

MYANMAR CRIMINAL DEFENSE PRACTICE MANUAL

Prepared for International Bridges to Justice by Jake Stevens
Edited by U Hla Ko



FIRST EDITION, 2018



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Myanmar Criminal Defense Practice Manual

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By Jake Stevens
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First Edition, 2018

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English Language Manual



Myanmar Language Manual

<https://www.ibj.org/where-we-work/myanmar/MyanmarDefenderManual.PDF>
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ABOUT THE WORK OF INTERNATIONAL BRIDES TO JUSTICE IN MYANMAR

IBJ's work in Myanmar is funded by a grant funded by the European Union to support rule of law reform. The grant is being implemented by the British Council through the MyJustice network. International Bridges to Justice (IBJ) has subcontracted with MyJustice to create this manual. Our work has been done in cooperation with all these agencies.

INTERNATIONAL BRIDGES TO JUSTICE

Our Mission Statement provides “In recognition of the fundamental principles of the Universal Declaration of Human Rights, International Bridges to Justice (IBJ) is dedicated to protecting the basic legal rights of ordinary citizens in developing countries. Specifically, IBJ works to guarantee all citizens the right to competent legal representation, the right to be protected from cruel and unusual punishment, and the right to a fair trial.”

Founded in 2000, International Bridges to Justice (IBJ) is building a global movement of justice-makers to end torture in the 21st century and strengthen the rule of law across the world. IBJ collaborates with state, civil, and community-based organizations to comprehensively reform criminal justice systems that respect the rights of every individual. IBJ's works to ensure that legal counsel is provided to the accused of the earliest stages of the criminal process in the hopes of significantly reducing instances of torture. IBJ's primary focus is the empowerment and support of the drivers of the criminal justice system—public defenders. IBJ is a US 501(c)(3) organization with programs in Burundi, Cambodia, China, Democratic Republic of the Congo, India, Myanmar, Rwanda, Singapore, Sri Lanka, and Zimbabwe. IBJ also has a program to encourage innovation in criminal justice systems around the world, called JusticeMakers. IBJ has sponsored Fellows for the JusticeMakers program in 41 countries. IBJ also maintains a website for international criminal defense knowledge and training called DefenseWiki. The DefenseWiki website contains information about criminal justice systems in 87 countries.

OUR VISION

We envision a world where the basic legal rights of every man, woman and child are respected in particular: the right to competent legal representation, the right to be free from torture and cruel treatment and the right to a fair trial. A world where each and every citizen is knowledgeable about his/her rights and is empowered to demand that they are upheld in practice. A world where international human rights standards and relevant local laws are brought to life in the everyday practice of justice.

OUR APPROACH

IBJ works with criminal defense attorneys, state institutions, legal aid organizations, community-based organizations, and other interested stakeholders to fulfill its mission. IBJ engages in a three-pillar programming approach to ensure comprehensive criminal justice transformation:

- ***Defender Capacity Building*** – as the drivers of the criminal justice system, we focus most of our support on the empowerment of public defenders/legal aid attorneys through skills development, training programs and materials, on-the-ground resource centres, international community-building, and technical support
- ***Institutional Capacity Building*** – in recognition that implementation of the rule of law requires the cooperation of all participants within the justice community, IBJ joins with defenders, law officers, judges, police, detention centre officials, local government representatives and legal academics in Criminal Justice Roundtable sessions to build mutual respect and establish the foundation for long-term criminal justice reform.
- ***Rights Awareness*** - the lack of information and knowledge of legal rights by average citizens is a major factor enabling the continuation of rights abuses; thus, IBJ administers Advisement of Rights campaigns through various communication tools (e.g. posters, brochures, street law sessions) to empower citizens to advocate for their own legal rights

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HOW TO USE THIS MANUAL

This manual is for the use of legal practitioners representing those accused of criminal acts in Myanmar courts. The Table of Contents can be used to identify the topic most important to the practitioner. When possible references are made in the text to other relevant sections (thus between the Pathway of the Case to specific Skills sections, or to Rights of the Accused Section). But the attorney or other legal services provider would be advised to review the Manual in its entirety, as sometimes related and necessary material is only presented once. The Manual does not hope to cover fully every topic addressed, or cite every possible relevant law or case on each subject, but rather provide a basic starting point for further consideration and research.

The Manual is divided into five parts. **Part One** presents topics foundational to representation. **Part Two** presents the core materials about conducting the case, starting with the need to provide early representation and make bail arguments, following the path of the case from investigation to appeal, and then a special focus on evidentiary issues. **Part Three** focuses on the needs of special populations: (1) juveniles; (2) women; (3) lesbian, gay, bisexual and transgender (LGBT) individuals; (4) people with mental illness; and (5) drug users. **Part Four** connects the role of the attorney to skills necessary to represent clients effectively; links between it and Part Two are in the text. Finally, **Part Five** are appendices presenting specific legal provisions, forms, and model attorney work product.

This Manual is only one ingredient in an ongoing effort to build the capacity of legal professionals to defend the rights of the accused, create a fairer criminal justice system, and expand access to justice. It cannot replace the expertise of Myanmar practitioners, nor does it pretend to be the final word on the subjects presented. Users are invited to send comments, corrections, and additional resources to the creators of the Manual, with the hope that future editions will be more correct and useful for all. Send such correspondence to International Bridges to Justice at: ibjmyanmar@ibj.org.

ABBREVIATIONS

Throughout this Manual abbreviations are used to refer to relevant laws, manuals, other resources. In the interests of readability, the abbreviations are used in conjunction with the section (for codes and statutes), paragraph (for manuals) and article for the constitution and for international treaties and conventions.

AG	Attorney General
AIR	All India Report
ASEAN	Association of South East Asian Nations
BLR	Burma Law Report
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CL	Child Law
CM	Myanmar Courts Manual
CPC	Civil Procedure Code
CRC	Convention on the Rights of the Child
CrPC	Criminal Procedure Code
CRPD	Convention on the Rights of Persons with Disabilities
EA	Evidence Act
FTG	Fair Trial Guidebook for Law Officers
FB	Full Bench (of Supreme Court)
HC	High Court (one level below apex court)
ICCPR	International Convention on Civil and Political Rights
JM	Jail Manual
LBLR	Lower Burma Law Report
M.E.	Myanmar Era (Myanmar date)
MLR	Myanmar Law Report
PA	Prisons Act
PC	Penal Code
PM	Police Manual
RAN, RLR	Rangoon Law Report
UDHR	Universal Declaration of Human Rights

INTRODUCTION

Welcome to the first edition of the Myanmar Criminal Defense Practice Manual. This Manual is designed to be an organic and evolving document. As you use it you may notice materials that need to be changed or added to. We welcome your thoughts and your feedback. We are printing and distributing 1000 copies for this first edition. We will also make an electronic version of the Manual widely available, and the electronic version will be regularly updated. The Manual is available in both Burmese and in English.

There are some language issues we want to highlight with this first English language draft. They relate to differences in the English and Myanmar languages.

- **Gender.** Throughout this document we refer to defense attorneys sometimes as he, sometimes as she, and sometimes by both genders (he or she). It is our intent to be gender neutral as much as possible in our language as attorneys, law officers, police officers, judges, and clients come in all shapes, sizes, and genders.
- **Lawyer/attorney.** We are aware that the term “lawyer” in Myanmar often refers to a law officer (prosecutor). As much as possible we have tried to use the term “attorney” when referring to defense counsel. There are some situations in which this is not possible. For example, we retained the concept of “client-centered lawyering.” There is no alternative construction in the English language that would be a suitable replacement. In addition, some international documents use the term “lawyer” when referring to defense counsel, and we did not modify the titles or text of such documents. One example is the *United Nations Basic Principles on the Role of Lawyers* referred to on page 28.
- **Magistrate/Judge.** As a general matter we use “Judge” to mean both magistrates and judges. We use magistrate when quoting laws or where describing the hierarchy of the courts and judicial authorities.
- **Confession/Admission.** We are aware that there is a difference under Myanmar law about an admission given to a police officer during the investigation stage, and a confession provided in court to a judge. As much as possible we have tried to differentiate between the two and have used the terms confession and admission. In the English language, however, it is not as easy to always differentiate between the two terms.

We hope this manual enhances your practice of the law and improves your representation of the poor, of children and youth, and of the marginalized in society.

We very much want your feedback about changes that should be made in the document. Thank you for taking the time to read and review the manual, and your help in improving this important work.

Jim Taylor
Country Program Director, Myanmar
International Bridges to Justice

PART ONE: FOUNDATIONAL ISSUES

COUNSELING CLIENTS

The criminal defense attorney's role is to defend, advise, counsel and represent the accused. In the criminal justice system the government is asserting its ultimate authority to deny the accused liberty or even life. Thus the prosecution bears the highest burden of proof in the Myanmar legal system, and the prosecution must show that an accused is guilty beyond a reasonable doubt of the crimes he is charged with.

The defense attorney must hold the prosecution to that high standard and seek to protect the life and liberty of the accused.

An attorney must counsel the accused on different strategies and arguments that can be used in the case as well as the benefits and drawbacks for each one. The attorney works with the accused and defense witnesses to understand the accused's information and perspective and to determine an appropriate defense (e.g. alibi, self-defense, unsoundness of mind and intoxication and misidentification). A defense attorney may provide advice on what plea to enter, whether to accept a plea agreement, and whether the accused should testify on his own behalf. An attorney must examine evidence and plea before the trial court to call witnesses on behalf of the defense, as well as cross-examination of prosecution witnesses. In case of appealing convictions the attorney must examine the judgment given by the trial court based on the evidence and testimony before it.

Attorneys, especially criminal defense attorneys serving the poor, must approach their relationship with their clients in a client-centered way. Client-centered values suggest that the primary objectives of attorneys in interactions with clients are

- to gather sufficient information from them;
- to give them sufficient information; and
- to encourage clients to make decisions that are likely to give them greatest satisfaction.

In order to accomplish these goals, it is important for an accused to obtain the help of an attorney as early as possible. There are many actions that attorneys should take to protect and aid an accused in the pretrial stages, that may not be possible as the case progresses. The pretrial stage of the case is perhaps the most important part of a criminal case, and the stage at which attorneys can do the most good for their clients. Attorneys must do everything possible within their ethical and legal obligations to defend their client, including advocating on behalf of the accused and challenging procedural irregularities and inconsistencies. This may bring the attorney into conflict with existing practices, as it is often found that common practices in the criminal justice system do not comply with the law. In order to bring about change attorneys must be willing to speak out about injustice.

This section focuses on the need to engage clients carefully as the most central decisions are under the control of the client:

- To Confess or Not
- To Plead Guilty or Deny

- To Testify or not to Testify

Many of these concepts are also explored elsewhere in this Manual. See Pathway of the Case, Prosecution Evidence, Skills: Interviewing Clients, Skills: Developing a Defense line Section

Client-Centered Lawyering

Benefits of client-centered lawyering:

- Enhances client competence by treating them as co-equals in finding options, assessing consequences;
- Promotes autonomy by fully informing them while encouraging and allowing them to make decisions;
- Satisfies client needs for relatedness by using collaborative actions and building relationships emphasizing mutual trust, respect, and caring.

Client-centered values and objectives have clear benefits:

- Problems belong to clients, not their attorneys, and clients must live with the consequences of their choices;
- Clients are better at identifying and assessing non-legal consequences than are their attorneys who have expertise only regarding legal consequences;
- Clients can better determine acceptable risk levels which exist in all difficult decisions because they run these risks in more personal ways and have to live with resulting consequences;
- Clients are usually capable, interested, and willing participants in making decisions that affect their lives and situations.

Attorneys need good communication skills when interviewing clients and meeting these expectations. These include

- Explaining what decisions are needed and why in clear and non-legal jargon;
- Identifying and explaining the available options for each of these decisions;
- Encouraging and allowing them to make all decisions that have substantial legal or non-legal impact on their lives.

Special Case: Make Sure the Child Client Understands

In order to be client-centered with child clients, attorneys must use language that a child can understand. When the defendant is a child, there are additional barriers to understanding, including lack of sophistication and immaturity. Moreover, children are particularly vulnerable in the court system, and may feel intimidated and afraid to indicate that they don't understand the proceedings. The defense attorney should carefully and thoroughly discuss the case with the juvenile client in meetings before court hearings to facilitate the child's understanding and ability to participate in his/her own defense.

Showing Respect for the Client in the Courtroom

Lawyers should be alert for ways they can communicate their respect for their client to the client and to the other actors in the courtroom. This includes fully informing the client of the purpose of each court appearance, what happened, and the reason for each adjournment. Lawyers should ensure that their clients can hear all the testimony.

- Handcuffs should be removed during court proceedings unless there is a reasonable expectation the accused will escape or act violently. CM, para. 477

Maintaining Confidentiality

One of the most important duties an attorney owes to a client is the duty of confidentiality. Attorney-client communications are governed by the Evidence Act:

Evidence Act Sec. 126. Professional communications

No legal practitioner shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

- (1) any such communication made in furtherance of any illegal purpose;
- (2) any fact observed by any legal practitioner, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such legal practitioner was or was not directed to such fact by or on behalf of his client.

Explanation – The obligation stated in this section continues after the employment has ceased*

Some concern has been voiced about whether attorneys have an obligation to inform authorities if a client has committed an offense listed in Criminal Procedure Code, Section 44, which provides in part:

•**Criminal Procedure Code- 44.** (1) Every person aware of the commission of, or of the intention or any other person to commit, an offence punishable under any of the following sections of the Penal Code (namely), 121, 121A, 122, 123, 124, 124 A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, **shall, in the absence of reasonable excuse**, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

•(2) For the purposes of this section the term "offence" includes an act

committed at any place out of the Union of Myanmar which would constitute an offence if committed in the Union of Myanmar. (emphasis added)

It is our belief that Evidence Act Sec. 126 provides the “reasonable excuse” required by CrPC Sec. 44, and that the Evidence Act requires that an attorney not inform authorities that a client has committed an offense.

There are other legal provisions in Myanmar that must also be considered in a discussion of confidentiality. According to The Ethics of the Legal Practitioners Duties and Rights, Seventh Edition, Sec. 151:

The legal practitioners are responsible to maintain the documents related to a case securely and return systematically those documents to the client when the case is finished, or when they no longer represent for the client.

This requirement is similar to that imposed by Evidence Act Sec. 126, in that it requires practitioners to maintain the confidentiality of documents related to a client’s case even after representation has ended, and return those documents to the client.

•Prison Act, Section 40. Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that, so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

This is a portion of the law that is frequently overlooked, and practitioners should bring it to the attention of officials that are responsible for the individuals charged with crimes.

Helping the Client Make Key Decisions

Working with Clients Who want to Confess or Plead Guilty

Attorneys may encounter clients who wish to either make an admission concerning this guilt (during the Police Investigation Stage) or make a formal admission as a plea of guilt once the case has reached court. Many of these clients may initially decline representation. Even so, Justice Centre attorneys should attempt to engage such persons in order to help them to determine their goals, and to understand the choices before them. By choosing to represent not just “innocent” clients or those who wish to deny the charges, the Justice Centres make a powerful statement about the rights to an attorney, to due process, and to a fair trial.

As with any client, the client who wishes to admit guilt needs to be heard by the attorney. Attorneys should learn as much about the facts of the case, and also about the goals and priorities of the client. Why do they want to confess or admit? Attorneys should explain the applicable law as it applies to the case, and all the

possible defenses (shared property rights, personal defense or insufficiency of prosecution evidence for example) available to the client. In addition, the attorney must explain what the consequences of giving a confession or plea guilty may be. Many clients may not be aware of lengthy prison sentences they are facing. And they may not be aware that they will be giving up their right to appeal (although a revision may still be available if a judge gives them an illegal sentence).

Caution against making an admission at the police investigative stage

A client who wishes to make an admission in the police investigation stage may not even intend to plead guilty, but may see it as an opportunity to get her side of the story heard, and the case dismissed early on. As a general matter this is not true, and clients should be advised against making an admission at this stage of the proceedings. The best defense against such admissions is early access to attorneys by the accused. As soon as the attorney has contact with his or her client, he or she should advise him not to make a statement to either the police or a magistrate, except after consultation with counsel and with their advice. There are many reasons to discourage the accused from giving a statement:

- To avoid creation of evidence prejudicial to him
- To avoid being locked into a particular defense-line
- To avoid possibility of perjury charges – although such prosecution is only allowed with sanction of high court. CrPC Sec. 342(1)
- To avoid the premature disclosure of defense evidence.

There is no prohibition of attorneys advising clients to remain silent. CrPC Sec. 163 (general prohibition on discouraging statements to police) does not apply in this situation.

There will, of course, be cases where an accused insists on “telling his side of the story.” In that situation an attorney should prepare the accused to make the most favorable statement possible, given the facts available to the attorney.

Making an Admission of Guilt to Get a Pardon

Consider also that clients who make admissions of guilt may be eligible for a pardon under CrPC SS. 337 and 338. But this would have to be with the authority of the relevant judge. The accused may be able to receive a pardon for their actions if they give a confession in regards to the action of others.

- The circumstances and authority for such a pardon are contained in CrPC SS. 337 and 338.
- The Public Prosecutor can, however, certify that the cooperating accused willfully concealed evidence or gave false evidence. In which case the accused may be sent to trial, the subject of which is both the original charge and whether or not he complied with the conditions of his pardon. CrPC Sec. 339

Guilty Pleas

Defense attorneys will have to understand guilty pleas in order to represent clients in two very different postures.

First, there may be some clients who, after careful consideration, review of the facts and the law, and discussion with their attorneys, may choose to admit, rather than fight the charges. An attorney must have investigated the case, considered viable defense lines and specific defense before giving advice to the client. See sections of Investigating to Collect Evidence, Defense line and Forming Specific Defense Lines. In those situations the attorney can still aid the client in achieving his or her goals, and it is hoped, receive the fairest sentence possible. An attorney may also ensure that a client doesn't "over confess" – to greater crime or implicate others. In the end the attorney can also stand ready to file a revision if the sentence imposed is illegal.

Second, clients or their families may approach the Justice Centres or other defense attorney to withdraw and overturn their previously entered guilty pleas. In both cases it is important for attorneys to understand the legal requirements and legal and practical consequences of guilty pleas.

Timing of the Plea

The opportunity to plea bargain – i.e. negotiate for a lesser charge or lesser sentence – is not formalized in Myanmar law and practice. There are, however, opportunities for clients to plead guilty through making an in-court admission. The timing varies dependent on whether it is a summons or a warrant case (see Types of Cases Section). Other than timing, however, the same legal requirements taking the plea and issuing a subsequent sentence should apply.

Summons Cases

In Summons cases, the accused can admit guilt before the presentation of any prosecution evidence in the inquiry stage. The judge must explain the complaint before any testimony, using the facts in the FIR and from the law officer. CrPC Sec. 242. The judge must ask if the accused admits or denies. CrPC Sec. 243. If the accused admits, the judge must write down her statement. The judge would then proceed to Sentencing (see that section).

Warrant Cases

Warrant cases carry with them more serious sentences, and thus the attorney should take great care in counseling a client about her decision to admit the charges. Procedurally, an admission can only take place after the prosecution has presented evidence during the Inquiry and the judge has found sufficient evidence to frame charges. As discussed in Pathway of the Case, "the charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make." CrPC Sec. 255(1). Similar to the summons case, "if the accused pleads guilty, the Magistrate shall record the plea and may in his discretion convict him thereon." CrPC Sec. 255(2)

Ingredients of a Guilty Plea

To be consistent with the law, a guilty plea should be more than just the simple admission of general guilt that apparently is common practice. The client's guilty plea should include the ingredients of the crime, the alleged facts, and the possible sentences. As stated in Para. 567 of the Myanmar Courts Manual, "if the accused, on being called on to plead, does not admit all the elements which go to make up the charge against him, a plea of not guilty should be recorded. A plea of an accused charged with murder or culpable homicide, which only admits that he killed the deceased is not a plea of guilty. No inference as to the guilt of an accused should be drawn from his plea so long as the plea is not a distinct admission of the charge. Without such admission the charge must be proved."

Relevant court citations:

- The judge should make an inquiry as to the health and understanding by the accused, otherwise the admission can later be withdrawn. 2 All India Report [AIR] 1915 Laho p. 487 (493).
- The judge must explain the facts and the law. AIR 1923 Rangoon p 132 Maung Sen. (the judge didn't tell the accused the facts or the ingredients. Charged with village act.) also 18 AIR 1931 Bombay p 195 (196).
- The judge must elicit necessary inculpatory facts. "I am guilty" or "I did it" is not sufficient. *Maung Pyo v Government (King-Emperor)* 14 LBLR 216. The judge must establish a factual basis for the plea by ensuring that the defendant admits to sufficient facts to establish each of the ingredients of the crime charged.
- The guilty plea must be knowing and voluntary: Where an accused pleaded guilty it was not enough for a judge just to accept the plea. It was necessary to ensure that the person understood the nature of the charge, facts of the case and consequences of admitting guilt. *Sri Sawarmal v. Union of Burma (U Thein Maung)*, 1954 BLR (HC) 331.

Sentencing after Guilty Plea

Sentencing after a guilty plea should follow the same procedures as sentencing after a full trial to verdict. (See Sentencing Section)

Although Myanmar does not allow for formal sentence bargaining, attorneys should still argue for their clients by presenting mitigating evidence, and statutory exceptions to prison sentences. Attorneys may also want to take advantage of a judge's willingness to issue a "sentence-release" (essentially time served). In that situation a guilty plea may result in a client being released sooner.

However, as individual attorneys and as members of the Justice Centres, attorneys should be aware that some judges, police and law officers, may use this practice as a way of gathering bribes to facilitate the "sentence-release." And even if no bribes are passed, the over-reliance of "sentence-release" in cases of minor crimes can undermine the development of a strong criminal justice system with respect for the rule of law, presumption of innocence, and burden of proof.

Even if a client has admitted the charge, the judge is not obligated to accept the plea. See CrPC Sec. 255(2).

Helping Clients Remain Silent

Myanmar law and practice is unclear on the right of the accused to stand mute in the face of the charges against him or her. While, as discussed above and also in the section on Evidence/Confessions, a judge needs to advise an accused of the consequences of testifying or confessing, the choice at trial seems to be either to testify as a “witness” or as an “accused.” While the accused may not be forced to “testify against himself or to confess guilt” (which would violate global standards such as in ICCPR art. 14(3)(g)), seemingly the accused must somehow tell his or her side of the story.

This would seem to be unnecessary in most cases, given the clear burden of the law officer to prove each and every ingredient of the charges beyond a reasonable doubt in a criminal matter. The defense attorney must consider the various potential benefits and drawbacks if the client testifies at trial, and the attorney must discuss those consequences thoroughly with the client. What is the other evidence of the client’s guilt? Will such evidence be admissible? Is the client’s statement to magistrate or judge admissible? Is it in the client’s best interest to make a statement to the court? Must the client testify in order to explain an innocent possession of contraband? The attorney should advise the client on the consequences of testimony, and can attempt to convince him or her to remain silent. The decision to testify is ultimately that of the client.

If the accused wishes to remain silent, attorneys should thus consider whether they want to give notice to the court through a motion that the accused will not give a statement to the court, relying instead on legal defenses such as insufficiency of the evidence or presented through other defense witnesses. In order to comport with Myanmar law, the attorney should assert for the accused that he or she does not wish to testify as a witness, and that his or her testimony as the accused is a general denial of the charges.

However, even if the judge is aware that the accused wishes to be silent, the judge may nonetheless ask questions of the accused, under CrPC Sec. 342(2). The attorney must carefully prepare the client to remain steadfast in his or her silence. If need be the attorney must make and record objections to ongoing questioning of a client who is determined to remain silent.

THE RIGHTS OF THE ACCUSED

This section is meant as a quick reference to fundamental rights of the accused. They are explained in context throughout the rest of the manual. See Appendix 1, Relevant Protections of the Myanmar Constitution

The Right of Defense

- Constitution of the Republic of the Union of Myanmar, Art. 375 – The accused have the right of defense.
- Code of Criminal Procedure, Section 208 (2) – The accused have the right to cross-examine witnesses for the prosecution, including the complainant, at the initial hearings.
- Nga Thet U v. King-Emperor, 2 LBR 115 – Where the accused was unable to enter a defense, he/she must be retried.
- Complainants and defendants had equal rights to be heard, to know of formal charges in court, and to call and cross-examine witnesses. See for example, *Maung Ant Bwe & One v. Union of Burma*, 1948 BLR (HC) 863. *Union of Burma v. Ah Shin & 2 Others*, 1955 BLR (HC) 317. *U Ba Aye & 3 Others v. Union of Burma*, 1958 BLR (HC) 548. ဘီရှူး (ခ) မကျင်နုနှင့်ပြည်ထောင်စုမြန်မာနိုင်ငံတော် (လွှတ်တော်) ၁၁၀ [*Bishu (a) Ma Kyin Nu v. Union of Burma*, 1953 BLR (HC) 110].
- International Covenant on Civil and Political Rights (ICCPR) art. 14(3)(d) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

Presumption of Innocence/Burden of Proof

Because the accused's liberty is at stake the government has the burden of proof and must demonstrate that the proof is beyond a reasonable doubt. Attorneys must be vigilant in rejecting attempts to shift the burden to the accused. Many (police, judges, legal officers) presume the accused are guilty; you must remind them this is not correct according to the law. There can seem to be a conflict between the very clear presumption of innocence and the demand that the accused who denies the charges must in some way present evidence.

1. Limited Constitutional Protection. There is no explicit reference to presumption of innocence in the 2008 Constitution, which distinguishes it from other modern constitutions. Nonetheless the constitutional due process protections (see below) incorporate the statutory law and court rulings that are discussed below.
2. The burden of proof is on the prosecution, as the prosecution is the "plaintiff" in many criminal cases.
 - Evidence Act, Sec. 101: "Whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove

the existence of any fact, it is said that the burden of proof lies on that person.”

- The definition of “proved” is provided in Evidence Act, Sec. 3: “A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.” The Evidence Act applies to all courts except the Courts Martial. No distinction is drawn between civil and criminal standards of proof in the codes.
3. Court Rulings establish that the proof in a criminal case is higher than in civil cases and **is proof beyond a reasonable doubt. The accused must be accorded the benefit of any doubt:**
- *King-Emperor vs U Damapala* 14 Ran. 666 (F.B.) is authority for this principle and is cited in The Law of Evidence by Sir Arthur Eggar edited by Dr. Muang Muang and published by the Rangoon Gazette Ltd 1958 (printed 1963). Dr. Muang Muang places the case on four squares with section 3 of the Evidence Act 1872.
 - There is a higher standard in criminal cases than in civil cases. “Circumstantial evidence must be consistent, and consistent only with the guilt of the accused. The inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. If the evidence is consistent with any other rational explanation, then there is an element of doubt of which the accused must be given the benefit.” *Muang Tin Win vs The Union of Burma*, 1955 BLR 146 H.C.
 - The High Court found that a plausible story for the defense, even if not believed by the court, would cast doubt on the case and entitle an acquittal because of the law officer’s failure to discharge the burden of proof. *M. Muthiah Servai v. Union of Burma* 1955 BLR 175.
 - A dictatorial court (the SCCAC) rejected this historic view preferring a more prosecution-friendly balancing in the pursuit not of procedural justice but the “truth” *Ma Khin Myint alias Ma Khin Nyunt Kyi v. Union of Burma* 1970: 5. Attorneys should be prepared to argue that this decision is not relevant because it diverged from the established principles in the original law.
 - Benefit of the doubt must reside on the accused. *Daw Tin Oo and U Aye Phe (3) v Union*, 1966 BLR 129
 - Appellant is entitled to benefit of the doubt about his intention when he struck the victim, and the victim died six months later. *Maung Ngwe Tha v. Union*, 1960 BLR 205
 - Appellant is given the benefit of doubt regarding the existence of premeditation. Premeditation is a question of fact, and the fact that the appellant was armed with a knife does not prove premeditation. *Maung Nyan Shein v. Union*, 1960 BLR 556.
 - In a criminal case, the burden lies on the prosecution to prove its case fully and the prosecution cannot fill the gaps in its evidence by relying on any weakness that the defense may show. The presumption of innocence is in favor of the accused, and he has the right to the benefit of any doubt. *Union of Burma v. U Aye Kyi*, 1964 BLR 396.

- The plaintiff has full responsibility to show the accused committed the crime. *Daw Si Si v Union*, 1964 BLR 876
 - If an accused person gives an explanation which may reasonably be true, even though it is not believed by the Court, he is entitled to an acquittal, because in such circumstances the onus of proving his guilt has not been discharged. *Robert Stuart Wallchope v. Emperor*, (1934) ILR Vo. 61 Cal Cal. 169 followed. *M. Muthiah Servai v. Union*, 1955 BLR (HC) 175
 - Circumstantial evidence and burden of proof: In a case of circumstantial evidence, the failure of one link destroys the chain so that it is of the utmost importance to get on the record every piece of evidence that makes a chain. *Sheo Narain Singh v. Emperor* (1920) 58 Indian Cases, 457.
 - Circumstantial evidence must be consistent, and consistent only with the guilt of the accused. The inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. If the evidence is consistent with any other rational explanation, then there is an element of doubt of which the accused must be given the benefit. *Basangouda Yamanappa v. Emperor*, A.I.R (1941) (1945).
 - Circumstantial evidence: A judge is bound to ask himself whether there is any rational explanation of the evidence and such a reasonable explanation should not be rejected because it was not offered by the accused. *Basangouda Yamanappa v. Emperor*, A.I.R. (1941) BOM. 139.
 - Burden concerning exceptions to Penal Code: The test is not whether the accused has proved beyond a reasonable doubt that he comes within any exception to the Penal Code, but whether in setting up his defense he has established a reasonable doubt in the case for the prosecution. *Aung Bwin v. The King*, 1947 BLR 50
4. Fair Trial Guidebook for Law Officers, Standards Applicable to Criminal Proceedings, II C, Presumption of Innocence and Benefit of the Doubt
- “The presumption of innocence requires that judges, law officers, and police officers make no statements about the guilt or innocence of the accused before the outcome of the trial,” citing to two decisions of the European Court of Human Rights, *Fatullayev vs Azerbaijan*(40984/07), 2010, §§ 160-163 and *Khuzhin and Others v Russia* (13470/02), 2008 §§ 93-97.
 - One of the aspects of the presumption of innocence is that persons facing trial but not yet convicted should be housed separately from those already convicted. Jail Manual, Paragraph 415 (3).
5. Relevant International Standards:
- Universal Declaration of Human Rights, Article 11(1): Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
 - Convention on the Rights of the Child, Article 40(2)(b): Every child alleged as or accused of having infringed the penal law has at least the

following guarantees: (i) To be presumed innocent until proven guilty according to law

- ICCPR art. 14(2): Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.
- ASEAN Declaration of Human Rights Article 20(1): Every person charged with a criminal offence shall be presumed innocent until proved guilty according to law in a fair and public trial, by a competent, independent and impartial tribunal, at which the accused is guaranteed the right to defence.

Right not to be tortured

At the very least, attorneys must protect their clients against physical harm at the hands of the police and other governmental officials.

1. Constitution, Art. 353 – Nothing shall be detrimental to the life and personal freedom of any person.
2. Penal Code Section 330 and 331 prohibit the causing of ‘hurt’ and ‘grievous hurt’ during an official interrogation.
3. Code of Criminal Procedure, Section 343 – The accused shall not be induced by threat, promise, or otherwise to disclose or withhold any matter within his knowledge.
4. Fair Trial Guidebook for Law Officers, Standards Applicable to Criminal Proceedings, II D, Protection from Torture and Degrading Treatment. “The right to be protected from torture is an absolute and mandatory right for a person accused of a crime and cannot be suspended even in war time or in a state of emergency. Torture or threat of torture cannot be justified by superior orders.”
4. Global Standards:
 - Universal Declaration of Human Rights, Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
 - United Nations Convention Against Torture Article 2: 2. No exceptional circumstances whatsoever...may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.
 - United Nations Convention on the Rights of People with Disabilities Article 15: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
 - ICCPR Article 7 - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Right to Remain Silent (Right against Self-Incrimination)

As discussed throughout manual, attorneys should provide early representation to clients to avoid coerced, false or unwise confessions. Defense attorneys can have a strong role in reinforcing and amplifying the right to silence. See Right to Silence in Counseling the Client Section.

1. Limited Constitutional protections. Must be inferred from general right to defense and due process rights.
2. Code of Criminal Procedure, Section 164 – Confessions made to a Judge may be used as evidence against the accused only if they were made voluntarily.

Also, the accused must be informed that he/she is not obliged to confess and that the confession may be used as evidence against him/her.

3. Code of Criminal Procedure, Section 342(1)(a) – The accused shall not be examined as witnesses except upon their own request.
4. Code of Criminal Procedure, Section 342(1)(c) – The accused may choose not to present evidence or witnesses for their own defense, and it shall not be noted at trial by the prosecution if they refuse to offer a defense, but the Court and the jury (if any) may draw such inference from therefrom as it thinks just.
5. International Standards are clear.
 - ICCPR art. 14(3)(g): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... Not to be compelled to testify against himself or to confess guilt.

Right to be defended by an attorney

Although attorneys are divided between higher grade pleaders (representation limited to township court) and advocates (can practice at all levels), the rights discussed below apply broadly to them all.

1. Constitution, Art. 19(c) – The Constitution provides protection “to guarantee in all cases the right of [defence] and the right of appeal under law.”
2. Constitution, Art. 375 – The accused have the right of defense.
3. Code of Criminal Procedure, Section 340 – Any person accused of an offence before a criminal Court, or against whom proceedings are instituted under the Code of Criminal Procedure may of right be defended by a pleader.
4. Courts Manual, Vol. II, para. 455 – Every person accused may of right be defended by a pleader.
5. Office of the AG, para. 79 – Those accused of offenses punishable with death have the right to an attorney provided by the state if they cannot afford one themselves, and the attorney will be appointed by the Law Office.
6. Legal Aid Law of 2017 Section 3: The objectives of the law are as to enjoy equal, free and lawful right to legal aid and too enjoy legal aid for defense and appeals. See Early Access to Attorneys Section.
7. The Union Judiciary Law, Section 3. The administration of justice shall be based upon the following principle:
 - (c) to obtain the right of defense and the right of appeal according to law
8. Court Rulings:
 - Chit Tun & Four Others v. Crown, 1 LBR 239 – When a case is transferred from one judge to another and where the accused did not have an attorney, the new judge should expressly advise the accused of their right to an attorney.
 - Tun Hlaing & Others v. King 1946 RLR 263 – Where the accused is likely to be charged with murder, they must have an attorney from the outset of the case.
9. Fair Trial Guidebook for Law Officers, Standards Applicable to Criminal Proceedings, II G, The Right to Counsel. “The right to counsel is an important right at every stage of the criminal proceedings. At the pre-trial stage, communication with counsel can prevent the rights of the accused

from being violated, or can reduce an infringement of fair trial principles. The person suspected or accused of a crime is often dependent on counsel to receive relevant and necessary information. Access to counsel during the early stages of proceedings is crucial for ensuring an adequate defence trial. Therefore, the relevant authorities have a responsibility to explain the right to counsel to the accused.”

“The accused held in custody have access to counsel from the outset of their detention.”

10. Relevant Global Standard:

- ICCPR art. 14(3)(d): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing.

Right to Due Process

Attorneys should be prepared to object when their clients are being denied a fair hearing. Although CrPC Sec. 537 appears to limit the importance of procedural defects when considering appeals or revisions, it includes the important exception “... unless such error, omission, irregularity, or misdirection has in fact occasioned a failure of justice.”

1. Constitution, Art. 381 – No citizen shall be denied redress by due process of law.
2. Constitution, Art. 353 – Nothing shall be detrimental to the life and personal freedom of any person.
3. Constitution Art. 19: “The following are prescribed as judicial principles... (b) to dispense justice in open court unless otherwise prohibited by law.”
4. Section 3(b) of the Union Judiciary Law 2010 Open courtroom.
5. Code of Criminal Procedure, Sec. 352 – Individuals have right to a public trial; all courts shall be deemed open to the public.
6. Fair Trial Guidebook for Law Officers, Standards Applicable to the Trial Stage, III B. “A public hearing is a transparency measure to the parties and the public to determine the case how the court reached its conclusions as well as the credibility and reliability of that conclusion. A transparent judicial system supports the independence and fairness of the legal and judicial systems.”
7. Global Standard:
 - Universal Declaration of Human Rights Section 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.
 - ICCPR art. 14(1): In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
 - ICCPR art. 9 (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be

deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Right to Equal Protection of the Law

All residents in Myanmar have the right to legal protections, without regard to gender, race, religion, or citizenship status. The use of the word “person” rather than “citizen” in many of the below constitutional provisions is important and should be used by attorneys as a demand that all be treated fairly and equally.

8. Constitution Basic Principal 6 (e) - is “enhancing the eternal principles of Justice, Liberty and Equality in the Union”
9. Constitution, Art. 21(a) - Every citizen shall enjoy the right of equality, the right of liberty and the right of justice, as prescribed in this Constitution.
10. Constitution, Art. 347 – Union shall guarantee any person equal rights before the law and shall equally provide legal protection.
11. Constitution, Art. 348 – Union shall not discriminate against any citizen based on race, birth, religion, official position, status, culture, sex, and wealth.
12. Fair Trial Guidebook for Law Officers, Standards Applicable to Criminal Proceedings, II A, Equality before the Law and Equal Treatment by the Law. “The Myanmar Constitution guarantees equal treatment before the law and non-discrimination against all persons accused of a crime, without regard to their race, birth, religion, and culture.”
13. Global Standard:
 - Universal Declaration of Human Rights Art. 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.
 - Universal Declaration of Human Rights, art. 7 - All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
 - UN Convention on Elimination of All Forms of Racial Discrimination
 - Convention on Ending Discrimination Against Women
 - ICCPR art. 14(1): All persons shall be equal before the courts and tribunals.

Right Against Double Jeopardy

Without protections against endless retrials, the accused stands defenseless against the superior resources of the government. Unfortunately this rule is undercut by the practice of bringing multiple simultaneous prosecutions across different townships where there is an argument the alleged criminal act occurred in multiple jurisdictions. This can happen in politicized prosecutions such as those against protesters.

1. Constitution, Art. 374 – Individuals shall not be retried for an offense for which they were already convicted or acquitted unless a superior court orders a retrial.
2. Code of Criminal Procedure, Section 403 – Person once tried for an offense shall not be liable to be tried again for the same offense. In the event that the first charge fails to lead to a conviction, the accused may not be charged with an alternative or lesser offense based on the same facts. (Can be tried on the same facts for any distinct offense for which a separate charge might have been brought.)

Right against Post Fact Prosecutions

No accused can be prosecuted for something that was not a crime at the time it occurred.

1. Constitution, Art. 43, No penal law shall be enacted to provide retrospective effect.
2. Constitution, Art. 373 – Individuals shall be convicted of only those crimes that are in operation at the time.
3. Fair Trial Guidebook for Law Officers, Standards Applicable to Criminal Proceedings, II B, Non-Retrospective Effect
4. Universal Declaration of Human Rights, Article 11(2): No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.
5. ICCPR, art. 15(1). No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed other than the one that was applicable at the time when the criminal offense was committed. If, subsequent to the commission of the offense, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
6. Convention on the Rights of the Child, Article 40(2)(a): No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed.

Right to be Informed of Charges

Attorneys should be aggressive in enforcing the right to be informed of the charges. This right does not seem to be fully protected under Myanmar practice, where accused are held in police custody for upwards of 30 days, and the formal charging document is not created until after the presentation of the prosecution's evidence. It is thus incumbent upon the criminal defense attorney to meet with and advise the accused as soon as possible. While such conversations cannot replace the obligation of the government to explain the basis for its detention or prosecution of the accused, the conversations can alleviate the anxiety of a detainee as well as begin the necessary tasks of investigating the facts and preparing the defense line.

1. Code of Criminal Procedure, Section 210 – The accused have the right to be read the charges against them and have the charges explained. The accused have a right to be given a copy of the charges against them, free of cost.
2. ICCPR art. 9(2) - Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Right to Bail

As general matter criminal defense attorneys should advocate for the release of the accused as early as possible in the case, including informal advocacy to the police, representation at remand hearings, and at all stages of an inquiry and trial. See Bail Section for Myanmar law.

1. Myanmar Constitution Articles 376-378
2. Global Standards:
 - Universal Declaration of Human Rights, Article 9: No one shall be subjected to arbitrary arrest, detention or exile.
 - Convention on the Rights of the Child Article 37(b): No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
 - ICCPR Article 9:
 - (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
 - (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Right to Interpretation.

Attorneys need to anticipate the need for interpretation so that it can be addressed in court. Be aware that the use of interpreters provided by the court may undermine the confidentiality of communications between the client and attorney. Unfortunately attorneys may be denied the right of speaking through interpreters with clients in custody, as police argue that the right to interpretation is limited to court activities. The new Legal Aid Law appears to provide legal basis to assert a right to interpretation in all situations involved in legal representation. See Early Access to Attorneys.

1. Code of Criminal Procedure Section 361 “Whenever an evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.”

2. Code of Criminal Procedure Section 364 written confessions shall be translated for the accused
3. Legal Aid Law of 2017 Section 27. Legal provider shall, for a person who is under charged, prosecution, decision and imprisonment-
 - (a) provide legal aid by the help of interpreter in the case of communication problem even he is a national.
 - (b) when he is a foreigner, by the help of translator, explain him that he can get legal aid and inform to the relevant Consulate and Embassy without delay from the Foreign Ministry department .
 - (c) When the person is a disable person, provide legal aid by gesture or by using body language and Braille by the help of a person who can understand it.
4. Fair Trial Guidebook for Law Officers, Standards Applicable to Criminal Proceedings, II H, The Right to Interpretation and Translation.
 - “The interpretation and translation must be provided during the early criminal proceedings including investigation, interrogation and pre-trial matters.”
 - “If the accused and the defense counsel do not have full command of the same language, the ability of the counsel to defend adequately is threatened. The accused may have a difficulty to explain important information about something a witness has said to his defence counsel. Similarly, he may want to have a conversation with his lawyer about line of defence or the legal issues in his case. All the fair trial rights given to criminal defendants are at risk if they are not able to understand the language being used by the court, government officials, witnesses, or their lawyer.”
5. Global Standard
 - ICCPR art. 14(3)(a) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.

Rights Against Unlawful Arrests and Searches

These rights are discussed extensively throughout this manual, as many unfair prosecutions begin as unlawful arrests or searches. See Path of the Case and Evidence Sections.

1. Code of Criminal Procedure, Section 50 – The police shall not use excessive force or undue restraint when arresting the accused.
2. Code of Criminal Procedure, Section 52 – Women have the right to be searched by another woman with strict regard to decency.
3. ICCPR art. 9 (1) -Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Right Against Unlawful Police Detention

See generally Early Access to Attorney, Pathway of the Case and Bail Sections.

1. Constitution Article 376: No person shall, except matters on precautionary measures taken for the security of the Union or prevalence of law and order, peace and tranquility in accord with the law in the interest of the public, or the matters permitted according to an existing law, be held in custody for more than 24 hours without the remand of a competent judge.
2. Constitution, Art. 378 – The accused have the right to petition the Supreme Court for a Writ of Habeas Corpus to challenge the lawfulness of the detention.
4. Code of Criminal Procedure, Section 167 – The accused have the right to be released within 24 hours of being held in custody by the police.
5. Code of Criminal Procedure, Section 81 – The accused have the right to be brought before the appropriate court without unnecessary delay upon arrest.
6. Code of Criminal Procedure 167 – detention during police investigation limited to to 15 days for an offense punishable with less than seven years' imprisonment or up to 30 days for offenses punishable with more than 7 years imprisonment.
7. Code of Criminal Procedure, Section 169 – The accused have the right to be released when, after investigation, the officer making the investigation decides that there is not sufficient evidence or reasonable ground of suspicion to justify sending the accused to a Judge.
8. Myanmar Courts Manual, Section 466 – The accused have the right to be tried as early as possible.
9. *Bo San Lin v. Commissioner of Police*, (1948) BLR (SC) 372. Unless the procedure followed for arrest was in accordance with the law, the detention would be illegal.

RIGHTS AND DUTIES OF THE DEFENSE ATTORNEY

Overview: The Justice Centres are dedicated to providing zealous, ethical and excellent representation to the very poor. Defense attorneys must inform themselves of and strive to achieve the universal standards for providing legal representation to the poor and effective criminal defense. An attorney's duties include determining whether client's rights have been violated and seeking the appropriate remedies. An attorney must consult with her client, investigate the facts of the case, research the applicable law, and provide in court representation.

Right to Practice if Qualified

See also Attorneys: Contempt and Prosecution Section.

1. Courts Manual 1999, para. 7, Legal Practitioners Act- Higher Grade Pleader
2. Courts Manual 1999, paragraphs 3(1), S. 3(4) – (7). –Advocate

Right to Provide Representation in Court

1. Courts Manual, Vol. II, para. 455 – Every person accused may of right be defended by a pleader.
2. Courts Manual, Vol. II, para. 455 – The Pleader has the right to continue acting as the attorney for the accused until the proceedings against the accused end or until the Court issues leave in writing signed by the pleader or the accused.

3. The Ethics of the Legal Practitioners Duties and Rights Seventh Edition, Union of Myanmar Bar Council, 201- Legal practitioners have a general right to be in court.
4. Code of Criminal Procedure, Section 353 – Evidence shall be taken in the presence of the accused or his pleader. (We believe that this section of the Criminal Procedure code provides additional evidence of the importance of pretrial legal aid.)
5. Code of Criminal Procedure, Section 360 – The Advocate or Pleader has the right to be present when evidence of each witness is taken.

Duty to be a Zealous Advocate

It is not enough that attorneys appear in court for the accused. They must be prepared both in the facts and law of the case, and argue vigorously for their clients interests.

1. The Ethics of the Legal Practitioners Duties and Rights Seventh Edition, Union of Myanmar Bar Council, Section 141-The legal practitioners are responsible to perform their best for client's interests.
2. Legal Practitioners Act, Section 44; see also 1960, BLR (High Court) Page 487; 1966, BLR (High Court) Page 874; 1968, BLR (High Court) Page 264 -Attorneys can be prosecuted for negligence.
3. UN Declaration on the Basic Principles on the Role of Lawyers 12-14 -Lawyers must always loyally respect the interests of their clients.

Duty to Avoid Conflicts in Representation

Myanmar attorneys understand and abide by rules that prohibit representation of parties on both sides of a dispute. Since the Justice Centres do not represent “complainants” in criminal actions, attorneys should have no difficulty observing these instructions. When there are multiple co-accused, otherwise eligible for Justice Centre representation, in one case the Justice Centre will only represent one of those accused. Other co-accused will be referred to pro bono cooperating attorneys and other criminal defense projects. The Legal Aid Law appears to allow representation for victims, as well as co-accused, but does not state whether this should be by separate pleaders or somehow by the same legal aid services provider.

1. Legal Practitioners Act, Section 13 (a) –an attorney cannot “take instruction in any case except from the party on whose behalf he is retained.”
2. Bar Council Act, Sec. 15.
3. Legal Aid Law Sec. 32. The Legal Aid Body shall, after deciding to assist legal aid to accused person, appoint and assign the legal aid provider to provide injured person from committing crime and crime related witnesses before charge or after charge at primary Court or all stage of Court. Legal Aid Body can be appointed if necessary when the accused person is more than one.

Duty to Maintain Confidentiality of Client's Information

Scope: An attorney must protect the client by protecting his information and even his identity against disclosure. Protected information includes communications between client and attorney, advice given to the client, and client documents. Attorneys must: safeguard files from outsiders; avoid casual conversations about clients where they can be overheard; conduct client interviews in jails as privately as possible; conduct

investigations carefully as to not reveal client secrets. Even when conducting community legal education or otherwise promoting the work of the Justice Centres, attorneys and other Justice Centre staff must not discuss cases in a way which reveals client information or name.

1. Evidence Act Sec. 126 -All communications between legal practitioners and their clients are privileged.
2. Evidence Act Sec. 127 -This privilege extends to interpreters, clerks and servants of legal practitioners.
3. Evidence Act Sec. 128 -This privilege not waived if client testifies.
4. Prison Act Sec. 40 - Confidentiality must be protected during prison visits by attorneys to their clients.
5. International Bar Association, International Principles on Conduct for the Legal Profession, art. 4.1, "Confidentiality/ professional secrecy: General Principle" - A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, unless otherwise allowed or required by law and/or applicable rules of professional conduct.

Duty to Conduct Necessary Investigations

Failure to conduct defense investigation may violate the client's right to defense, right to counsel and right to a fair trial. Although police have an obligation to be impartial in their investigation, police do not often seek information helpful to the accused. Defense attorneys cannot rely upon other to seek out favorable witnesses, investigate prosecution witnesses to determine bias or inaccuracies, or create necessary evidence such as photos. See Skills: Investigation Section. It is critical that defense attorneys view the scene of the alleged crime, interview witnesses, and inspect evidence. It is especially important to identify evidence that may be transitory in nature. For example, if there is CCTV footage of an event, it may be recorded over after a fairly short period of time. It is critical to find out as soon as possible if such evidence exists and to secure a copy of it.

1. Courts Manual, Vol. II, Section 457 – Advocates or Pleaders should be engaged in sufficient time to enable them to receive instructions and to study the necessary documents. The Advocate or Pleader shall examine the committal record and decide what parts of the record he/she requires to be copied to enable him/her to conduct the case properly.
2. ICCPR art. 14(3)(b) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.
3. UN Basic Principles on the Role of Lawyers. Article 21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

Duty to Show Candor to the Court

The Justice Centres are advocating for and developing the basis for the creation of a national system of public defense or legal aid for the poor. As such all staff must hold themselves up to the highest ethical standards. This includes not lying to the Court or

allowing others to lie. Although this can appear at time to conflict with the duty to advocate zealously for our clients, a well-prepared and skillful attorney is able to avoid missteps. See Attorneys Discipline and Prosecution

1. Government v. U Ohn Pe, 1968 Civil Miscellaneous Case No. 3. ; In The Matter of a Lower Grade Pleader [1953] Burma Law Reports 129; 1988, BLR, Page 132) - Attorneys must not lie to the Court or allowing others to lie.

Duty to Be Ethical

This is related to other duties. Being ethical includes avoiding conflicts, providing zealous representation and not paying bribes. See Attorneys: Discipline and Prosecution Section.

1. Bar Council Act, India Act XXXVIII 1926 (amended 1989), S. 10-13.
2. Legal Practitioners Act 1999, S. 12-15.
3. The Ethics of the Legal Practitioners Duties and Rights Seventh Edition, Union of Myanmar Bar Council
4. Government v. U Ohn Pe, 1968 Civil Miscellaneous Case No. 3.

Right to be Deemed Independent

One barrier to practice is an over-identification of the attorney with the client. While attorneys need to be client-centered and ever mindful of their goals, attorneys should be viewed by the courts as independent professionals, providing representation consistent with the law and ethical standards.

1. Myanmar Constitution Art. 375 (right to a defense)
2. UN Declaration on the Basic Principles on the Role of the Lawyer Principle 18 - Lawyers “shall not be identified with their clients or their clients' causes as a result of discharging their functions.”
3. UN Basic Principles on the Role of Lawyers, Principle 20 -Lawyers “shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority”.
4. International Bar Association (IBA), International Principles on Conduct for the Legal Profession. 1. Independence. - A lawyer shall maintain independence and be afforded the protection such independence offers in giving clients unbiased advice and representation. A lawyer shall exercise independent, unbiased professional judgment in advising a client, including as to the likelihood of success of the client’s case.

Right to Gain Access to Detained Clients

See Early Access to Attorneys

1. Constitution Art. 375 -The accused has the right to defense.
2. Courts Manual para. 455 -The accused has right to defended by a pleader.
3. Courts Manual para. 455; High Court Notification No.2 (General), 16th February 1927 -Attorneys must have access to detained client to get necessary power of attorney.
4. Prisons Act, Sec. 40 – Provisions shall be made for the admission into every prison of persons with whom un-convicted criminal prisoners may desire to communicate, such that in the interest of justice prisoners under trial may see their duly qualified legal advisors without the presence of any other person.

5. Police Manual, paragraph 74 - Except the judge concerned (or the judge in duty), lawyers and police officer, the detainee shall not be allowed to meet and speak with any one without getting the permission of the Guard Officer.
6. UN Basic Principles on the Role of Attorneys, Principle 7 - Never should the delay in access exceed 48 hours from arrest or detention.

USING THE LAW

A skillful attorney should base arguments in the law, meaning the constitution, statutes, court rulings, and relevant international treaties. By basing arguments in rights derived from the law an attorney can help reassure judges who want to rule “according to the law” only. Knowledge of the law will both help the defense of individual clients and the development of a fair criminal justice system. Defense attorneys who wish to protect their client’s rights need to work to increase respect for the written law and law derived from prior court decisions. The effectiveness of nearly all of the defense attorney’s tools depends upon the predictability and accountability created by strict adherence to the law.

In researching the law, a defense attorney should remember that fundamental advocacy skills are:

- Seeing that more than one solution may exist to a single problem;
- Being able to support a position with facts, arguments, and/or legal authority; and
- Seeing how to best argue both sides of a single argument
- This is where improvement must start. An attorney must be able to approach a problem creatively, and to help create new solutions to existing problems. It is not enough to say that “this is how it has always been done.”

Five systems of formal law apply concurrently in Myanmar: British common law and statutes from the colonial period, post-independence laws and decrees, revolutionary council and socialist era, laws from the military dictatorship period, and the post-2011 parliamentary period. Of the country’s 800 laws, more than 400 precede independence and have not been republished. Newer laws and regulations are published in newspapers but most cannot be retrieved electronically. Many of the country’s laws are, therefore, neither known nor accessible to many judges and attorneys. The legal education system in Myanmar has only recently begun to improve its curriculum and teaching methodology. This system must continue to improve, and defense attorneys should do all they can to support reforms in legal education.

The current constitution in Myanmar lacks many of the explicit guarantees of individual liberty and procedural rights for criminal defendants that are found in other constitutions. As discussed in the manual, the constitution does not explicitly guarantee the right to silence, the right to an attorney, or define the burden of proof. Article 354 is particularly problematic as it limits fundamental freedoms such as expression, assembly and association by subjecting them to “laws enacted for State security, prevalence of law and order, community peace and tranquility or public order and morality.” While limitation clauses are not uncommon in democratic constitutions and international human rights treaties, the limitation clause provided in Article 354 is particularly broad and does not require that restrictions, for example, have to be consistent with democratic values. For that reason Myanmar attorneys may want look beyond the constitution to find rights in statutes, court rulings, and in law in other jurisdictions. In *Daw Si Si v. Union of Myanmar*, (1964) BLR 876, the court ruled that statements, principles, doctrine of other countries could be looked to as sources of information.

Similarly, under Chapter 2, Section 3 (b) of the 2017 Amendments to Myanmar's Legal Aid Law, one of the objectives of the new law is to ensure effective criminal defense that is based on good will and complies with international standards in conducting the right to a defense and appeal in criminal cases. Since it has not been the recent custom and practice for Myanmar courts to look to other jurisdiction as a source of legal interpretation, however, expect that you may meet some resistance to this kind of argument. Finally, there is another development in the law that may assist you in asking a court to look to international law. On March 7, 2018, at the Conference on Justice Sector Coordination for Rule of Law in Nay Pyi Taw, the Union Attorney General U Tun Tun Oo officially announced and distributed the Fair Trial Guidebook for Law Officers (FTG). The FTG has the official text in both the Myanmar language and in English. The FTG represents a significant step forward in the recognition of international fair trial standards as they apply to Myanmar. The FTG "sets out the provisions of existing national laws and twelve international fair trial standards. The purpose of the Guidebook is to support on fair trial standards to law officers and to protect the legal right of the people in accordance with law." The FTG also states the policy of the Union Attorney General's office on a number of important issues in Myanmar's criminal justice system, including:

- Equality before the Law and Equal Treatment by the Law
- Non-Retrospective Effect of Criminal Statutes
- The Presumption of Innocence and Benefit of the Doubt
- Protection from Torture and Degrading Treatment
- Protection from Arbitrary Detention
- The Right to Remain Silent
- The Right to Counsel
- The Right to Interpretation and Translation
- Independence and Impartiality of Judges
- The Right to a Public Hearing
- The Right of the Accused to be Present at the Trial
- The Right to Trial Without Unreasonable Delay
- Protections of the Rights of Women in the Criminal Justice System

This Manual cites to many important sections of the FTG, but we strongly recommend that the reader obtain their own copy and study it thoroughly. As a criminal defense attorney you can use the FTG to inform your discussions with law officers about your clients fair trial rights. The FTG also includes extensive reference to international law, especially the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Consider using the FTG as additional persuasive authority for the proposition that Courts should look to international standards when interpreting fair trial rights. The FTG provides a policy statement by the highest ranking law enforcement official in Myanmar that learning and applying international fair trial standards is something we must all do.

Judges Should Interpret Constitution to Promote Liberty

Early post-independence Judges emphasized the importance of interpreting the constitution to protect individual liberties:

- For an enforcement of a criminal defendant's rights as per provisions of the 1947 Burmese Constitution see *Nga Pein and two Others v The Union of Burma*, 1953 BLR (SC) 116a summary of the holdings of the case can be found in Maung Maung, *Burma's Constitution* (1959, Martinus Nijhoff).
- Judge Ba U wrote that "this Court, having been constituted by the Constitution as a protector and guardian of the rights of the subjects"—which included the rights to settle freely and not to be deprived of personal liberty, and rights to freedom of opinion, assembly and association—"will not hesitate to step in and afford appropriate relief whenever there is an illegal invasion of these rights." *U Htwe (a) A. E. Madari v. U Tun Ohn & One*. 1948 BLR (SC) 541, at 560-61

Favorable Old Case Law Is Still Persuasive

Myanmar attorneys have to confront not one, but two, discontinuities in legal traditions. The first was between colonial jurisprudence and that of independent Burma. As a common law country, Myanmar law is made up of not just the constitution, statutes (such as the Penal Code, Criminal Procedure Code, Prisons Act), commentaries (the Courts Manual and the Police Manual), but also court rulings. Many of those most favorable to the accused date to pre-Independence era, including decisions in India when it was unified with Burma. Those cases are still good law. See *Dr T Chan Taik v Doopley* 84 1948 BLR 453 (HC) 476.

The second discontinuity occurred due to the military and socialist period from 1962 onwards. Many rulings from the time of the military coup in 1962 are both openly dismissive of the importance of "stare decisis" (the need to respect and uphold prior court decisions) and of the individual liberties and procedural protections most dear to criminal defense attorneys. It is beyond the scope of this manual to opine on the precedential value of decisions issued during military and socialist times. An argument could be made that they are not consistent with and part of the democratic Myanmar legal tradition. The practitioner must research and be aware of these swings in policy. (See for example admissibility of confessions to military police discussed in Evidence/Confessions). At the very least a practitioner could argue that the continued use of the 19th century codes suggest that old rulings are valuable.

International Treaty Obligations

Myanmar has signed, ratified and acceded to important relevant international treaties. The treaties should be used by attorneys to argue for judicial interpretations of Myanmar national law that are consistent with these international obligations. They include:

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 22 July 1997 (acceded)
- 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which Myanmar 11 June 1991 (acceded)
- Convention on the Rights of the Child (CRC) 15 Jul 1991 (acceded)
- Convention on the Rights of Persons with Disabilities (CRPD)

- Charter of the United Nations and Statute of the International Court of Justice 19 Apr 1948 (signed and ratified)
- Universal Declaration of Human Rights (UDHR) December 10, 1948 (voted in favor): not a treaty but part of international customary law.
- ASEAN Declaration of Human Rights (ADHR) November 2012. Not a treaty, but a statement of principles. Myanmar is a member of ASEAN.

Persuasive Global Standards

Throughout this manual national Myanmar law is supplemented by references to best practices, even if Myanmar has not signed, ratified or acceded to them. The most important include:

- The International Covenant on Civil and Political Rights (ICCPR). While there are efforts to encourage Myanmar to accede to the ICCPR, this has not happened. Attorneys should be familiar with its provisions, however, as they are used throughout the world to measure whether or not a criminal justice system is consistent with global fair trial rights.
- UN Basic Principles on the Role of Lawyers (1990): Provides guidance to both lawyers and to other justice actors of the important role of lawyers.
- Basic Principles on the Independence of the Judiciary (1985)
- The Bangalore Principles of Judicial Conduct (2002)
- The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, General Assembly Resolution 67/187 (2013).

Myanmar Law

Attorneys must familiarize themselves with the laws most relevant to criminal defense practice. The strongest defense line in many cases is that the prosecution has failed to provide evidence to prove every ingredient of a crime. Attorneys must thus understand the ingredients of a crime, as well as any specific evidentiary requirements, exceptions and defenses. A chief problem with the Myanmar Penal Code is that it lacks clearly articulated general principles of criminal responsibility. Attorneys must also review court rulings that may have interpreted the statutory law. Many older ones are also contained in the multi-volume “Burma Code”:

- Arms Act 1878
- Anti-Corruption Law 2013
- Bar Council Act
- Burma Excise Act, 1917
- Child Law 1993
- Contempt of Courts Act 2013
- Criminal Procedure Code 1898
- Evidence Act 1872
- 2015 Amendment to the Evidence Act regarding electronic evidence
- Gambling Law 1986
- Judiciary Law 2000
- Law Amending the Peaceful and Assembly Law 2014
- Legal Practitioners Act 1879
- Narcotic Drugs and Psychotropic Substances Law 1993

- Rules relating to Narcotic Drugs and Psychotropic Substances, 1995.
- Peaceful Assembly and Procession Law 2011
- Penal Code 1860
- Police Act 1945
- Prisons Act
- Public Order (Preservation) Act 1947
- Television and Video Law 1996
- Telecommunications Law 2013
- Union Judiciary Law 2010
- Unlawful Associations Act 1908

Also persuasive are compendiums of law and analysis that guide other actors in the criminal justice system:

- Courts Manual
- Jail Manual
- Police Manual

The Government dailies "The New Light of Myanmar" (English) and, especially, the Burmese language "Myanmar Alin" and "The Mirror" / "Kyemon" frequently carry the texts of new bills and laws. The government also publishes weekly government gazettes called "Pyan Tann" on Friday, which contain not only about newly promulgated law and bills, but also contain rules, regulations and notifications.

Court Rulings or Case Citations

Myanmar is a common law country, which means that law can also be interpreted and created through the decisions by judges. The most authoritative decisions are those issued by the Supreme Court or other apex court. Some of these are contained in the Myanmar Law Report; one ongoing effort is to get more decisions published. For other decisions, practitioners must seek out other resources, including the expert commentaries listed below.

Online Resources

www.president-office.gov.mm

- some information on laws and notifications

<http://www.pyithuhluttaw.gov.mm>

- parliament website

<http://www.unionsupremecourt.gov.mm>

- limited Supreme Court Rulings
- Some Regional High Court judgments
- Some Directives
- PDF of The Burma Code

<http://www.myanmarconstitutionaltribunal.org.mm> The website (in Burmese) of the Constitutional Tribunal which rules on the constitutionality of laws.

www.oag.gov.mm Website of the Office of the Union Attorney General. Not very updated.

<http://www.gad.gov.mm/en/laws-and-rules> Website of General Administration Department (GAD). The GAD, part of the Home Affairs Ministries, one of the three ministries still controlled by the military, township authorities, and most of the central governmental civil service. The police are also part of the Ministry of Home Affairs, although not directly under the GAD.

www.burmalibrary.org

Many commentaries and links to useful resources

- Myanmar Law Reports 1989 to 2016 (published January 2018)
- Burma Law Reports 1948-1988
- Rangoon Law Reports 1937-1942, 1946-1947
- All India Reporter 1923-1937
- Burma Law Journal 1922-1927
- And others

<http://www.worldlii.org/catalog/57123.html>

<http://www.asianlii.org/mm/legis/laws/>

<https://www.mlis.gov.mm/> (Burmese); https://www.mlis.gov.mm/?locale=en_US (English)

Expert Commentaries

Myanmar attorneys traditionally rely upon treatises written by experienced attorneys, law officers or retired judges. Some are available on CDs as well as hard copies.

These include:

- U Kyaw Sein, The Penal Code with Commentaries (2016)
- U Kyaw Sein, Code of Criminal Procedures with Commentaries (2017)
- U Chit Maung, Code of Criminal Procedures with Commentaries (1989)
- U Thet Pe & U Maung Maung Win, Penal Code Commentaries (2007)
- U Thet Aung, A Digest of Myanmar Rulings (Criminal)
- U Kyaw Sein, Applied Laws of Narcotic Drugs and Psychotropic Substances, Third Edition (Revised up to June 2003)
- U Kyaw Sein, Criminal Special Laws in Practice, (Volume I+II+III), 1st Edition, 1999
- U Ba Kyaing, Practical Criminal Justice Procedures, 4th Edition 2005
- U Myint Lwin (Advocate), Practical Application in Criminal Proceeding (2003)

International Commentaries

- Criminal Law in Myanmar by Chan Wing Cheong and Others, LexisNexis 2016
 - “Provides an extensive and in-depth presentation and critical evaluation of the main principles of criminal responsibility under the Myanmar Penal Code as spelt out in its provisions and decisions of the courts of Myanmar, India and also of Malaysia and Singapore.”
- International Commission of Jurists, Handbook of Habeas Corpus, 2016
- Justice Base, Behind Closed Doors: Obstacles and Opportunities for Public Access to
- Myanmar's Courts, June 2017
- Justice Base, Monitoring in Myanmar: An Analysis of Myanmar's Compliance with Fair Trial Rights, October 2, 2017

TYPES OF CASES AND JUDICIAL JURISDICTIONS

THE COURT SYSTEM

The court system is made up of four levels: Township Courts; District Courts; High Courts; and the Supreme Court. Township and District Courts are the trial courts, depending on the severity of the charges. Revisions are filed and appeals made to either the District Court (in the case of Township cases) or the High Courts (in the case of District Court cases), with the Supreme Court being the final court of appeal. See Remedies Section.

In addition to these courts, there are specialized courts: Juvenile Court (see Juvenile Section); Municipal Courts and Traffic Courts. Cases involving defense forces personnel are adjudicated in the Courts Martial, while matters involving interpretations of the constitution and challenges to the constitutionality of laws are to be heard in the Constitutional Tribunal. Constitution, Articles 46, 293 and 322.

Overview Categories of Cases in Myanmar Practice

Criminal cases are distinguished as to whether they are cognizable or non-cognizable, summons or warrant, bailable or non-bailable. The general definitions of these categories are found in Section 4 of the Criminal Procedure Code. These distinctions have implications for the procedure to be used for arrest and court inquiry and trial, the prosecuting authority, the ability of the accused to remain at liberty, and the jurisdictions of different trial-level courts. Attorneys should review these in order to prepare proper arguments when judges lack jurisdiction to hear cases, when cases are not dismissed according to the law, or when bail has been improperly set.

Cognizable versus Non-Cognizable cases

It is very important to distinguish between cognizable cases and non-cognizable cases. **Non-cognizable** cases require more judicial permission before police may take action, and give the police less time to conduct the investigation once an arrest has happened. It is illegal to make an arrest on a non-cognizable case without a warrant. Also there should be no detention beyond the initial 24 hours in non-cognizable cases. Attorneys should be alert to such cases when they are in court. If necessary they should immediately interview the accused, be appointed attorney, and seek dismissal of the case or release on bail in the prosecution is not ready.

1. Summary

- Quick reference: CrPC Schedule II lists offences and indicates whether each offence requires a warrant (and is thus cognizable), whether it is a summons or a warrant case, and whether it is bailable or not.
- The President of the Union may, by notification declare that any offence punishable under sections 186, 188, 189, 190, 228, 295A, 298, 505, 506 or 507 of the Penal Code, when committed in any area specified in the notification, shall be cognizable.
- Determines process for initiating the case and who prosecutes it

2. Cognizable cases

- CrPC Sec. 4(1)(f)
- **Arrest without warrant**

- Prosecuted by law officer
 - Allow for extended detentions during police investigation
 - Referral to court by the police
- 3. Non-cognizable cases**
- CrPC Sec. 4(1)(n)
 - **Need a warrant for a police arrest or may also be initiated through summons** CrPC Sec. 54
 - Direct complaint to court by “complainant” (Myanmar attorneys often use the word “plaintiff” to describe both the complainant and the prosecution, as in “plaintiff witness.”)
 - After reviewing a complaint, a judge can refer case back to the police to investigate.
 - Prosecuted by complainant’s lawyer
 - No extended detention beyond initial 24 hour detention by police

Summons versus Warrant Cases.

The distinction between summons and warrant cases is based upon the potential sentence. **Summons cases** have a somewhat abbreviated trial procedure, and allow the accused to plea guilty prior to the presentation of prosecution evidence, while warrant cases require that the prosecution present sufficient evidence to frame the charge in the Inquiry stage before the accused is asked to admit or deny.

1. Summons Cases

- CrPC Sec. 4(1)(v)
- Potential sentence in 6 months or less CrPC SS. 241-249
- If plaintiff does not appear when properly summoned, case will be dismissed. CrPC Sec. 247
- Judge may allow complainant to withdraw complaint before final judgment and acquit defendant. CrPC Sec. 248
- All summons cases are bailable.
- When accused brought before the court the judge has to explain the case. CrPC Sec. 242. There is no framing of the charge. If the accused admits (CrPC Sec. 243) the judge has to record the plea. (CrPC Sec. 244) If accused denies the plaintiff etc. has to testify.

2. Warrant Cases

- CrPC Sec. 4(1)(w)
- Potential sentence more than 6 months
- There is no statutory speedy trial statute.
 - A case cannot be submitted which is not ready for trial, with witnesses available. CrPC Sec. 170(3)
- Must have inquiry and framing of the charge to accept plea or find guilty

Bailable versus Non-Bailable Cases (see “Bail” section for further detail)

These are discussed more fully in the bail section. Remember defense attorneys must always seek to free clients from unlawful detention.

1. Summary

- Major factor in determining whether accused can be at liberty during criminal process
- See CrPC Sec. 4(1) (a)

- Quick Reference, CrPC Schedule II, Column 5
 - Indicates that there are exceptions to the general scheme discussed below (i.e. CrPC Sec. 406 vs 420)

2. Bailable cases

- Possible punishment of 3 years or less
- Judge must allow bail. CrPC Sec. 496

3. Non-bailable

- Possible punishment more than 3 years
- Not a bar on bail being set
 - CrPC Sec. 497 – bail “may be set”
 - except if capital case
 - even then may be granted for children (younger than 16), women or infirm

Juvenile Cases:

Cases involving accused under the age of 16 are dealt separately in the juvenile court. The charges themselves are the same as adult charges. As noted above, all cases involving juveniles are potentially “bailable.” See Juvenile Section.

Jurisdiction of Judges and Magistrates

Township and District Court Judges can hear civil and criminal matters. As discussed in detail below, Township Judges (or Magistrates) hear cases up to seven years in possible sentences, while District Court judges hear more serious cases. The language below is directly quoted from the Criminal Procedure Code. Please note that it references punishments that may not be currently imposed (transportation, whipping) as well as fines in currencies no longer used (rupees). Elsewhere in the manual “Judge” is used to refer to both magistrates and judges.

1. The Supreme Court may pass any sentence authorized by law. CrPC Sec. 31(1)
2. District Court Judges: “High Court of the Region or a High Court of the State or a District Court may pass any sentence authorized by law, but any sentence of death passed by any such court shall be subject to confirmation by the Supreme Court of the Union.” CrPC Sec. 31 (2)
3. Magistrates
 - Default jurisdiction is as follows (according to CrPC Sec. 32)
 - Courts of Judges of the first class: “Imprisonment for a term not exceeding three years, including such solitary confinement as is authorized by law; Fine not exceeding one hundred thousand kyats.”
 - Courts of Judges of the second-class: “Imprisonment for a term not exceeding one year, including such solitary confinement as is authorized by law; Fine not exceeding fifty thousand kyats.”
 - Courts of Judges of the third class: “Imprisonment for a term not exceeding three months; Fine not exceeding thirty thousand kyats.”
 - Exceptions to this include:
 - Magistrates may pass longer sentences if aggregating separate charges. CrPC Sec. 32 (2)
 - Can’t give sentence more than twice what he would normally be able to. And never longer than 7 years. CrPC Sec. 35 (2)(a) and (b)
 - Jurisdiction can be expanded to sentence up to 7 years in Townships:

- “The President of the Union may invest the District Magistrate or any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death.” CrPC Sec. 30
- “The Court of a Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death, imprisonment for a term of twenty years, or ‘imprisonment for a term exceeding seven years.’” CrPC Sec. 34. Note that the 2016 Amendments to the Criminal Procedure Code replacing “transportation for a term exceeding seven years” with “imprisonment for a term of twenty years” have left a duplicative restriction.
- Above jurisdictional limits a magistrate can have the case certified for sentencing to the District Court. 1973 General Laws 22
- “When an offence charged is triable by Magistrate as well as by a Court of Session, the Magistrate must exercise his own discretion in deciding whether the case should be committed or whether the justice of the case will be fully satisfied by a sentence which he himself is authorised to pass.” CM para. 536
- In cases which resulted in death, magistrate may retain jurisdiction only when is “clearly of opinion” that it is not a culpable homicide. CM para. 537

OTHER CRIMINAL JUSTICE ACTORS

Criminal defense attorneys must vigorously defend individual clients. Attorneys must also work collaboratively to build and to strengthen a criminal justice system that is transparent and implements rule of law principles like legal certainty, non-impunity and judicial independence. Attorneys need to be familiar with the relevant laws, court rulings, manuals and notifications that govern the conduct of judges, law officers, clerks and police. New Codes of Conduct for judges and law officers have been enacted; all must work hard to make sure they are implemented and followed. But it is also important to remember that the goal is create a more transparent and fair justice system. Attorneys should take opportunities to educate others on the role of a defense attorneys and, when possible, create relationships based on respect for each other and for the law.

JUDGES

Judges have great power and responsibility within the courtroom.

- Judges need to be independent and impartial in their adjudication of cases. Constitution Art. 19(a).
- A judge is responsible for the management of the courtroom. CM para. 13.
- The Supreme Court or supervising District Court is responsible for unlawful conduct. Constitution Art. 314.

The behavior of judges is controlled by the Judiciary Law of 2010. Chapter II Judicial Principles states:

3. The administration of justice shall be based upon the following principles:
 - (a) to administer justice independently according to law;
 - (b) to dispense justice in open Court unless otherwise prohibited by law;
 - (c) to obtain the right of defence and the right of appeal in cases according to law;
 - (d) to support in building of rule of law and regional peace and tranquility by protecting and safeguarding the interests of the people;
 - (e) to educate the people to understand and abide by the law and nurture the habit of abiding by the law by the people;
 - (f) to cause to compound and complete the cases within the framework of law for the settlement of cases among the public;
 - (g) to aim at reforming moral character in meting out punishment to offender.

A new National Code for Judicial Ethics was created in 2017. It is largely based on the Bangalore Principles of Judicial Conduct.¹ The Code of Judicial Ethics provides the values and moral standards that judges have to observe. It lays out the standards of integrity and professionalism that all judges shall be bound to respect in their work. As judges perform their judicial tasks with equality and impartiality by adhering to the Code of Judicial Ethics for judges, they also fulfill Article 10 of the Universal

¹ For more information on the Bangalore Principles of Judicial Conduct see: https://www.un.org/ruleoflaw/files/Bangalore_principles.pdf

Declaration of Human Rights, which states that, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." Attorneys should review this document to understand the rules that judges must follow.

No matter what the behavior of individual judges, at all times defense attorneys should be respectful of them. The duty of respect is also owed by judges to all parties:

- The Judge or Magistrate is responsible for the general management and control of the Court and its business. He should carefully supervise the working of the establishment and see that all duties are properly performed and all rules duly observed. The discharge of judicial functions is incomplete without constant attention to administrative matters. Judges or Magistrates should bear in mind that punctuality, courtesy, patience, observance of the prescribed procedure and the avoidance of delay are essential. CM para. 13.

Defense attorneys need to be vigilant against judges who are partial to the prosecution or who act as a second law officer in the trial:

- If a magistrate was a friend of a government officer in a case before him, this was sufficient ground for the case to be transferred, as it created doubt about possible bias and fairness of trial; it was not necessary to prove that the judge had actually done anything wrong *U Ba Khin v. Union of Burma* 1954.
- A judge should not act as a second law officer. If a judge had made inquiries about a case, not so as to understand the facts but to fill gaps in the law officer's argument, his verdict was unlawful *T.S. Mohamed & One v. Union of Burma* 1953 BLR 107 (High Court).

Higher courts have shown themselves willing to punish judges who ignore the law in making decisions.

One judge in Kachin state was punished by the Supreme Court for too obviously manipulating charges and adjournments.

တရားရုံးချုပ်အမိန့်အမှတ်၉၆/၂၀၀၆၊ ၂၀၀၆ခုနှစ်၊ နိုဝင်ဘာလ ၁၆ ရက်။ (Supreme Court Order No. 96/2006, 16 Nov. 2006.)

But there is still a perception that judges lack independence when dealing with high profile or politicized cases.

- "If you have to imprison in a political case, don't release for lack of evidence. If you do, it'll be your ruin." A judge quoted in Nick Cheesman, *Myanmar's Courts and the Sounds Money Makes*, p 238

Although judges can take over from each other, the judge rendering the final verdict needs to hear the evidence of the accused.

- Although it was legal to transfer a case from one judge to another during trial, the defendants had the right to recall any or all of their witnesses to be reheard, and where the accused did not have an attorney the new judge should expressly advise him of this right. *Chit Tun & Four Others v. Crown*, 1 LBR 239.

- And a judge who passed an order on the basis of evidence collected by his predecessors and without personally hearing from the accused had violated the law. *King-Emperor v. Myat Aung*, 4 LBR 135

Global Standard:

A judge is required to “perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.” Bangalore Principles of Judicial Conduct, 6.5.

LAW OFFICERS

Office of the Union Attorney General (OAG) supervises 14 Offices of Advocate General of the Region or State, 68 District Law Offices, and 325 Township Law Offices, comprised of law officers and functionaries who conduct criminal prosecutions. In addition to the Prosecution Department the OAG has three other departments: Legislative Vetting and Advising, Legal Advice, and Administration.

The Prosecution Department is responsible for appearing on behalf of the Union in criminal and civil cases in which the government is involved. It is during the inquiry that the law officer (prosecutor) takes control of the prosecution in all cognizable cases. Their office structure parallels the court structure, with law officers appointed to appear at each court level (township, district, etc.). Law Officers may also supervise “plaintiff lawyers” in non-cognizable cases.

- Constitution Art. 237
- Attorney General of the Union Law of 2010 Section 36
- Attorney General Rules Rules 67 to 69
- Prosecution and Appearing Directive No.(1/2001) Para. 16 to 18

Law Officers Code of Ethics 2017

Like Judges, Law Officers have recently adopted a new ethical code. The basic principles described are integrity, impartiality, propriety, equality, competence and due diligence, and responsibility and accountability. Attorneys should review the principles and be prepared to remind law officers of them when they believe law officers are not upholding them. There are not, however, formal reporting or complaint systems set up to enforce these principles. Attorneys should work with law officers to create common respect and understanding of ethical practices consistent with human rights and rule of law.

Law Officers Can Dismiss or Reduce the Charges

Law Officers have authority to scrutinize cases under the Attorney General of the Union Law 2010 section 36:

- The Law Officers at the various levels of Law Office shall, in accordance with the stipulations, carry out the following functions and duties ... scrutinizing and making decision, in accord with the stipulations as to whether or not the entire case or any charge or any accused in the criminal case filed at the Court should be withdrawn...

There is apparently no guidance as to how Law Officers should respond to their section 36(i) duty. But arguably this duty must (1) answer the obligation to enhance the eternal principle of Justice as required by the Constitution and (2) the duty must be exercised reasonably. At the minimum, this means that this discretion cannot be exercised in an arbitrary fashion. If the Law Officer does act in an unreasonable fashion then this must be capable of review by the courts.

The Charging Standard

Attorneys should encourage law officers to consider that:

- When instituting criminal proceedings, the law officer should proceed only when a case is well-founded, upon evidence reasonably believed to be reliable and admissible, and should not continue with such proceedings in the absence of such evidence. In court, the law officer should ensure that the case is firmly but fairly presented, and not beyond what is indicated by the evidence. “United Nations Convention against Corruption: article 11 implementation guide and evaluative framework”

Both in advocacy at the charging stage and possible habeas corpus litigation seeking to force the law officer to exercise the section 36(i) duty reasonably, attorneys should consider the following **charging standard**²:

- Step 1: Is there sufficient evidence available to make it more likely than not that the prosecution will succeed, and
 - Is there evidence to prove every ingredient of the charged crime beyond a reasonable doubt?
 - Is the evidence admissible?
 - Are the witnesses credible?
 - Is the evidence reliable?
 - Is the evidence available?
 - Are there strong defenses available to the accused?
- Step 2: Is it in the public interest for the prosecution to continue?
 - What is the nature and seriousness of the offense
 - What are the interests of the victim and the broader community?
 - Has there been a delay between the date of the offense and the beginning of the prosecution?
 - Are there other non-criminal justice alternatives to prosecution that would better serve the public interest?

Law officers can confuse the two steps, and thus seek to justify an otherwise weak case by arguing for the seriousness of the crime.

Attorneys must consult with clients and must do independent investigation. Defense attorneys should use their knowledge of the case to argue that the proposed prosecution fails one or both steps of the charging standard. In order to do this attorneys need to know each ingredient necessary to prove a crime. See USAID Legal Aid Toolkit, Annex 4 for sample penal code ingredient forms.

Because law officers have the authority, under section 36(i) of the Attorney General Law 2010, to withdraw charges or an entire case, defense attorneys can negotiate with the law officers to either dismiss the case or to proceed with reduced charges. This

² See UN Convention Against Corruption, Article 11.

might involve advocating with the law officer to present the case as being one with a lower potential sentence or one that is bailable. One example of this would be the application of criminal breach of trust, PC Sec. 406 [3 years potential sentence, but non-bailable] versus cheating, PC Sec. 420 [seven years potential sentence, but bailable].

Because this kind of pre-trial negotiation is a new practice, the attorney risks being viewed as improperly influencing the case. Even more likely, this kind of negotiation, happening in the context of current Myanmar legal culture, may be viewed more as an opportunity for the police or the law officers to demand monetary bribes, rather than an honest advocacy about the strength of the case and the most appropriate legal charge. Justice Centre attorneys can never offer or give bribes. The goals of the client must be achieved in an ethical manner consistent with the law.

Law Officer Approving Accused Giving a Confession to Get a Pardon

Accused may be able to receive a pardon for their actions if they give a confession in regards to the action of others. This is something that needs to be negotiated with the law officer. This is another reason why Justice Centres will not be representing co-accused. A situation as described above could very well create a conflict in the representation of multiple co-accused by the same attorney or by the same justice centre.

- The circumstances and authority for such a pardon are contained in CrPC Sec. 337 and 338.
- The law officer can, however, certify that the cooperating accused willfully concealed evidence or gave false evidence. In which case the accused may be sent to trial, the subject of which is both the original charge and whether or not he complied with the conditions of his pardon. CrPC Sec. 339

Requesting Discovery

Law officers control access to the available evidence in a case. As part of defense negotiations about dismissals, pleas etc., attorneys should continually demand copies of available expert witness statements, other witness statements, confessions, etc. See Evidence/Discovery for rules and procedures.

CLERKS

Attorneys must be prepared to work with court clerks in the day-to-day activities. Clerks play many different roles in court operations. A bench clerk plays the role of assistant to the judge during court proceedings. Perhaps most important, a bench clerk has responsibility for faithfully recording testimony and preparing decisions and orders for the judge. Attorneys need to be vigilant to make sure that that is done accurately. Clerks can also serve the role of bailiff where they deal with matters involving money, as well as safeguarding evidence in particular cases.

Unfortunately some clerks can be the face of corruption in the courtroom, playing the role of broker between different actors, including attorneys, law officers and judges. As discussed below in Corruption, clerks may charge far above the official fee for

necessary services such as access to the court file, copying documents, and receiving power of attorneys. Attorneys may face obstacles to getting access to the court file, even though they legally have the right to it according to Courts Manual 103(43). Attorneys may face logistical challenges to getting the physical file and demands for fees from court personnel. The Supreme Court has set fees and rules relating to court documents, which it regularly updates and publishes via the Courts Manual.

- Union Judiciary Law (the State Peace and Development Council Law No. 20/2010), S. 73.
- Courts Manual 1999, para. 76 (setting fee for submission of a complaint at five kyat) and S. 103(44) (setting stamp fee for inspection of court document at one kyat).

Court clerks can sometimes use demands for “urgency fees” as allowed by Courts Manual 1999, S. 103A(42)(d) as thinly veiled demands for bribes. Court Fees should only be paid that are consistent with the law. Legal aid offices and independent attorneys should create systems to memorialize and to report demands for bribes.

POLICE

The Myanmar Police Force is under Ministry of Home Affairs, one of three ministries controlled by the Tatmadaw (Military), along with the Ministries of Defence and of Border Affairs (Immigration). The police and their actions are discussed extensively in the Path of the Case section. Police are often far more powerful in deciding the ultimate outcome of a case than the law would suggest, as they are the gatekeepers of which cases are submitted to court, as well as those who are tasked with seeking out witnesses to testify. Attorneys must review and understand the duties and procedures required of police as described in the Police Manual. See Pathway of the Case, Early Access to Clients.

The Police Manual contains these relevant provisions:

- Para. 1693: Right after the accused has been arrested, the investigation officer shall inquire into whether there are accusations against the police of torture or any other claims of misconduct and shall write down the answers into the daily case diary. If there are claims of torture, the investigation officer must investigate the presence of marks that are consistent with alleged torture. Findings have to be recorded in daily case diary. If the accused refused to allow to investigate his body, the refusal has to be recorded in daily case diary as well."
- 1056: It is the duty of all police-officers to maintain friendly relations with the public without whose cordial co-operation the work of the police is rendered difficult if not impossible. To this end police- officers are strictly enjoined to preserve good temper and good humour in all their relations with the public of whom they are the servants and not the masters. An overbearing and discourteous attitude results in dislike of the police and a corresponding disinclination of members of the public to assist them.
- 1086: Implicit obedience and a continuous and vigilant persistence of duty are required of every Constable. The Constable is invested with

responsible powers for the protection of the public, the preservation of the peace and the prevention and detection of crime and it is important that these powers be not abused. He is the paid servant of the public who have the right to expect that he be civil to them and that he protects their interests in every way that lies in his power. In performing any duty the Constable will invariably bear this in mind.

Complaints about Police Torture

Complaints about police torture or abuse of clients must be taken to the courts, rather than lodged as a complaint with the police themselves, as the relevant charge is non-cognizable. Attorneys should consider how best to pursue these accusations given the reluctance for some judges to accept the request for a case to be opened.

It is a criminal offence for a police officer to assault a detainee to obtain a confession see The Penal Code Section 330.

- Section 330...(a) A , police-officer tortures Z in order to induce Z to confess he committed a crime A is guilty of an offence under this section.
- Section 330 is a non-cognizable offence and, therefore, a complaint cannot be made directly to the police but must be made to the court further to CrCP s200.
- See also Police Manual, para. 1693, referenced above.

Suits for Unlawful Police Detention

While in theory a client might have a claim against the police for an illegal detention, there does not seem to be any recorded cases of damages being paid for wrongful imprisonment in Myanmar. The procedure for filing such a suit would be under the Code of Civil Procedure, Section 80:

No suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such a public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered or left at the office of—

(a) in the case of any suit against the Government, a Secretary to the Government or the Collector of the District, and

(b) in the case of a suit against a public officer, the officer against whom the suit is brought stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims ; and the plaint, shall contain a statement that such notice has been so delivered or left.

The 2008 Constitution Art. 445 barred suits against the State Law and Order Restoration Council and the State Peace and Development Council “or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties.” But this immunity would appear to not be an ongoing one, but limited to the actions under the pre-2008 regimes.

CORRUPTION

All public servants, including judges and law officers, are subject to penalties including imprisonment and a fine if they engage in bribery. Myanmar acceded to the U.N. Convention against Corruption. In July 2013, Parliament passed a new anti-corruption law that superseded the country’s 66 year-old domestic legislation to

comply with that convention.³ The law sets up an Anti-Corruption Commission (ACC) to receive complaints, investigate them, and refer them to the attorney general for “litigation.” Public servants can also be prosecuted for corruption under Penal Code SS. 161-171.

It is unclear how that law will address the chronic and pervasive existence of corruption in the criminal justice system. Bribery is sometimes justified as a necessary way to pay for life expenses.

Bribery can touch all aspects of a case. Bribes may be demanded by law officers to change nonbailable charges to bailable ones, or by judges to grant a reduced sentence. Clerks may demand bribes to do their job, such as deliver court documents or correctly record testimony. Bribes may also be demanded to adjourn cases to benefit one party or the other.⁴

Justice Centre attorneys may not engage in bribery, even at a “discount rate,” for their clients. Thus attorneys must resist judges or clerks who expect a “gratuity,” “tea money,” or “small money” despite the prevalence of the practice. A unified decision by attorneys to refuse to pay bribes has had some success in some townships, including in Bago. Unfortunately public still has a belief cases are decided on bribery or influence rather than legal knowledge, analytical or advocacy skills. It is necessary for Justice Centre attorneys to prove them wrong.

³ Anti-Corruption Law 2013, Pyidaungsu Hluttaw, Law No.23, The First Waxing of Wagaung 1375 M.E, 7th August 2013.

⁴ See: Justice Base, **Monitoring in Myanmar: An Analysis of Myanmar’s Compliance with Fair Trial Rights**, October 2017. Also includes detailed list of common bribes and their amount.

ATTORNEYS: DISCIPLINE AND PROSECUTION

Defense attorneys must be willing to be zealous and energetic in their defense of their clients. This manual suggests many ways that attorneys can present novel legal arguments and can challenge existing practices to protect their clients while acting within the law. This may result in other justice actors, including police, clerks, law officers, and judges, being uncomfortable. They may threaten to take action against the attorneys. This may include either professional misconduct allegations or even prosecution for contempt. Attorneys must review carefully the Rights and Obligations of the Attorney discussed elsewhere in this manual. They must also study the applicable law governing their role.

While recent years have seen the establishment and registration of association of attorneys, they are not independent self-regulating professional bodies such as would be encountered in other countries. The Bar Council consists of the Attorney General and the director-general of his office, the director-general of the Supreme Court, a Supreme Court judge and six attorneys approved by the Supreme Court (Law Amending the Bar Council Act 1989).

Bar Council Act is applicable to advocates.

The Bar Council Act broadly sets out the form of conduct that justifies disciplinary action, granting the Supreme Court power to “reprimand, suspend or remove from practice any advocate of the High Court whom it finds guilty of professional or other misconduct.” Judges, the Bar Council or “any other person” can file complaints in the Supreme Court to initiate disciplinary action. The Supreme Court may then either dismiss the case or refer it to either a special Bar Council “Tribunal” or (after consultation with the Bar Council) a District Court, who makes findings and send them to the Supreme Court. The Supreme Court must then convene a hearing at which the advocate, Bar Council and Attorney-General are given the opportunity to speak.

Legal Practitioners Act is applicable to higher grade pleaders.

The Legal Practitioners Act of 1880 empowers the Supreme Court to dismiss or suspend higher- grade pleaders for certain enumerated disciplinary offences, including a criminal conviction “implying a defect of character which unfits him to be a pleader”; taking instruction from a party other than her or his client; or acting in a fraudulent or “grossly improper” manner. The Supreme Court may also suspend or dismiss higher-grade pleaders “for any other reasonable cause.”

Judges in subordinate courts are able to initiate investigations into misconduct by higher-grade pleaders and make recommendations to the Supreme Court, which is empowered to make a final ruling on suspension or dismissal. Higher-grade pleaders must be given the opportunity to defend themselves in a hearing before the subordinate court, and any evidence they present is to be admitted to the record. Legal Practitioners Act 1999, S. 14.

The Supreme Court Gazette contains orders⁵ laying out the reasons for disbarring attorneys:

⁵တရားရုံးချုပ်စာအမှတ်၅၅၅/၁၂၃-ရန (၂၀၀၆)၊ ၂၀၀၆ခုနှစ်၊အောက်တိုဘာလ၁၁ရက်။[Supreme Court Letter No.

- making a submission written in a manner disrespectful of a judge (2006);
- conviction under the Unlawful Associations Act (2004);
- submitting a false complaint(2002);
- tutoring witnesses on how to testify (2001);
- conviction under the Emergency Provisions Act (2001);
- conviction for contempt (1999),

The Ethics of the Legal Practitioners Duties and Rights, Union of Myanmar Bar Council, Seventh Edition

The Bar Council has issued a handbook collecting and annotating ethical rules. These rules should be examined thoughtfully and skeptically as that the Bar Council is controlled by the government, not the legal profession, and many of the mandates in the handbook are not supported by reference to specific laws or court rulings.

Contempt of Court: Attorneys Prosecuted for their Activities

Historically, in addition to the expected discipline for ethical lapses, attorneys in Myanmar have been prosecuted criminally for their advocacy for their clients. The structure of the Justice Centres, a unified office of public defenders with extensive training and supervision, as well as ongoing dialogues with other actors in the Criminal Justice System, such as judges and law officers, should diminish the likelihood of and vulnerability of an individual attorney risking such misuse of the criminal system. The Justice Centre encourages our attorneys to be vigorous in our defense of our clients. Nonetheless, Attorneys have an obligation, under the Attorneys Code of Conduct, to avoid contempt of court.⁶ If convicted of contempt their names will be reported to the Supreme Court for discipline.⁷ This is in addition to any criminal sentence they might face.

The Penal Code lists a number of crimes which, when applied in the context of conduct in a courtroom, are often referred to generally as “contempt of court.”⁸ These include the Contempt of the Lawful Authority of Public Servants and False Evidence and Offenses against Public Justice. Until recently (with the adoption of the 2013 Contempt of Courts Act) attorneys faced prosecutions under the 1926 Contempt of Court Act.

555/123-YaNa (2006), 11 Oct. 2006.] တရားရုံးချုပ်စာအမှတ်၅၀၄/ရန (အထတ) ၂၀၀၄/၂၀၀၄ခုနှစ်၊ဩဂုတ်လ၂၆ရက်။[Supreme Court Letter No. 504/YaNa (A-HtaTa) 2004, 26 Aug. 2004.] တရားရုံးချုပ်စာအမှတ်၇၈၁/၁၆-ရန (၂၀၀၂) ၊ ၂၀၀၂ခုနှစ်၊အောက်တိုဘာလ၉ရက်။[Supreme Court Letter No. 781/16-YaNa (2002), 9 Oct. 2002.] တရားရုံးချုပ်စာအမှတ်၇၆၅/၇၂-ရန (၂၀၀၁) ၊ ၂၀၀၁ခုနှစ်၊ဇူလိုင်လ၂၄ရက်။[Supreme Court Letter No. 765/72-YaNa (2001), 24 July 2001.] တရားရုံးချုပ်စာအမှတ်၈၄၇/၄၉-ရန (၉၈) ၊ ၂၀၀၁ခုနှစ်၊ဩဂုတ်လ၁၇ရက်။[Supreme Court Letter No. 847/49-YaNa (98), 17 Aug. 2001.] တရားရုံးချုပ်အမိန့်အမှတ်၁၃/၉၉၊၁၉၉၉ခုနှစ်၊ဖေဖော်ဝါရီလ၁၁ရက်။(Supreme Court Order No. 13/99, 11 Feb. 1999.)

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တရားရုံးချုပ်ရှေ့နေများကောင်စီ၊ရှေ့နေရှေ့ရှပ်များ၏ကျင့်ဝတ်သိက္ခာများ၊တာဝန်များနှင့်အခွင့်အရေးများ၊တတိယအကြိမ် (ရန်ကုန်၊ရှေ့နေချုပ်ရုံး၊၂၀၀၁) စာ။[Bar Council, Lawyers’ Code of Conduct, Responsibilities and Rights, 3rd ed.(Yangon: Office of the Attorney General, 2001) 8.]

⁷ Bar Council Act, No. 38/1926, section 12(3). Legal Practitioners Act, No. 18/1879, section 14.

⁸ Myanmar Penal Code, S. 172-229.

The 1926 Act was applied widely. In 1995, the court issued a circular to attorneys, notifying them of the sorts of language that would land them in trouble, including assertions that a Supreme Court judge had not examined a case properly, that a divisional court ruling clearly violated the law, and that the divisional judge in making his final ruling gave his order either because he corruptly took a lot of bribes, because of the unlawful pressure applied by some person whom he feared or for some other reasons.⁹

It has been dangerous to make accusations either against the judicial system as a whole or of senior supervising judges. While a complaint against a junior judge can be specific and individualized, a complaint against a senior judge cannot be individualized, because he is responsible for supervising a hierarchy of subordinates, and therefore any criticism against him constitutes a systemic critique.¹⁰ It is for this reason that attorneys at the Justice Centre should not, without prior authorization from the project country director, make any public comment about a client, case, or aspects of the Myanmar Criminal Justice system. The role of the individual attorney is to provide representation to the very poor, and when requested to give community legal education to the townships we serve. Relevant decisions under the old law:

- Contempt Should be Used Sparingly: “contempt proceedings being summary and a very arbitrary method of dealing with an offence should be sparingly instituted and...there must be something more than a technical contempt in that there must be a substantial contempt which tends... to interfere with the course of justice.” *Thakin Myo Nyunt v. Thakin Pu*, 1963 BLR (CC) 728, at 735.
- In 1986, the Central Court, citing the ruling in an application to the Chief Court in 1973, observed that “in contempt of court cases the main thing is not whether or not there is ill-intent or whether or not there is the possibility of impact... on the court’s verdict [but] if the possibility exists that the judicial process of the case might be perverted... then an offence has been committed.” *Daw Aye Kyi v. U Win Thaung & 3*, 1986 BLR (CC) 87, at 91
- But in 1992 the Supreme Court greatly widened the ambit of contempt by ruling that any “writing, speech or behaviour so as to create an inferior opinion of the court or judge; or constituting interference in the legal uprightness of the court; or amounting to interference in the decision of the court... and any actions blocking, obstructing or interfering with a legally issued order, summons, warrant, etc., that the court has confirmed are acts of contempt of court.” *U Maung Maung & Another v. Daw Kyu Sein & 2*, 1992 MLR (SC) 102, at 105

In 2013 a new “Contempt of Courts Law” was enacted. The primary provision (Section 2d) is as follows:

- Criminal Contempt of Courts means orally or by words or by sign or by significant pattern or other means or announcing intentionally, by describing in writing as information, publishing or distribution of any matter for any conduct as follow:
 1. Scandalizing the court at which power is conferred legally;

⁹(“တိုင်းတရားသူကြီးအနေဖြင့်အပြီးသတ်စီရင်ချက်ချမှတ်ရာ၌အဂတိတရားဖြစ်သည့်ငွေများများလာဘ်စားခဲ့၍လည်းကောင်း၊ မိမိကြောက်ရသူတစ်ဦး၏မတရားခိုင်းစေချက်အရလည်းကောင်း၊ အခြားအကြောင်းများကြောင့်လည်းကောင်း၊ အမိန့်ချမှတ်ခဲ့ခြင်းသည်”)၊ တရားရုံးချုပ်စာအမှတ် ၂၅၈/၁၅-ရန (၉၅)၊ ၁၉၉၅ခုနှစ်၊ မတ်လ ၂၂ ရက်။ [Supreme Court Letter No. 258/15-YaNa (95), 22 Mar. 1995.]

¹⁰ Nick Cheesman, *Opposing the Rule of Law: How Myanmar’s Courts Make Law and Order*, Cambridge University Press 2015, p. 244.

2. Affecting the fair judicial case, interfering or disturbing;
3. Impairing the public trust upon fair and free judiciary by any means;
4. Pre-commenting, describing in writing, publishing, distribution, before the judicial decisions are passed;

It is unclear what the effect of this new law will be. But attorneys could argue that it creates a narrower definition of what constitutes contempt. It must helpfully establishes in Chapter 3, “Immunities,” what is NOT criminal contempt:

- “Section 7: In connection with the judicial act which is being undertaken, orally or by words or by sign, by significant pattern, or by other means or announcing, by describing in writing as information, or publishing or distribution, of any fair, true and firm shall not be regarded as the Contempt of Court.
- Section 8: Publishing or distributing the comment or fair review on a quality of judicial act of which the final order has been passed, shall not be regarded as the Contempt of Court.
- Section 9: Notwithstanding to be included in this law, except the following matters, in connection with the judicial act performed in the special office room which is restricted to be entered by the public, publishing or distributing the true, fair and firm report, shall not be regarded as the Contempt of Court :
 - (a) Publishing or distribution opposing the stipulations under any existing law;
 - (b) Publishing or distribution of data information and configuration of a judicial act, clearly prohibited by the court, according to the policy relating to the public or exercising the power entrusted;
 - (c) Publishing or distribution of data information relating to the innovation or investigating and discovering the disputed secret work scheme in a judicial act.”

PART TWO: CONDUCTING THE CASE

EARLY ACCESS TO ATTORNEY & MECHANISMS OF ASSERTING REPRESENTATION

A core component of effective criminal defense is its provision at all stages of the criminal justice system. It is not enough that an attorney is assigned only hear the verdict of guilt or even to appear quietly in court next to a defendant as the evidence against him is gathered by law officers. From the moment that an individual is seized and arrested by the police, he or she needs the assistance of attorneys to understand and implement his or her rights to a fair trial and to equal protection before the law.

If attorneys in Myanmar wait to aid detainees until their cases are submitted to the court by the police, they have allowed their clients to sit unaided for 15 or 30 days in police jails. At the worst this means their clients have been tortured, often resulting in involuntary and false confessions. Even at the best this means that individuals may have been denied the release of bail to which they are statutorily entitled or witnesses who may have aided their client are not contacted and disappear.

Benefits of early representation:

- Charges dropped
- Clients released on bail or on own recognizance
- False or induced confessions prevented
- Investigations begun early
- Torture or other police malfeasance prevented
- Client reassured and comforted

Myanmar Legal Basis for Early Representation

- Constitution Art. 375: right to defense
- CrPC Sec. 340: (1) Any person accused of an offence before a criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader.
- Courts Manual para. e455: Every person accused may of right be defended by a pleader.
- In the matter of Llewelyn Evans, ILR (1926) 50 BOM 742, AIR 1926 BOM 551, 1926 CRLJ 1169: the right to representation includes opportunities for the accused in custody to communicate with his attorney in the preparation of his defense. The right is not limited to trial representation.
- Legal Aid Law of 2017 establishes a broad and early right to representation that explicitly includes the investigation stage and remand hearings:

Section 3 (e) [the goal of the law is] “to reduce unlawful and the unnecessary use of detention in the police custody and prison when conducting criminal investigation and inquiry.”

25. “Any legal aid provider shall, regarding to any person who is under the detention or arrested- (a) inform to the police station or other place of detention or family of the arrested person and, if necessary, provide legal aid in accordance with this law. (b) provide legal aid to defense at the time of

applying remand before the Court or during in custody with remand. (c) provide legal aid to defense for investigation or scrutinizing by the police or relevant body who is submitted to charge. (e) provide necessary legal aid when the suit or case is bring before the court.”

It is critical that defense attorneys become involved in criminal cases in the pretrial stage.

Global Standard

- The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principle 3: “anyone who is detained, arrested, suspected of, or charged with a criminal offence” is entitled to legal aid “at all stages of the criminal justice process.”

Right of Attorneys to Gain Access to Accused in Detention

Attorneys can visit client in detention. Access to the detained **is** allowed in the first 24 hours after arrest with permission of the police. Attorneys are an exception to the rules limiting access. This right has been broadened by the new Legal Aid Law mandating representation during investigation stage.

- Prisons Act (India Act IX, 1894), section 40 “Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or un-convicted criminal prisoners may desire to communicate, care being taken that, so far as may be consistent with the interest of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other persons.”
- Police Manual para. 1198 concerns access to a prisoner: The duties and responsibilities of the guard officers are mentioned in Police Manual Volume 1, paragraph 74. Refer to paragraph 74.
- Police Manual para. 74: Except the judge concerned (or the judge in duty), lawyers and police officer, the detainee shall not be allowed to meet and speak with anyone without getting the permission of the Guard Officer
- Police Act, Section 31, 11: The accused can be given food and clothes.
- Legal Aid Law of 2017, Sections 3(e) and 25. See above.
- Fair Trial Guidebook for Law Officers, Standards Applicable to Criminal Proceedings, II G, The Right to Counsel. “Detainees can consult and communicate with counsel without delay, interception or censorship. Adequate facilities should be provided for arrested and detained individuals to meet and communicate privately with their lawyers, including by telephone at police station and places of detention. Individuals should be given on adequate time to communicate with their lawyer and prepare their defence.”

Police may require name and address of lawyer, and conduct a security search. Refusal to provide that information or submit to the search may result in denial of access to the prisoner. Prisons Act Sec. 41(1) and 41(2).

Defense Attorneys Must be Forceful in Gaining Access

Defense attorneys may attempt to gain access to eligible clients in detention in two situations. First they may be aware of a detained person, but have not received a

transfer of power from an appropriate family member. Many of those most likely to be arrested may be distant from family and home. Second, Justice attorneys may – and should – visit police lock ups and township and district court lock ups anticipating that eligible unrepresented accused will be found.

Attorneys may face resistance from police or other officials when they attempt to visit clients or potential clients early in the investigation stage of a case (or even later in sensitive matters). Police may give many excuses, including the presence of “sensitive detainees,” high-level visitors, or lack of sufficient staff to organize the visit. Attorneys should be firm in seeking access to eligible clients.

The new Legal Aid Law will not prevent the Justice Centres from offering representation. Although local legal aid bodies will approve eligible criminal defense providers and determine eligibility requirements for clients, non-governmental organizations like the Justice Centres can provide representation either as one of the approved providers or in addition to the approved providers.

- Section 2(a) [the legal aid bodies must] “provide to hire attorneys in accordance with this law, legal education, advice, legal assistance and access to legal information to the people who has granted for legal aid.”
- Section 17 “Legal aid claimant can request legal aid from a legal aid body as per rules.”
- Section 22 Any organization can apply to the respective legal aid body for cooperation of recognized legal assistant services according to the procedures.
- Section 47 This law shall not apply to legal aid supporting bodies (individuals/organizations) providing legal aid on their own.

Attorneys can visit jails without a Formal “Transfer of Power of Power of Attorney” from potential clients. Attorneys do not need a formal transfer of power of attorney to see detainees as it is not a “court proceeding.” Courts Manual para. 455 states:

“No pleader shall act for any person **in any Criminal Court** unless he has been appointed for the purpose by such person by a document in writing signed by such person.”

But attorneys should argue that a jail or holding cell is not a court. In addition, preventing an attorney to consult with a potential client would have the perverse effect of preventing the signing of the very document required for court representation.

Defense attorneys should approach early access and engagement in cases as a duty for them and a right for their clients. They should be aware of all legal rights and potential remedies. Attorneys may face additional obstacles when dealing with politically sensitive cases, ones which police see as being filed in response to economically powerful individuals, or where individuals allege police abuse. On a day-to-day basis, however, defense attorneys should seek the voluntary cooperation of police and clerks to gain easy access to clients and potential clients. By engaging in community legal education, partnerships with civil society organizations, and outreach campaigns, Justice Centres and other defense attorneys can encourage swift visits from family when arrests happen, alerting staff to the existence of new potential clients.

Signing of a formal Transfer of Power of Attorney

The most traditional means of formalizing the relationship is through the signing of called “power *ko sa le lwe sar*”, or “transfer of power” in Myanmar. The document must be signed by the client. There is no legal proscribed format of this power, as it essentially a contract between the attorney and the client. But it is essentially a promise by the attorney to take responsibility for the case and do all that is necessary. Most attorneys rely on forms from commercial sources.

Because there is no mechanism for the power to vest in a corporation or association, multiple powers must be signed designating all attorneys who might appear in the case in court. For attorneys working in a Justice Centre, this means all attorneys at a particular Centre should be listed on the Power so that one can appear on behalf of the other in the event of an emergency.

Once the power of attorney has been signed by a detained client, the practice has been to require that the attorney have it “counter-signed” by the criminal records officer to verify the signature of the accused. This can sometimes be denied for either political or bribe-seeking reasons, at which point the attorney needs to pursue the remedies discussed below.

If the case is beyond the investigation stage and has been filed in court, the transfer or power should be filed there. Note that Justice Centre attorneys must receive authorization from supervisors before formally filing transfer of power in court. Once the power is filed, the attorney must maintain responsibility for the case:

“Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies, or until all proceedings in the case are ended so far as regards the client.” The Courts Manual 455 refers to **High Court Notification No.2 (General), dated the 16th February 1927**

Some attorneys and other justice actors believe that legal representation cannot begin until the case is submitted to court by the police and assigned a case number. This is untrue. Legal representation can and should begin as soon as someone is arrested. Judges in round table discussions have agreed that as long as attorneys can show their license and show some letter of engagement from the accused or the accused’s family, they have a right to represent the accused.

Reminder: No Bribery

Defense attorneys must refuse to pay bribes or “special fees” to either file power of attorney or to gain access to clients in jail. Unfortunately in Myanmar, as in other countries, “several attorneys indicated that they continue to need to pay bribes or unofficial ‘fees’ in order to register power of attorney with courts or to gain initial access to clients detained in prison or at police stations. In other cases, prison officials will deny attorneys access on their first visit to a detained client, until such time as the latter has signed a power of attorney letter provided by the prison official and paid an ‘additional fee.’”¹¹ Existing justice centres have had success with meeting with

¹¹ ICJ Myanmar Right to Counsel, 2013, p 35

relevant officials to explain the nature of legal aid and the lack of resources on the part of clients to pay bribes.

Use of Interpreters

Attorneys report that police block the use of interpreters to facilitate communication between attorneys and non-Myanmar speaking clients. This extends to foreigners and to those who are deaf or hearing impaired.

- This is a violation of the right to interpretation (CrPC Sec. 361).
- Attorneys should point out that police are supposed to give “audible” privacy to all attorney communications (see above Prisons Act Sec. 40) and that the right of confidentiality between attorney and client extends to “interpreters, clerks and servants of legal practitioners.” Evidence Act Sec. 137.
- The Legal Aid Law Section 27 provides major expansions of this right, and states the obligation of legal aid providers to use interpreters for a person who is under charged, prosecution, decision and imprisonment-
 - (a) provide legal aid by the help of interpreter in the case of communication problem even he is a national.
 - (b) when he is a foreigner, by the help of translator, explain him that he can get legal aid and inform to the relevant Consulate and Embassy without delay from the Foreign Ministry department .
 - (c) When the person is a disabled person, provide legal aid by gesture or by using body language and Braille by the help of a person who can understand it.

Rights of Paralegals to Access the Accused

Arguably the law that extends confidentiality protections to “interpreters, clerks and servants of legal practitioners” (Evidence Act Sec.137) stands for the proposition that such agents stand in for legal practitioners as needed and thus should be allowed access to the accused. To the extent that “paralegals” employed by most justice centres are in fact attorneys, the title paralegal should not be a bar for them having access to clients in detention.

Remedies when Access is Denied

Defense attorneys must be prepared to respond quickly, respectfully and vigorously when their right to access clients is denied.

Often attorneys can resolve the matter through Informal advocacy with the reluctant police officer. It can be as simple as returning the next day. This is problematic, however, if this results in the accused giving an uncounseled admission, or being remanded without representation. In order to address individual cases attorneys can also write a letter of complaint to a police supervisor or another responsible official in the township. Systemic issues must be brought to the attention of supervisors or attorneys associations.

Ultimately, however, attorneys need to be prepared to assert the rights of their clients through the use of legal mechanisms available. These are discussed more fully in the Remedies section. They include:

- Suing the police for false imprisonment pursuant to Penal Code Sec. 330. This may discourage future problems, but won’t immediately address the need to

access the accused. And of course, absent a power of attorney, the attorney may not be able to file the suit!

- Filing a suit in the High Court asking for release of the illegally detained individual pursuant to CrPC Sec. 491.
- Filing a Writ of Habeas Corpus in the Supreme Court.

Relevant Global Standards

UN Principles on the Role of Lawyers (Havana 1990). Sections:

1. All people entitled to a lawyer
5. Should be informed “upon arrest or detention or when charged with a criminal offence.”
6. Entitled to a lawyer with enough experience to defend them.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty eight hours from the time of arrest or detention.
8. Accused “shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. ” May be in sight, but not sound of government officials.

SPEEDY TRIAL

The right to liberty *and* the right to be tried without undue delay are undermined when frequent, excessive adjournments occur, especially when an accused is detained pending trial.

There is no firm legal deadline for completing a criminal prosecution. While in common, non-political matters, criminal cases in Myanmar proceed faster than in some other countries, the accused, their families and their attorneys, as well as alleged victims and the public, suffer when cases are unnecessarily or illegally delayed.

Despite suggestions that cases be tried “as early as possible” and that cases, once begun, be tried on “sequential days,” the reality of Myanmar practice is that cases are adjourned one or two weeks at a time for many months as the court awaits the appearance of prosecution witnesses. Judges are reluctant to use the powers given to them by the Criminal Procedure Code to strike witnesses and, eventually, to dismiss charges. Defense attorneys must then seek the use of court summons and witness warrants to force the appearance of prosecution witnesses to move the case forward. In the face of these delays many accused with viable defenses may plead guilty at the first available instance to be sentenced and gain certainty about their sentence. See Counseling Clients/Guilty Pleas.

The Relevant Law

- CM para. 22. Avoidable postponement and unjustifiable delay are strictly forbidden.
- CM para. 24. The law forbids “unjustifiable delay” and hearings must “continue[] from **day to day** until all the witnesses in attendance have been examined.”

- CM para. 559: “At each Sessions all persons, other than insane **persons detained in a lunatic asylum**, awaiting trial at the Court of Session, shall be brought before the Judge in open Court; and if the Public Prosecutor is not prepared to go to trial in any particular case, he shall be required to show cause, properly supported, why the accused should not be acquitted and released, the accused himself being also heard in answer to such cause shown.”
- CM para. 560: Sessions trials must not be lightly postponed.
- CM para. 466: the right of an accused to be tried “as early as possible.”
- CM para. 462: case should not be delayed simply to join accused’s case with a co-accused..
- CM para. 468 and 608. If a case has been adjourned *once* without the court examining all witnesses in attendance, that case must be given preference over any others to be heard on the next day
- The Union Attorney General Rules, Rule 109(e). Law officers shall conclude the criminal original cases which they first appeared within a six months limitation period. If not, they shall report the reason for the delay to the officer in charge.
- Fair Trial Guidebook for Law Officers, Standards Applicable to the Trial Stage, III D. “Trial without delay is important for the right of presumption of innocence and the right of defense by oneself. It aims not to be uncertainty due to prolonged trial, not to lose evidence and fade witness’s memory.”
- *Maung Tin Ngwe v. Union of Burma*, (1966) B.R. 639, Adjudication should be speedy and done in the correct manner.
- Individual judges are reprimanded if they do not move their cases forward. Many court circulars urging speed:
 - Such as contained in တရားရုံးချုပ်စာအမှတ်ငြဝင/စု၁၁/(၇/၂၀၀၃) ၂၀၀၃ခုနှစ်၊ဖေဖော်ဝါရီလ၁၃ရက်။ [Supreme Court Letter No. 604/Su 11/(7/2007), 13 Feb. 2003.]
 - As for example in တရားရုံးချုပ်အမိန့်အမှတ်၄၆- ၇/၂၀၀၃၊၂၀၀၃ခုနှစ်၊မတ်လ၃၁ရက်။ (Supreme Court Order Nos. 46-7/2003, 31 Mar. 2003.)
 - As in တရားရုံးချုပ်အမှာစာ၊စာအမှတ်ငြဝ/၃၄/၉၁(လထန) ၁၉၈၉ခုနှစ်၊ဇန်နဝါရီလ၂၅ရက်။ [Supreme Court Memorandum, Letter No. 690/34/89(LaTaNa), 25 Jan. 1989.]
 - Supreme Court Notification 114/424 PTC [2855/2015] discussed below, urging dismissal of cases where witnesses do not appear.
- International Law
 - ICCPR art. 9(3): Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.
 - Also See ICCPR, Article 14(3)(c): This guarantee is designed not only to avoid keeping people in a state of uncertainty about their fate and to ensure deprivation of liberty does not last longer than necessary in the case of pre-trial detention, but also to serve the interests of justice.
 - Bangalore Principles of Judicial Conduct: a judge is required to “perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.”

Prosecution Witness Delay

The accused suffer as cases are adjourned from week to week due to the failure of prosecution witnesses to appear. Although judges are permitted to make adjournments and remand the accused up to 15 days according to CrPC Sec. 344 (1), this is meant to be the exception, not the rule. Attorneys must object to this. The Courts Manual is very clear that cases (including criminal cases) should be heard quickly and **on sequential days**:

- CM para. 24: Attention is also invited to the proviso to Order XVII, Rule I, Code of Civil Procedure, which is frequently overlooked. When the hearing of evidence is begun, the hearing must be continued from day to day until all the witnesses in attendance have been examined, unless there are reasons, which must be recorded, for an adjournment. This rule applies equally to criminal cases.
- CM para. 464: The common practice of adjourning a case, because all the witnesses for the prosecution or defence are not in attendance, is prohibited, except in cases where it may be sometimes desirable to postpone a trial or inquiry for a short period in order that, when commenced, it may be continuous and conducted in such order in regard to the examination of witnesses as may best set out the facts to be given in evidence.
- CM para. 465: Postponements, because an advocate or a pleader for the prosecution or defence cannot attend when a case is called or cannot remain throughout the time the Magistrate can devote to the case, should be most rare and ordinarily confined to the case of an advocate or a pleader being attacked by sudden illness on the day of hearing, incapacitating him from coming to or remaining in Court.
- CM para. 466: Similarly the practice is prohibited of adjourning a case for days for want of time, and telling the witnesses to come again on another day. All Courts must bear in mind that the accused is entitled to have his case tried as early as possible. If a case cannot be taken up on the date fixed every endeavour should be made to take it up on the following day. In time of congestion of work in any Court, subordinate Magistrates should make an immediate report to the District Magistrate whenever they are forced by circumstances to adjourn a case, whether at the first or at any later hearing, for any period longer than 15 days.
- USAID has developed a pilot court program that presently includes 8 courts in Myanmar. The pilot court program primarily deals with case management issues. Among those issues are delays caused by the failure of witnesses to attend. In the pilot court system, a schedule is developed for cases, and if witnesses do not appear after 3 occasions, the court orders the case to proceed without that witness. Because it is usually prosecution witnesses subject to the rule, this has the effect of moving cases along at a much quicker pace than would normally occur. Some exceptions to this rule may be applied if the witness is a public servant.

The Supreme Court Has Ordered Judges to Dismiss Stalled Cases

Attorneys should draw the judge's attention to **Supreme Court Notification 114/424 PTC [2855/2015]**, which lays out in detail the mandate for judges to respond quickly to witness-related delays. This notification starts with a declaration that too many

criminal cases are delayed because law officers and witnesses do not appear. The notification reminds the judges of their rights to dismiss delayed cases:

- In summons cases, if the complainant does not attend, judges may act according in CrPC Sec. 247.
- In police cases, judge may act according to CrPC Sec. 249.
- In warrant cases, if private prosecutor does not attend, but case is compoundable (dismissible by complainant) act according to CrPC Sec. 259.
- In private cases, if witnesses do not appear after three occasions, court should release accused and dismiss the case.
- In public cases, if witnesses do not appear on three occasions, summons must be issued and served by police warning that case will be dismissed. This gives witnesses one more time to appear before the case is to be dismissed.

Defense Strategies for Reducing Trial Delay

Defense lawyers should consider the following strategies to ensure the accused has the right to a fair and timely trial.

1. At the first or second hearing

The defense attorney must inspect the witness list for prosecution.

- Negotiate with the Law Officer to concede witnesses
- Challenge relevancy of all witnesses
 - Are they all eyewitnesses?
 - If they are not eyewitnesses, can they be excused?
 - Challenge need to have all witnesses testify at this stage during the proceeding
 - Burden during inquiry stage v. trial stage is different so the prosecution should call fewer witnesses before the framing of the charge.
- Make an oral argument for each challenge and argue that it must be officially recorded
- Follow up with a written argument submitted to court
- Defense lawyers should request that all hearings and witnesses be scheduled on sequential dates. Present practice, even in the “pilot courts,” is to arrange for one witness to attend each week, then the court will adjourn to the following week for the next witness. If defence lawyers point out the legal requirements relating to sequential hearings at the beginning of the case then court staff will be in a better position to list hearings and request witness attendance in a more efficient way.

2. At the second hearing

- If the witness list is not discussed at the first hearing, consider the same challenges for the second hearing
- Make an oral argument that the court should hold sequential hearings to hear all of the prosecution’s witnesses in a row as efficiently as possible

3. At Subsequent Hearings

If witnesses continue to fail to attend court:

- Argue for the judge to issue a summons for the witness's appearance
- Argue for the judge to issue a warrant for the witness's appearance
- Argue for the judge to summon the witness's supervisor to determine if there are reasonable grounds for the witness's non-attendance

See **Speedy Trial** Section for law.

If the judge has summoned and issued warrants for the attendance of witnesses and they still fail to appear:

- Argue that the judge may dismiss witnesses if it is a compoundable case
- Argue that the judge has the power to dismiss witnesses as he/she has the power and duty to manage his/her court

If the judge fails to summon and/or issue warrants for the attendance of witnesses who fail to appear:

- Argue that you'll complain to the disciplinary committee about the judge's failure
- File a revision due to the judge's failure to issue summons or warrants
- Petition to transfer the case

4. Ways Defense Attorneys Can Speed Trials

- Cross-examine every prosecution witness during the inquiry stage to reduce the number of necessary recall witnesses

Only recall those witnesses who are absolutely necessary to your client's defence

Process for Summoning Witnesses

Thus, in cases where the case is delayed by prosecution witness absences, defense attorneys should consider demanding that the court issue summons to such witnesses. While this may seem counter-intuitive for defense counsel to secure prosecution witnesses, that allows for defense attorneys to demand the judges follow the Supreme Court Notification above. The procedure for the issuance of summons is below:

- CrPC Sec. 68 (1): Every summons issued by a Court under this Code shall be in writing in duplicate, signed and sealed by the presiding officer of such Court or by, such other officer as the High Court may, from time to time, by rule, direct.
- CrPC Sec. 68 (2) Such summons shall be served by a police-officer or subject to such rules as the President of the Union may prescribe in this behalf, by an officer of the Court issuing it or other public servant
- CrPC Sec. 90: A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror, issue, after recording its reasons in writing, a warrant for his arrest - if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Attorneys should remember that Judges always have the right to dismiss a unsubstantiated case:

- CrPC Sec. 209(2): Nothing in this section shall be deemed to prevent a Judge from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Judge, he considers the charge to be groundless.

Remedies

See Remedies Section

If the applications discussed above are denied, attorneys must seek the appropriate review by a higher court, through revision, writ or the habeas corpus power in the CrPC Sec. 491:

- (1) The High Court may, whenever it thinks fit, direct----
 - (a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;
 - (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty.....

BAIL

As general matter criminal defense attorneys should advocate for the release of the accused as early as possible in the case, including informal advocacy to the police, representation at remand hearings, and at all stages of an inquiry and trial. **Bail is a general right.. The presumption of innocence demands that detention be the exception, not the rule**

- **Detention should not be routine. Police Manual 1785**
- **Bail is a general right.** “We have to consider the accused person presumed innocent and has not been found guilty.” (emphasis added) *U Hussain Bux Khan v Union* 1960 BLR 192. *Also Nga Po Nyun v. King-Emperor*, 2 LBR 76, at 79.
- There is no such thing as being early when it comes to applying for bail. Bail can be applied at any time. *Maung Lu Min v Union*, 1956 BLR 112 (High Court) _
- ICCPR art. 9(3): It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement

Bailable versus Non-Bailable Cases

Myanmar criminal charges are divided into bailable and non-bailable. See Criminal Procedure Code, Schedule 2, Column 5.

Bailable Cases carry a possible sentence of 3 years or less. Accused in those cases should be granted release as soon as the charges are determined, even during the investigatory stage. Police Manual para. 1785

Non-bailable cases carry potentially sentences greater than three years or the death penalty.

- Police officers can grant bail in bailable cases. CrPC Sec. 170 (1)
- Bail can be granted in non-capital or non-transportation cases. CrPC Sec. 497 (1)
- Bail can be granted if the evidence is weak. CM para. 481(1)
 - Note that the English version of CM para. 481 seems to establish a stricter standard against bail stating “shall not be released...if there are reasonable grounds for believing he is guilty.” The Myanmar version is more permissive, as it correctly states that the accused: “shall not be released...if there is reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life.” The Myanmar version has been updated due to more recent case decisions.
- Bail can be granted to accused under age of 16, any woman or any sick or infirm person in any kind of case. CrPC Sec. 497 (1)

Important exceptions: PC Sec. 406, criminal breach of trust, is punishable by only 3 years but is non-bailable. PC Sec. 420, cheating, may result in a 7 year sentence yet is

bailable. These similar charges offer opportunities for advocacy, but also opportunities for misuse of charging discretion by police.

Procedure

Bailable Cases

- Attorneys should seek release from police as soon as an arrest is made.
- Only the head of police station has the authority initially to grant bail. CrPC Sec. 497, *Two including U Aung Kyi vs Union*, 2001 BLR 113. See also Police manual 1115 (h) *Under sections 60, 169, 170, 496 and 497*.
- “In bailable cases bail is a right and not a favour; detention in the lock-up is the alternative, not the original order. The bail demanded will never be excessive, but will be fixed with reference to the social status of the prisoner and the character of the offence.” Police Manual para. 1785

Non-bailable Cases

- Attorneys should make bail applications as soon as possible, at the 24-hour hearing.
- No one can be held in custody more than 24 hours without permission of court. Myanmar Constitution Articles 21, 376.
- Every accused has the right to a bail hearing and notice to that hearing. “He also had to be informed of a hearing to fix a good behaviour bond and to be heard on that date, or else the order for surety was invalid.” *Nga Hnaung v. King-Emperor*, 3 LBR 43.
- Even if a magistrate determines that there is sufficient evidence to continue to investigate a case, the accused should be released without sureties if there is not reasonable grounds to believe accused has committed non-bailable offense. CrPC Sec. 497
- The Court doesn’t require law officer input and should not defer to them. *Kyaw Myint vs State*, 2002 BLR 124
- Bail should not be used as preventative detention. Lower courts should not use “general repute of habitual criminality” to demand bonds. *Nga Shwe Ywe v. Crown*, 1 LBR 71, at 75. See also *Crown v. Nga Nyein*, 1 LBR 90. 90.

Form of Bail

Release On Personal Promise to Return

Release does not require either cash or bail or a bond with sureties. Defense attorneys should seek in appropriate cases that the accused be released with personal undertakings to return to court. CrPC 497. During police investigation the judge could require that the accused report to the police station weekly. In that case the accused attorney should advise the client not to speak about the case to the police. The custom to adjourn cases from week to week during the inquiry and trial should be enough oversight.

- Bail should not be excessive. CrPC Sec. 498

- Bail does not have to be cash, but can be a promise from sureties to pay if accused absconds, or simply a promise from the accused to appear as required. CrPC Secs. 499 and 496.
- Principle (accused) or surety liable for part of all of bond if accused absconds. CM para. 523
- The law only requires one surety, not two. CrPC Sec. 499(1)
- Judges often impose requirements to be a surety such as that they must own house; be head of household; produce family list or registration document; produce citizenship identification case; live within township of case; or have recommendation of ward administrator. These are not rooted in the law. Attorneys should make legal arguments against these illegal restrictions. See CrPC Sec. 498(1) and (2).
- In cases where there is no appropriate known surety, the accused may need to resort to a commercial surety who will charge a fee (10,000 to 50,000 kyat).

Bail Review and Appellate Rights

See CrPC Sec. 498

Even before a conviction a High Court or District Court can admit person to bail or reduce bail set by police or magistrate. The attorney must make a “miscellaneous action” on higher court. There is no need to serve notice on law officer. The downside of pursuing such an appeal is that it freezes the case until the issue is decided, and can cause additional delay.

Bail Forfeiture

See CrPC Sec. 497.

High Court or District Court can also revoke bail and order arrest and detention of accused. These are the reasons:

- When the accused commits the same crime again
- Accused disrupts the trial of the court
- Bothers witness
- Leaves the country
- Goes to remote areas
- Accused retaliates against plaintiff (Plaintiff has to submit affidavit)

Procedure to forfeit bail

- When the bond is for the appearance of a person before a Court, that Court only may declare that the bond has been forfeited. CM para. 521(1)
- If case is transferred, new court must take new bond from accused. CM para. 521(2).

Global Standards:

- Universal Declaration of Human Rights, Article 9: No one shall be subjected to arbitrary arrest, detention or exile.
- Convention on the Rights of the Child Article 37(b): No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- ICCPR Article 9:

(3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

The Structure of A Bail Argument

An attorney needs to know the law governing bail in order to make an effective bail argument. Bail should be granted in non-bailable cases as a matter of course. The greater challenge is to secure bail in cases that would otherwise be deemed non-bailable. Always keep in mind that granting bail is the rule, and denying bail is the exception.

The attorney needs to (1) give the judge the legal basis for granting of bail (2) challenge the prosecution presentation of facts (3) present favorable or mitigating information about the accused and (4) state clearly what the requested remedy is.

1. Legal Basis for the Granting of Bail

Clearly State the law and how the client fits into the law:

- Magistrates can grant bail in non-bailable cases. CrPC Sec. 170 (1)
- Bail can be granted in non-capital or non-transportation cases. CrPC Sec. 497 (1)
- Bail can be granted in any case if the evidence is weak.¹² CM para. 481(1)
- Bail can be granted to accused under age of 16, to any woman, or to any sick or infirm person in any kind of case. CrPC Sec. 497 (1)

2. The weakness of the prosecution case. As discussed elsewhere in the Manual, point out evidentiary or procedural weaknesses in the prosecution's case. Be careful about disclosing the results of defense investigation. Also be careful not to repeat the client's statements to the defense attorney. This threatens client-attorney confidentiality, potentially locks you into one defense line, and is unlikely to be persuasive at this early point.

3. Favorable or Mitigating Information about the accused

Make a persuasive statement about why the client has strong ties to the community, a good reputation, and how being in jail would negatively impact the client or the client's family. Prepare carefully for bail application and do not rely upon pre-existing forms. Make oral argument. These arguments can include:

- Marital status
- Name of dependents
- Present employment
- Under care of physician or medication

¹² Note that the English version of CM para. 481 seems to establish a stricter standard against bail stating "shall not be released...if there are reasonable grounds for believing he is guilty." The Myanmar version is more helpful to the accused.

- Physical or mental conditions affecting behavior
- Education
- Lack of Prior criminal record and facts
- Consistency in making prior court appearances
- Ties to the community
- Financial resources
- Availability and nature of sureties

4. Request a Remedy! Make sure the judge knows what you want. In some cases you may want to ask for release without a surety.

PATH OF A CRIMINAL CASE IN MYANMAR

INVESTIGATORY STAGE – THE BEGINNING OF THE CRIMINAL PROSECUTION

Role of Defense Attorney

The defense attorney must be proactive during the investigation stage. Due to the new Legal Aid Law, defense attorneys should be ready to represent the accused from the arrest, and appear at Confession hearings and Remand hearings. During this period attorneys should fully interview clients, begin investigations, and seek out prosecution evidence – although the last will be hard to get. Attorneys should consider how they can best ethically advocate with the police to dismiss the case. See Early Access to Attorney Section.

Fighting Against Torture in Police Custody

Defense attorneys must protect their clients, and all detainees against police abuse and torture. The first step is to visit police lockups routinely to meet newly arrested persons and to prevent police acting without oversights. One evidence of abuse or torture is detected attorneys must move quickly to prevent it from continuing. However care must be exercised to respect the privacy and a decision-making authority of the accused.

- Request the judge make a record of the injuries at remand hearings and at confession hearings.
- Report the problems to superior police officers
- Request the assistance of ward and township administrators
- Drafting letters of complaint on behalf of clients
- Filing complaints with the National Anti-Corruption Commission

Legal Remedies to Police Abuse

- Penal Code Section 330, illegal extortion of a confession
- Penal Code Section 321 or 322. Harm.
- Writ of Habeas Corpus seeking release of the accused. See Remedies Section.
- State or Divisional High Court Habeas Corpus. CrPC Sec. 491(1).
- The Myanmar Police Force Maintenance of Discipline Law provides for administrative proceedings to punish police

In cases of illegal surveillances searches or arrest, actions can be brought under the Law Protecting the Privacy and Security of Citizens (2017).

The attorney can try to protect the accused by

- Seek to transfer custody from police to the prison
- Have the accused seen by a doctor

Sometimes public exposure or involvement of the media may be seen as a solution. Care must be taken to avoid exposing the accused or the defense

lawyer to legal complaints of defamation or similar charges. Justice Centre Lawyers employed by International Bridges to Justice must get approval from headquarters for any media contact.

Role of Law Officers during Investigation Stage

Under the Attorney General of the Union Law 2010, Sections 36(g) and (i) law officers shall carry out a number of duties related to pre-trial procedure, including:

- “Scrutinizing” a police officer’s request for remand and
- Determining whether “any charge or any accused” or the “entire case” should be withdrawn.

Law officers claim they have a limited role during the investigation stage. They become most involved at the end of the investigation stage when the police present their files for review and advice before it is submitted to the court. According to law officers, this takes place approximately 3 days before the end of a 15-day investigation period, and 7 days before the end of a 30-day investigation period.

As defense attorneys become more active in their representation of the accused during the investigation stage, appearing at Confession hearings and remand hearings, law officers may feel pressure to appear as well. Attorneys should consider informal advocacy to encourage the dismissal of unsupported cases and to secure the release of eligible clients.

Initiating the Complaint

Any case can be initiated through a complaint at the Police Station, except those filed against police officers. What happens next depends if the case appears to involve charges that are non-cognizable or cognizable (See Types of Cases)

- Non-cognizable Case
 - Police fill out the “AB” Form
 - Tell complainant to go to Magistrate Court (with form)
 - Police must record complaint in “Police Record Book.”
 - When the Judge receives a complaint, the Judge shall at once examine the complainant. CrPC Sec. 200
 - If this case is taken cognizance in the Judge’s authority, the Judge may direct a police office to investigate it. CrPC Sec. 202
- Cognizable case:
 - Police officer may open the case immediately.
 - Takes a statement from complainant, read it out loud to the complainant, and then ask them to sign it. This is the First Incident Report or FIR.
 - Registers in the police book 20.
 - Police Manual paragraphs 1441-42; CrPC Sec. 154.

There are some reports a “recommendation letter” from the relevant Ward Administrator was needed before filing a complaint alleging a non-cognizable offense

with police, otherwise the police station will not accept the case.¹³ This process may provide additional opportunities for investigation by defense attorneys.

The Police Investigation

The authority to begin the investigation depends on whether the case is cognizable or non-cognizable. Attorneys should carefully examine the police and court paperwork to make sure that the investigation and subsequent arrest was legal.

- Non-cognizable case police must receive direction from the Judge
- Cognizable case
 - Investigation may begin once complainant has filed FIR. CrPC Sec. 156
 - It is improper to begin without FIR. *Nyan Wai Phyoe v Union* 2009 MLR 24. CrPC Sec. 162.
 - Police may decline to investigate if they believe there are not sufficient grounds. See CrPC Sec. 157 (1) (b).

Scope of Investigation

Attorneys should be aware of the required elements and form of an investigation. If a case reaches court, attorneys should be prepared to cross-examine a police witness on the thoroughness and competency of their investigation. If the police admit that they failed to follow the procedure set out below, the attorney should argue that the investigation was flawed or incomplete, throwing onto doubt the prosecution case.

- A police officer cannot be partial to either party PC SS. 177 & 218, PM para. 1414
- The police must go to the scene of alleged crime. PM para. 1423
- The investigation can be by telephone, writing, orally, or telegram PM para. 1414
- A police officer can investigate all witnesses who are relevant. CrPC Sec. 161
- If witness does not respond to a police order, police can be taken action
 - Imprison for up to one month PC Sec. 174,
 - See also PM para. 1690.
- The police have to record statements on separate paper, not in police diary. CM para. 596, PM para. 1425, 1689.

Searches and seizures – See Evidence Section

The police may wish to conduct searches of places or people.

When the police wish to search a person's property, they are generally required to present their basis for believing a crime has happened to a judge. If the judge believes there is sufficient reason to believe a crime has happened the judge will issue a search warrant. The judge shall record his reasons for issuing the warrant either on the warrant or elsewhere. Probable cause to issue a warrant exists if: (1) the evidence given by the police would lead a reasonable person to believe a crime has committed; (2) evidence of the crime will be likely found at the location; and (3) the suspect is connected to the crime.

When the police have made a lawful arrest without a warrant they are entitled to search the person if the accused cannot legally be admitted to bail or is unable to furnish bail. They must search the person in the presence of a witness.

¹³ Justice Base, Women's Access to Justice, 2017.

- Law Protecting the Privacy and Security of Citizens (2017) provides additional protections against warrantless searches or those done without being accompanied by minimum of two witnesses who should comprise Ward or Village Tract Administrators, Hundred- or Ten-Householder Head.

The police may search any location where the suspect does not have a reasonable expectation of privacy. This would include a public place.

The police are required to furnish a receipt for all seized items. This receipt or “search form” may be latter used by the prosecution as a means to show that the accused consented to the search, agreed that all the proper procedures were followed or even admitted to possession of the items listed.

- CrPC SS. 96-103 search warrants
- CrPC SS. 165-166
- Police Manual, paragraph 1064 (general requirement of a Magistrate’s warrant to conduct a search)
- Police Manual Section VI, - The Conduct of Searches, paragraphs 1703-1706
- Courts Manual, paragraph 401 (requiring the police to comply with Sections 101 and 102 concerning judicial warrants in all cases)

Exceptions in Cases involving Drugs

Under **The 1995 Rules relating to Narcotic Drugs and Psychotropic Substances Law** anyone can seize drug users and deliver to the police. This undermines procedural protections guaranteed by criminal procedure code. This raises the danger of the “planting of drugs” and breaks in chain of custody of alleged illicit substances.

Whoever sees an offence being committed in his presence at a public place, may arrest the offender and seize the exhibits without a search warrant, and after such arrest shall hand over systematically to any member of the Myanmar Police Force without delay. If there is no member of the Myanmar Police Force, such offender will be handed over to the nearest police station systematically and immediately together with the exhibits. Rule 20, Narcotics Drugs and Psychotropic Substances Law.

Section 13 of the Narcotic Drugs and Psychotropic Substances Act requires in subsection (a) searches for drugs be conducted in accordance with the rules promulgated under the act. Chapter IV, 21 of those rules allow police to issue their own warrants to conduct searches of private homes, buildings, and aircraft. This rule appears to be directly at odds with the relevant portions of the Criminal Procedure Code requiring judicial warrants, as well as the relevant portions of the Police Manual and Courts Manual, set forth above. Attention should also be paid to Article 357 of the Myanmar Constitution, which provides “The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution.”

The Arrest

An arrest must be based upon probable cause at the time of the arrest. The police have probable cause when they rely on trustworthy facts and circumstances that would lead a reasonably prudent person to believe that the accused has committed or is committing a crime.

In cognizable case the police do not need a warrant. In non-cognizable cases the police must receive an arrest warrant in order to enter an accused's home to arrest the accused. Upon entry to a home, the officer may search for the person to be arrested, but no provision is made for a general search of the premises for evidence.

- CrPC SS. 46-86 arrests
- See Types of Cases Section
- The police cannot use force if the person does not resist when arrested. CrPC Sec 46.
- The detainee must not be harmed unjustly. Police Act Sec. 43, Police Manual Sec 1060
- Police should inform the parents, relatives or friends about an arrest. Police Manual Volume I, Sec. 74 (c)

First 24-Hour Detention

Once arrested, in normal cases, the accused should be brought before a Judge in court within 24 hours. As noted below, exceptions can and are made in what are essentially political cases. This 24 hour period leads either to the release of the accused, a First Hearing in court (non-cognizable cases) or a Remand Hearing before a magistrate (cognizable cases).

Except in the rare cases where the accused are aware of a complaint or the potential of a complaint and seek pre-arrest representation, the involvement of the attorney begins sometime after the arrest. The earlier the attorney is engaged, the greater impact she or he can have on the outcome of the case. Attorneys, once engaged, have an obligation to gather the necessary information about date of arrest, remand dates to make sure that limits on detention are not violated. The attorney should attempt to see client even at this point. She should advocate for release when possible. She should prevent torture and confessions. See Early Access, Bail, Advising Clients, Evidence/Confessions Sections.

- The police cannot detain accused beyond 24 hours without court authorization, Constitution Art. 376 and CrPC Sec. 61.
- But the Constitution overrides the 24-hour limit in cases where 'precautionary measures [are] taken for the security of the Union or prevalence of law and order, peace and tranquility in accordance with the law in the interest of the public' Constitution Article 376.
- The government can hold persons under the Emergency Act of 1950, which allows for indefinite detention.

Confession before a Judge

After securing an inculpatory admission from the accused, the police will bring the accused before a judge as described in Criminal Procedure Code Section 164. In order to provide early representation to the accused, the defense attorney should seek to advise the accused before any confession is taken. In most situations a confession would be unwise and should be discouraged. At the very least the defense attorney should ensure that all the legal protections available under CrPC Sec. 164 are followed. See full discussion in the Evidence Against the Accused Section, Confessions.

Remand Hearings

Myanmar has clear and strict restrictions on the ability of the police to detain suspects beyond 24 hours. In practice police may bring arrestees to the court well before the end of the first 24 hours, as they normally expect the Judge to extend the remand without questioning the need for the extension.

Attorneys should appear at remand hearings and oppose further detentions. Defense attorneys have the right and obligation to represent the accused at these hearings. See Early Access to an Attorney Section.

Attorneys must challenge the request for continued detention.

- Ask why the necessary investigation has not been completed,
- Request that judges review the police log books even if they are not generally discoverable by defense attorneys.
- Argue that detention is not necessary to ensure accused's attendance during the inquiry stage and trial, or for the investigation
- Argue that the detention is not reasonable
- Challenge length of detention

See Bail Section, Client Interviewing, Investigation, Evidence.

- In order to extend the police investigatory detention period beyond 24 hours the police have to request an extension from a Judge. CrPC Sec. 167.
- The police must show why more investigation is necessary AND that additional detention is necessary. CrPC Sec. 167
- If the accused is not brought to court remand cannot be granted. Accused should be given opportunity to oppose remand. CM para. 403
- When sending accused to court police must bring police generated documents including the daily diary and Police Form 32 for remand. These are confidential so magistrate must accept and return them directly to the police. Only law officer can see them. PM paragraphs 1347-1350.
 - May be discoverable during Inquiry if used to refresh recollection of police witness. See Evidence Section.
- Defense attorneys can oppose extension of remand. CM para. 403
- Law officers can support or oppose the application for a remand extension. Attorney-General of the Union Law 2010, Section 36(g) "scrutinizing as to whether or not the request of remand by the prosecuting body is in conformity with the existing laws, orders and directives."
- Only 1st and 2nd magistrates can grant an extension to remand, not 3rd class magistrates.
- The Judge must issue ruling of how long remand on Criminal Form 7, which is given to the Police.
- This extension is for 15 days for all cases. For those charges carrying a potential sentence of more than 7 years, the magistrate may authorize a second extension of detention of 15 days for a total of 30 days. CrPC Sec. 167, PM paragraphs 1347-1350.
- These time limits include the first 24 hours in the entirety of the period, according to the plain meaning of CrPC Sec. 167.
- The practice is to extend in two-week periods of time, but this should not be automatic: "The Magistrate to whom the accused person is forwarded under

this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit.” CrPC Sec. 167

- There should be no “indefinite” detention. *U Zan v. Deputy Commissioner, Insein & Another*, 1951 BLR (SC) 188. *Thet Tun v. Deputy Commissioner, Shwebo & Another*, 1952 BLR (SC) 33. (Accused detained for four years because police “forgot” him.)

At End of Investigation Period

The Police must make a decision as to whether to submit the case to the court, or to discharge the case. Defense attorneys may consider how best for them to advocate for their clients at this time, especially given the limited information they may have. There is a risk that any attempt at negotiation may be met with either requests for bribes or accusations of offering bribes.

- Submitting the case to court. If police find a basis for prosecution they need to take Police Form 125 and attach the form 71. Police must forward a report with names of parties, nature of case, names of witnesses, if the accused is sent in custody or not. The investigation is completed and the case is “sent up.” CrPC Sec. 173
 - Case sent to law officer for pre-trial legal opinion
 - Attorney General Rules (2001) Rules 51 to 60
 - Prosecution and Appearing Directive No.(1/2001)Para 5 to 9
- Discharge the case. The police should release accused where there is no sufficient evidence or reasonable ground of suspicion of a crime. CrPC Sec. 169. The police return Criminal Form 71 to judge.
 - Case submitted to law officer for closing

INQUIRY AND THE PROSECUTION CASE IN CHIEF

Myanmar Practice Confuses Inquiry with the Prosecution Case In Chief

In Myanmar practice there has been a conflation of the Inquiry and the Prosecution Case in Chief. As described more clearly in the procedures for a jury trial, the Inquiry is intended to be a relatively brief determination of sufficiency of the evidence leading to the discharge of the accused or to framing of relevant charges. This would then lead to a separate presentation of the prosecution case as the first half of the trial. The second half of the trial would be the accused case. See CM para. 449.

This is also the procedure discussed for warrant cases tried before a judge. CrPC Section 256(1).

Although the prosecution is allowed to present additional witnesses after the framing of the charge, in practice this is rare. The confusion of the Inquiry with the Prosecution's Chief Case at trial disadvantages the accused in a number of ways.

- First, it forces the accused and the accused lawyer to plan cross-examination and the defense line before the charges have been framed, essentially denying the accused the ability to be informed of the charges against them. CrPC Section 210
- Second, it undermines the presumption of innocence and reduces the burden of proof that must be carried by the law officers. At Inquiry the prosecution must present sufficient evidence (probable cause) for the Judge to frame the charge. This is lower than the burden at trial, which is the requirement that the prosecution must prove each ingredient of crime charged beyond a reasonable doubt at the end of the entire court proceeding. See Presumption of Innocence/Burden on Proof.

It is unlikely that this practice will change in the near future. But a defense attorney must be aware of how an Inquiry is different from a Trial, and must remind the judge after framing of the charge that the framing is not a finding of proof beyond a reasonable doubt.

Summons Case versus Warrant Case

The procedure of inquiry and trial depends on whether it is a summons case (punishable by six months or less) or a warrant case (punishable by more than 6 months). Discussed below is the longer and more elaborate procedure demanded in a warrant case. A summons case would follow the same general format, except the accused is asked to admit or deny before the presentation of the prosecution evidence. See Types of Case, Guilty Pleas.

Advocating for the Dismissal, Compounding or Withdrawal of a Case

It is during the inquiry that the law officer (prosecutor) takes control of the prosecution in all cognizable cases. The law officer may also supervise "plaintiff lawyers" in non-cognizable cases. An important power is that of refusing the case or changing the proposed charge. Relevant Law:

- Attorney General of the Union Law of 2010 Section 36(m)
- Attorney General Rules 67 to 69
- Prosecution and Appearing Directive No.(1/2001) Para 16 to 18, as amended in 2016.

Attorneys should negotiate with the law officers to either dismiss the case or to proceed with less serious charges. Attorneys can encourage the law officer to present the charges with a lower potential sentence or which are bailable. The attorney is in a stronger position to negotiate when the attorney has done investigation, knows the law, and has consulted fully with the client.

- Attorneys must be client-centered. They must know what their clients' goals are and what risks they are willing to take. For example, usually crimes with maximum sentences below 3 years are bailable. But occasionally there are unusual situations where one charge might carry the higher sentence but be bailable, while the one with less serious sentence is not bailable. One example of this would be the application of criminal breach of trust, PC Sec. 406 [3 years potential sentence, but non-bailable] versus cheating, PC Sec. 420 [seven years potential sentence, but bailable]. A client may prefer to fight a case at liberty, even with a higher potential sentence.

Cases can be Compounded or Withdrawn

Depending on the severity of a case, a case can be compounded or withdrawn. Compoundable cases can be discharged through the request of the complainant. Non-compoundable cases must be "withdrawn" by the law officer with the permission of the judge. Whether a case is compoundable or not is described in Column 6 of Schedule II of the Criminal Procedure Code

There are many offenses that are offenses against specific individuals. Sometimes the law allows for that individual to agree to the compounding (or dismissal) of the action against the accused.

- In less serious cases this can be done without the court's permission. CrPC Sec. 345(1).
- In more serious cases the agreement of the judge is necessary. CrPC Sec. 345(2)
- A responsible adult can compound on the behalf of a minor. CrPC Sec. 345(4)
- Even after verdict compounding can occur, but only with permission of the judge. CrPC Sec. 345(5)

Subject to the restrictions above at the any stage of trial, the case may be withdrawn when the aggrieved person submits the withdrawal of the case.

More serious cases cannot be compounded, but they may be withdrawn. This is described in CrPC 494

Any Public Prosecutor may with the consent of the Court in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any per either generally or in respect of any one or more of the offences for which he is tried and upon such withdrawal, (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences (b) if it is made

after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.

In practice this is rare, and is often limited to cases, such as those arising out of traffic accidents, where the accused and complainants have otherwise achieved a private disposition. The law officer may demand a multiple step procedure before giving his or her consent to the waiver:

- The accused obtain all relevant documents from the court
- The accused get a written consent from complainant or complainant's family
- The accused secures agreement from township police
- The law officer then examines and gives consent
- This consent is then presented to the judge for the order.

The law officer also is empowered to seek withdrawals under the Attorney General Law of 2010.

- Section 36 The Law Officers at the various levels of Law Office shall, in accordance with the stipulations, carry out the following functions and duties:
(i) scrutinizing and making decision, in accord with the stipulations as to whether or not the entire case or any charge or any accused in the criminal case filed at the Court should be withdrawn

Role of Private Prosecutor

The complainant who has made a complaint with the police or with a judge may hire an outside attorney with permission of the court. This private attorney may conduct a criminal hearing under the law officer's "instructions." CrPC Sec. 163

Role of Judge at Inquiry and Trial

See Other Criminal Justice Actors Section

Judges need to be independent and impartial in their adjudication of cases. At all times defense attorneys should be respectful of them and mindful of their power over their clients. Defense attorneys need to be vigilant against judges who are partial to the prosecution or who act as a second law officer in the trial:

- If a judge was a friend of a government officer in a case before him, this was sufficient ground for the case to be transferred, as it created doubt about possible bias and fairness of trial; it was not necessary to prove that the judge had actually done anything wrong *U Ba Khin v. Union of Burma* 1954.
- A judge should not act as a second law officer. If a judge had made inquiries about a case, not so as to understand the facts but to fill gaps in the law officer's argument, his verdict was unlawful *T.S. Mohamed & One v. Union of Burma* 1953.¹⁴

The Judge must be present and attentive during the inquiry and trial. Lawyers must politely request that the judge be physically present during the giving of evidence and during arguments. In addition, lawyers should be alert to the judge directing his or her attention elsewhere. Lawyers should not allow the law officer or clerk to begin or continue proceedings in the absence of a judge. Judges must be present for

¹⁴See Nick Cheesman, HOW AN AUTHORITARIAN REGIME IN BURMA USED SPECIAL COURTS TO DEFEAT JUDICIAL INDEPENDENCE, 45 Law & Soc'y Rev. 801, December 2011

every hearing and must adjourn proceedings they cannot attend. In the face of failures, lawyer must be prepared to respond:

- Informal advocacy to the judge and other staff.
- Formal objections in the courtroom.
- Complaints to the presiding judge.
- Filing of revisions or appeals alleging violations of procedures.

Judges may be reluctant to entertain legal arguments to adjust the charges or be too open to defense arguments for fear that, even if not true, they will be perceived as being corrupt. Attorneys should be careful in making their arguments.

- One judge in Kachin state was punished by the Supreme Court for too obviously manipulating charges and adjournments.

တရားရုံးချုပ်အမိန့်အမှတ်၉၆/၂၀၀၆၊ ၂၀၀၆ခုနှစ်၊ နိုဝင်ဘာလ ၁၆ ရက်။ (Supreme Court Order No. 96/2006, 16 Nov. 2006.)

Although judges can take over a case from each other, the judge rendering the final verdict needs to hear the evidence of the accused.

- Although it was legal to transfer a case from one judge to another during trial, the defendants had the right to recall any or all of their witnesses to be reheard, and where the accused did not have an attorney the new judge should expressly advise him of this right. *Chit Tun & Four Others v. Crown*, 1 LBR 239.
- And a judge who passed an order on the basis of evidence collected by his predecessors and without personally hearing from the accused had violated the law. *King-Emperor v. Myat Aung*, 4 LBR 135

Global Standard:

- A judge is required to “perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.” Bangalore Principles of Judicial Conduct, 6.5.

Respect for the Accused in the Courtroom

Lawyers should be alert for ways they can communicate their respect for their client to the client and to the other actors in the courtroom. This includes fully informing the client of the purpose of each court appearance, and the reason for each adjournment. Lawyers should ensure that their clients can hear all the testimony.

- Handcuffs should be removed during court proceedings unless there is a reasonable expectation the accused will escape or act violently. CM para. 477

First Hearing

This is the day for formal presentation of the case in court. There can be a delay in the actual hearing until the afternoon. This is to allow for negotiations between the complainant and the accused to dispose of the case absent a prosecution.

Note: It is the responsibility of the bench clerk to keep a handwritten record of what has happened in court, including testimony. Defense attorneys must be vigilant to make sure this record is accurate.

Court Hearing

Attorneys should be ready to make or renew bail applications based upon the final proposed charge. They should also endeavor to copy the court file and make discovery demands on the law officers. If appropriate they should seek to transfer child clients to the Juvenile Court. See Juvenile Section.

- Described in CrPC Sec. 173
- Right to fair and impartial hearing Constitution Art. 347

Generally all proceedings should be in a courtroom open to all. But the practice is quite different. People without an interest in a hearing are often prevented from entering courtrooms. The physical layout of the courtrooms may prohibit any public from observing. When appropriate attorneys should demand the presence of family for hearings.¹⁵

- Constitution Article 19: “The following are prescribed as judicial principles... (b) to dispense justice in open court unless otherwise prohibited by law.”
- Section 3(b) of the Union Judiciary Law 2010.
- But there are exceptions:
 - CrPC Sec. 352 a judge has authority to select the place of trial and also to issue orders to exclude “the public generally, or any particular person” from the premises.
 - Myanmar Courts Manual para. 48(1) The provision is grounded in concern for the security of the court
 - Section 42(b) of the Child Law 1993 excludes public access to cases in which persons aged 16 or younger are tried, other than by special permission. See Juvenile Law Section
 - Section 14 of the Burma Official Secrets Act 1923 permits courts to exclude the public from proceedings brought under the Act upon the prosecution’s request

Prosecution Presentation of Witnesses

The Prosecution case in warrant cases normally takes place over many non-sequential days. This is contrary to the legal process. See Speedy Trial Section for arguments on how to fight these delays.

In order to respond effectively to the case, defense attorneys must begin with a strong understanding of the evidence, the available defense lines and defense line. The procedure for the inquiry is described in detail in CrPC Sec. 252.

CrPC Sections 135 to 166 deal extensively with the questioning of witnesses and generally reflect well-understood rules in common law systems.

See Evidence Section to prepare for objections to prosecution evidence. See Defense line. See Also USAID Legal Aid Toolkit

¹⁵ See Justice Base “Behind Closed Doors” 2017.

Make Objections to Preserve Issues:

Attorneys must raise objections during the case proceedings. First, only by objecting to illegal or improper evidence can they protect their clients. Second, even if the objection is denied, the objection should be made in order to avoid waiving an issue for a later appeal. Failure to do so may result in a court rejecting the defense application for a remedy. Attorneys should record all objections made and the ruling by the judge as part of their memorialization of daily court events in the client's case file.

- CrPC Sec. 537 "Explanation----- In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of Justice the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

Cross-examination

After each examination in chief the accused or his attorney may cross-examine the witness. Leading questions are permitted during cross-examination and undisputed matters in chief. Myanmar practice allows for the defense attorney to recall prosecution witnesses after the framing of the charge. Nonetheless careful, thorough cross-examination is vital BEFORE the framing of the charge to point out factual weaknesses, the failure to prove each ingredient of the crime, and to highlight witness bias. As discussed below a skillful cross-examination and argument of admissibility of evidence is a way to make arguments about sufficiency of the evidence.

See Evidence Section, Skills: Questioning the Witness, and USAID Legal Aid Toolkit Chapter 4 "Trial Skills/Examination" page 72.

- See generally Courts Manual Chapter XXI- Evidence and Witnesses paragraphs 594-639;
- "The accused shall be at liberty to cross-examine the witnesses for the prosecution, and in such a case the prosecutor may re-examine them." CrPC Sec. 208 (2):
- The accused person has right to cross-examine witnesses in trials of warrant cases before magistrates. CrPC Sec. 256
- Same right in summons trials. CrPC Sec. 262
- Re-examination may only explore matters raised in cross examination.

Speedy Trials Must be Enforced

See Speedy Trial Section for the full argument

In summary attorneys should:

- Seek to reduce the prosecution list of witnesses
- Request that inquiry and trial be held of sequential days
- Request summons, warrants and discharge of non-appearing witnesses

FRAMING THE CHARGE

Attorneys must be ready to present arguments when the judge determines that there is sufficient evidence to frame the charges against their client. Once the judge indicates the intention to frame charges, the prosecution should make argument, followed by the defense attorney, with rebuttal by the prosecution.

Attorneys must remind the judge to dismiss case if the judge believes there is insufficient evidence. CrPC Sec. 253, CM para. 538

Standard for Framing

- There must be sufficient evidence. CM para. 538
- The Judge should not wait until end of the prosecution evidence, but should frame the charge as soon as there is sufficient evidence. CM para. 449
- “If, when such evidence and examination have been taken and made. or at any previous stage of the case, the Judge is of opinion that there is ground for presuming that the accused had committed an offence triable under this Chapter which such Judge is competent to try, and which, in his opinion could be adequately punished by him he shall frame in writing a charge against the accused.” CrPC Sec. 254
- Court Rulings
 - A *prima facie* case had to be established at committal before ordering a trial. *Tambi v. Appalsawmy (King-Emperor)*, 9 LBR 208.
 - The ruling uses the Latin term “prima facie” which means sufficient evidence to establish a fact or raise a presumption of fact unless refuted. Note that this is lower than “proof beyond a reasonable doubt” which the judge must find in order to convict the accused at the end of the trial.
 - Even where convinced that such a case existed, a judge could not dispense with procedure and fail to complete the hearing as required by the procedure code. *King-Emperor v. Channing Arnold*, 6 LBR 129.

Form of Charge

The form of the charge is found generally in CrPC Sec. 221, and 223-240.

- Many judges have pre-printed forms.
 - For example: U Myint Lwin, Attorney, “Application Forms Used in the Courts,” Publisher Than Myint Aung.
- Often the form is completed by the clerk, not the Judge. The Judge only signs it. The form includes the relevant township, name of the accused, parents names, date, the place of occurrence, the date of occurrence, the charges framed, and additional remarks.
- A judge can frame up to three charges for each case.
- Can only frame one section of a particular charge even if both applicable. 1973 Interpretation of Law Sec. 22
- Accused cannot be sentenced for more than one section of a charge per each set of facts. PC 71

Jurisdictional Issue

If the Judge decides case should have been properly heard in higher court, the Judge must direct that it be withdrawn and resubmitted in higher court. CrPC Sec. 346 & CrPC Sec. 347.

Defense Attorney Role

The Criminal Procedure Code and the Courts Manual lack specific procedures for the defense attorney to be heard prior to the framing of the charge. Nonetheless such arguments are commonly made and are expected. The Prosecution argues first, then accused, with a rebuttal by the prosecution. See Criminal Practice Forms Before the Court by U Myint Lwin, p 67.

As judges can dismiss according to CrPC Sec. 253, defense attorneys should always insist on making an argument in order to ensure the judge decides according to the law. Arguments include:

- The prosecution has failed to submit evidence or testimony that supports each ingredient of the charge.
- The witnesses were incredible, contradictory, or biased.
- Testimony and evidence was legally irrelevant or barred by the law of evidence
- The evidence presented fails to meet the burden of proof.

The defense attorney should also preview these arguments throughout the case, such as at bail applications, in arguments about the admissibility of prosecution evidence, and through cross-examinations.

See Bail and Evidence Sections, and USAID Legal Aid Tool Kit Chapter 4 “Trial Skills.

Renewed Bail Application

If judge has only framed a bailable charge when originally the case included non-bailable charges, attorney should arrange for the Judge to set bail. See Bail Section.

Revision after Framing of Charge

If the attorney believes the judge has made an error in applying the law, the attorney should consider filing motion requesting a remedy from the higher court. This is called a revision, and is similar to an interlocutory appeal in other common law systems. This must be a legal argument only, such as an argument that the wrong standard was applied or that there was insufficient evidence to make out one or more ingredients of the crime charged. It cannot rely on arguments about witness credibility or weight of factual evidence. This may delay the trial for a detained client. CrPC SS. 436 & 439. See Remedies Section.

THE ACCUSED DECIDES: ADMISSION OR TRIAL

Normally immediately after the Judge frames the charge(s), the Judge requests that the accused admit or deny the charges. The Judge directly addresses the accused. The accused is allowed to ask questions of the Judge. CrPC Sec. 255.

The Attorney Must Counsel the Accused

See Counseling the Client Section

An attorney must have discussed the client's goals from the very beginning of the representation. These may change over the course of the case, so attorneys should create time to visit a detained client or meet with a client at liberty to confirm attorneys understand their clients' goals and concerns. The particular factors of each case will determine how often and for how long you should visit each client who is in custody. As a general rule, you should regularly visit every client in custody. How often you go will vary from case to case, but in every case you need to maintain good communication with your client.

The arrangement of the courtroom separates the accused from the defense attorney, so the client needs to be prepared before the charge is framed. If necessary, attorneys should seek time to consult with clients in the courtroom, relying upon the right to defense by an attorney (Constitution Art. 375 and other provisions).

Deny

The accused can deny pursuant to CrPC Sec. 256. Case then proceeds to Trial. See below.

The Accused Admits

Some clients will wish to plead guilty. It is important that the decision to admit the charges be one informed by a review of the facts and the law, and a discussion with their attorneys. In those situations the attorney can still help the client in achieving goals, and receive a fair sentence possible. An attorney may also ensure that a client doesn't "over confess" to greater crime or implicate others. In the end the attorney should be ready to file a revision if the sentence imposed is illegal.

Timing of the Plea

The timing varies dependent on whether it is a summons or a warrant case (see Types of Cases). Other than timing, however, the same legal requirements taking the plea and issuing a subsequent sentence should apply.

Summons Cases

In Summons cases, the accused can admit guilt before the presentation of any prosecution evidence in the inquiry stage. The Judge must explain the complaint before any testimony, using the facts in the FIR and from the law officer. CrPC Sec. 242. The judge must ask if the accused admits or denies. CrPC Sec. 243. If the accused admits, the Judge must write down the accused's statement. The Judge proceeds to Sentencing (see that section).

Warrant Cases

Warrant cases carry with them more serious sentences, and thus the attorney should take great care in advising a client about a decision to admit the charges. Procedurally, an admission can only take place after the prosecution has presented evidence during the Inquiry and the Judge has found sufficient evidence to frame charges. CrPC Sec. 255(1). Similar to the Summons case, “if the accused pleads guilty, the Judge shall record the plea and may in his discretion convict him thereon.” CrPC Sec. 255(2).

Ingredients of a Guilty Plea

A guilty plea should be more than just the simple admission of general guilt that apparently is common practice. The questions by the Judge should confirm that the accused admits to facts sufficient to satisfy all the ingredients of the crime, and that the accused understands the possible sentences.

- “If the accused, on being called on to plead, does not admit all the elements which go to make up the charge against him, a plea of not guilty should be recorded. A plea of an accused charged with murder or culpable homicide, which only admits that he killed the deceased is not a plea of guilty. No inference as to the guilt of an accused should be drawn from his plea so long as the plea is not a distinct admission of the charge. Without such admission the charge must be proved.” CM para. 567

Relevant court citations:

- The judge should make an inquiry as to the health and understanding by the accused, otherwise the admission can later be withdrawn. 2 All India Report [AIR] 1915 Laho p. 487 (493).
- The magistrate must explain the facts and the law. *King Emperor v. Nga Sein and others*, AIR 1923 Rangoon p 132; Maung Sen. (the judge didn’t tell the accused the facts or the ingredients. Charged with village act.) Also 18 AIR 1931 Bombay p 195 (196)
- The magistrate must elicit necessary inculpatory facts. “I am guilty” or “I did it” is not sufficient. *Maung Pyo v Government (King-Emperor)* 14 LBLR 216
- The guilty plea must be knowing and voluntary: Where an accused pleaded guilty it was not enough for a judge just to accept the plea. It was necessary to ensure that the person understood the nature of the charge, facts of the case and consequences of admitting guilt. *Sri Sawarmal v. Union of Burma (U Thein Maung)*, 1954 BLR (HC) 331.

Judge can still discharge case CrPC Sec. 255 (2) which says the Judge MAY convict him after an admission. This may be relevant when the Judge decides that the evidence, even with an admission is somehow insufficient or contradictory. There may also be situations where the interests of justice are not served by a conviction. These may include when someone has a legally imperfect but persuasive defense.

Sentencing after Guilty Plea

The Judge can sentence the accused on same day, or can adjourn the case for sentencing. Attorneys should be prepared to make a sentencing argument, but attorneys should ask for an adjournment if necessary to present mitigating evidence.

Sentencing after a guilty plea should follow the same procedures as sentencing after a full trial to verdict. See **Sentencing Section**

Although Myanmar does not allow for formal sentence bargaining, attorneys should still argue for their clients by presenting mitigating evidence, and statutory exceptions to prison sentences. Attorneys may also want to take advantage of a judge's willingness to impose a "sentence-release" (essentially time served). In that situation a guilty plea may result in a client being released sooner than if the case continued through the accused's case and final argument. This strategy should be discussed with the client. See **Counseling the Client Section**.

However, as individual attorneys and as members of the Justice Centres, attorneys should be aware that some judges, police and law officers, may use this practice as a way of gathering bribes to facilitate the "sentence-release." Even if no bribes are passed, the over-reliance of "sentence-release" in cases of minor crimes can mean that judges, law officers and even defense lawyers do not take the cases seriously and do not uphold their professional responsibilities to ensure that innocent accused are acquitted. In these situations the use of "sentence release" in place of strong criminal defense advocacy can undermine the development of a strong criminal justice system with respect for the rule of law, presumption of innocence, and burden of proof.

Even if a client has admitted the charge, an attorney, with permission from her client, might be able to argue that there is insufficient evidence to convict. See CrPC Sec. 255(2).

An Immediate Guilty Plea May Leave an Insufficient Prosecution Case

The procedure which allows a guilty plea immediately after the framing of the charge, but before the prosecution completes the presentation of the prosecution case in chief, may result in legally insufficient record. Attorneys may confront this in two situations:

- If the attorney is retained after the guilty plea, the attorney should examine the court record to confirm that the guilty plea was sufficient, and that the accused admission plus the prosecution evidence provides sufficient evidence to prove each ingredient of the crime. If it did not or if the sentence was illegal, the attorney should file a revision. See Remedy section.
- If the attorney represented the accused during the trial and the guilty plea, the attorney may choose (after consultation with the client) to file the same revision. However, knowingly allowing an illegal or insufficient guilty plea to go forward may violate the attorney's duty of candor to the court.

A CONTINUED PROSECUTION CASE AFTER FRAMING OF THE CHARGE

The judge should frame the charge as soon as she believes there is sufficient evidence to do so. However if the accused does not admit the charge, the prosecution is allowed to continue presenting evidence, although this rarely happens.

- The framing of the charge does not automatically close the case for the prosecution. The remaining witnesses for the prosecution should be examined, and, if necessary, cross-examined. Witnesses examined before the framing of the charge must of course be recalled for cross-examination if the accused demands their recall, but the accused has no right to recall prosecution witnesses examined after the framing of the charge. CM para. 449
- ... The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any) they also shall be discharged. CrPC Sec. 256

Speedy Trial Still An Issue After Framing of the Charge

The defense attorney must continue to advocate for a fair and timely resolution of the case against the accused. Argue again for sequential hearings to hear all recall and defense witnesses.

ACCUSED CASE IN CHIEF

If the case has not been discharged by the judge and the accused has not admitted guilt, the next stage of the case is the accused case in chief. The accused must be given the chance to present evidence. That evidence must be heard by the judge who makes the final decision in the case.

- If accused does not confess he cannot be punished without hearing from defense evidence: *Union v U Htun Ying* 1964 BLR 337 (SC)
- A retrial was unavoidable where a trial court judge had not actually examined a defendant. *King-Emperor v. Kyan Baw*, 2 LBR 239.
- Although it was legal to transfer a case from one judge to another during trial, the defendants had the right to recall any or all of their witnesses to be reheard, and where the accused did not have an attorney the new judge should expressly advise him of this right. *Chit Tun & Four Others v. Crown*, 1 LBR 239.

Components of the Accused Case

Here is a brief overview of the accused case. The discussion continues below on the most important elements.

Order of Accused Case

Section 256(2) of the Criminal Procedure Code suggests that the accused testify before other witnesses. This is what happens in practice. Attorneys should consider delaying the accused's testimony until after the other witnesses have been presented. This will highlight such testimony in the judge's mind, as well as reduce the chance that there will be accidental discrepancies between the testimony of the accused and the accused's witnesses.

1. Presentation of Witness List.

Upon denial the accused must submit a witness list. This should be prepared by attorney in advance. CrPc Sec. 211(2)

2. Recall prosecution witnesses. The accused has the right to recall prosecution witnesses heard before the framing of the charge. This should not be done indiscriminately, but rather should be consistent with the defense line and defense line. One reason might be when the defense attorney thought a limited cross-examination during the Inquiry would support a dismissal prior to the framing of the charge.

- CrPC Sec. 256
- *U Tun Hla Phyu vs State*, 1958 BLR 160
- *Maung Ant Bwe vs State*, 1948 Yangon P-863

However if there is no adverse affect on justice for accused, a case will not be dismissed even if witnesses are not recalled.

- *U Than Myint (a) Bo Par vs Pyi-So-Taw (Tha Tun Aung)* 86 Supreme Court (Yangon)
- CrPC Sec. 284(a)

3. Testimony by accused. See below for more detail.

4. Fact Witnesses

Fact witnesses are called to present evidence on matters that they directly observed. They include witnesses to the incident, and to support defenses such as alibi. Their testimony must be prepared to anticipate the same objections the attorney would make

to prosecution witnesses. See Evidence Section/Testimonial Witnesses, Defense line Section, Also See USAID Legal Aid Tool Kit Chapter 4 Trial Skills: Direct Examination, page 66

- Evidence Act SS.59-60
- While Judges can refuse to hear witnesses under the Special Judges Act 1946, the reason for doing so had to be that their evidence would be immaterial to the case, and not just because calling them would cause undue delay. Attorneys should be vigilant to make sure that necessary defense witnesses are heard. *Hla Maung & Others v. Union of Burma*, 1952 BLR (HC) 262, at 271-72.
- A co-accused cannot be called as witness for accused. Moreover an accused person is not a competent witness for the co-accused tried in the same trial and he cannot be examined as a defence witness for such a co-accused. *Poonalu v. The King*, (1947) R.L.R. 214.

5. Character Witnesses

The accused may wish to call witnesses to testify on the accused's good. Special care must be taken in this situation as if the accused presents good character evidence the prosecution can rebut with bad character evidence, which would otherwise not be relevant.

- Evidence Act SS. 52-55

6. Expert Testimony

Experts may be called to testify on scientific or medical issues. Experts can also testify to explain the how things happen or why things happen. See Skills: Presenting Defense Evidence Section.

- Witness must be qualified pursuant to Evidence Act SS. 45 and 51.

7. Exhibits

There are three different kinds of exhibits that an attorney may present at trial: physical evidence; documentary evidence; and illustrative evidence. They are discussed in turn below. Attorneys must review the law and practices of how to admit exhibits into evidence. See Skills: Presenting Defense Evidence Section, Also Legal Aid Tool Kit Exhibits page 70.

7.1 Physical Evidence

This can include objects that either contradict the prosecution case or support the accused's defense. An example would be the clothing of the accused:

- To show evidence of torture
- To contradict allegations of involvement in a fight
- To undermine an identification

7.2 Documentary Evidence

Written or photographic evidence can be admissible to prove the information contained or to impeach the testimony of a witness. Such items include:

- Written Documents
- Photos and videos
- Business or medical documents
- Governmental Records
- E-mails and computer printouts
- Screenshots of internet posts

The law relevant to admissibility:

- Evidence Act 61-73.
- 2015 Amendment to the Myanmar Evidence Act regarding electronic evidence.
- Judges can examine any document to determine its admissibility. Evidence Act Sec. 162

7.3 Illustrative Evidence

Visual evidence is more powerful and more likely to be remembered than oral testimony. Some items are properly considered as documentary evidence in that they are admissible on their own to prove or disprove facts relevant to the charges. Many are used to be persuasive or to reinforce the testimony of a witness. These can include:

- Photos
- Charts to summarize
- Diagrams
- Maps
- Drawings made by witness while testifying
- Demonstrations made by witness while testifying

The Testimony of the Accused

The Right To Silence

Myanmar law is unclear on the right of the accused to stand mute in the face of the charges against the accused during the trial.

- Fair Trial Guidebook for Law Officers, Standards Applicable to Criminal Proceedings, II F, The Right to Remain Silent. “The right of an accused to remain silent during the investigation phase is an important right not to be compelled to incriminate oneself.”
- The law is clear that judge must advise an accused of the consequences of testifying confessing during the police investigation stage. CrPC Sec. 256
- After the framing of the charge, the accused is asked whether he or she wishes to testify. CrPC Sec. 256(2)
- The Judge must warn the accused that any evidence he or she gives can be used against the accused or co-accused. CrPC Sec. 342.
- The Judge must also warn the accused that an adverse inference may be given if the accused remains silent. CrPC SS. 289(1) and 342(1)(b) and (c)
- Judge may ask questions to enable the accused, but not compel the accused, the explain the circumstances of the case. But a judge may determine that this is unnecessary. CrPC Sec. 289(2)
- Accused can only testify as a “witness” at his own desire. CrPC 342(1)(a)
- There is no compulsion to answer the judge’s questions. CrPC 342(2)(iii)

Defense attorneys need to be prepared to argue against the drawing of an adverse inference. The clear burden of the law officer is to prove each and every ingredient of the charges beyond a reasonable doubt in a criminal matter.

The defense attorney must consider the various potential benefits and drawbacks if the client makes a statement to the court, and discuss those consequences thoroughly with the client.

- What is the other evidence of the client's guilt?
- Will such evidence be admissible?
- Is the client's statement to the judge admissible?
- Is it in the client's best interest to make a statement to the court?
- Must the client testify in order to explain an innocent possession of contraband?

The attorney should advise the client on the consequences of testimony, and can attempt to convince him or her to remain silent. The decision to testify is ultimately that of the client.

If the accused wishes to remain silent, attorneys should consider whether they want to give notice to the court through a written notice or by oral argument that the accused will not give a statement to the court. Such notice could state that the accused is relying instead on legal defenses such as insufficiency of the evidence or a defense presented through other defense witnesses. In order to be consistent with Myanmar law, the attorney should assert for the accused that he or she does not wish to testify as a witness, and that his or her testimony as the accused is a general denial of the charges.

However, even if the Judge is aware that the accused wishes to be silent, the Judge may nonetheless ask questions of the accused, under CrPC Sec. 342(2). The attorney should explain this to the client, and help the client implement the decision to remain silent. The attorney should request the right to consult with a client during the proceeding. If need be the attorney should make and record objections to any ongoing questioning of a client who is determined to remain silent.

Manner of Testimony of the Accused

Myanmar law allows two manners for the non-admitting accused to testify.

1. As a witness CrPC Sec. 342(1): under oath, subject to cross-examination
 - "He is not bound to give evidence"
 - He must be warned "that he is not bound to give evidence, and that if he does so his evidence may be used against any person or persons tried jointly with him." CrPC Sec. 342(1)(b)
 - "The failure of the accused to give evidence shall not be made the subject of any comment by the prosecution, but the Court and the jury (if any) may draw such inference there from as it thinks just." CrPC Sec. 342(1)(c)
 - Evidence Act Section 114 allows Courts to make some presumptions including that an accused who does not answer a question he is not compelled to answer would not have a favourable answer if he gave one.
 - Cross-examination – See Evidence Section, Skills: Questioning Witnesses
 - The accused cannot be cross-examined on bad character unless accused raised the issue of character.
 - The accused can be impeached by non-confessional police statement.
 - Cannot be prosecuted for perjury except with permission of the High Court.
2. As the "accused" the accused can testify not under oath in narrative fashion CrPC Sec. 342(2)

- The accused can be questioned (at any time) by the Judge without warning to explain the case against him.
- The manner to question the accused statement must be recorded in full, shown (and translated if need be) to accused and corrections allowed. CrPC Sec. 364
- No cross examination by law officer

Preparation of the Accused

An attorney must advise a client on the impact and consequences of his or her testimony. An attorney must advise the client, explaining the evidence, the law, and the burdens, and why client should tell the truth.

“Principally, there are two kinds of responsibilities: first duty is to ascertain the truth, and; the second duty is to practice the case effectively and efficiently for his client.” *Government v. U Ohn Pe, 1968*, Civil miscellaneous case No. 3 (High Court).

The client can only make the decision about whether to testify after he has been fully advised by his attorney concerning:

- the risks of testifying;
- the risks of remaining silent;
- the legal implications of the story the accused plans to tell. Sometimes the accused wants to tell a story that admits to the charges without intending to. Or a story may implicate others important to the accused.;
- what is likely to happen such as others being arrested, or the accused receiving a higher or lower sentence.

The attorney should also go through the procedure and discuss the form of testimony or, if appropriate, the way the attorney will protect the client’s right to remain silent. This may include practice sessions with the client including having another attorney play the role of the legal officer in cross-examination. See generally USAID Legal Aid Tool Kit Chapter 4 Trial Skills/Direct Examination Techniques, page 68.

Attorneys are allowed to refresh the memories of clients by showing them documents, maps, photographs and other items. In preparation the attorney must practice the manner and purpose of refreshing the client’s memory. Evidence Act 159.

Special burdens of proof on the accused

The general rule is that prosecution has the burden to prove each ingredient of the crimes charged. But in some circumstances it is the accused who “desires any Court to give judgment as to ...legal right or liability” and thus has the burden of proof. For example:

- Alibi Evidence Act Sec. 103
 - Attorneys should consider arguing that alibi evidence is really an argument that the accused was misidentified or the charges against him have been fabricated. Alibi is a challenge to the ingredient that the prosecution must prove in every case – the identity of the accused as the perpetrator.
- Legal exception. Evidence Act Sec. 105
- Fact within accused’s special knowledge. Evidence Act Sec. 106.
- Right of Private Defense. PC SS. 96-105

- Overcome Presumption of Guilty Knowledge
 - Evidence Act Sec. 114 allows Courts to make some presumptions including that an accused who does not answer a question he is not compelled to answer would not have a favourable answer if he gave one.
 - For example, a man in possession of stolen goods soon after the theft is either the thief or knew them to be stolen.
 - While some seem to believe this presumption, if unchallenged, would result in a guilty verdict, it only applies to one ingredient (“knowing” or “intentionally”) of the crime. The prosecution must still show possession of the property and another’s ownership and lack of permission. So in those many cases where the prosecution has failed to show the owner of an item, the case is still not relevant (insufficient).

FINAL DECISION AND SENTENCING

The law officer has the burden of proving, beyond a reasonable doubt, each element of the offense charged through admissible and reliable evidence. The attorney has an obligation to set forth the best interpretation of the facts and law that is consistent with ethical obligations and the duty of zealous representation for the client.

Sources of the Law:

- CrPC SS. 256 & 257
- CrPC SS. 366-372 (Chapter XXVI “Of The Judgment”)
- PC Sec. 53: “The punishments to which offenders are liable under the provisions or this Code are :-- *First*.-- Death; *Secondly*.-- Transportation; 2[** *] *Fourthly*. -- Imprisonment, which is of two descriptions, namely(1) Rigorous, that is, with hard labour: (2) Simple; *Sixthly*.-- Fine.”
- PC Sec. 65 limitations on sentences for defaults on fines
- PC, Schedule 2: Fines and imprisonment of specific provisions
- CM paragraphs 653-655, 683

Ask to Divide Final Argument and Sentencing

In Myanmar the final arguments on guilt and innocence and sentencing arguments are not automatically dealt with in separate hearings. This can leave the defense attorney with the task of both making a final argument for acquittal and requesting leniency in sentencing at once. Attorneys should ask for the opportunity to separate the verdict and sentencing. This can be either done through separate arguments on the same day, or, if need be and the client requests, an adjournment to a subsequent day. Separating the arguments for verdict and sentencing would also prevent the prosecution from introducing improper and prejudicial criminal history information in the verdict phase of the case. The attorney should object to the submission of “Assessment of Classification and Punishment of Prisoners.” CM para. 962, as it may prejudice the verdict.

Defense Arguments

This section reviews the law relevant to final argument and sentencing. In addition to knowing and using the law, attorneys must also develop their skills in presenting their final arguments. Attorneys should review Skills: Argument Section, also USAID Legal Aid Tool Kit, Chapter 4 Trial Skills/Closing Argument, p. 81

The attorney has an absolute right to be heard at final argument and at sentencing.

- CrPC SS. 256 & 257.
- “The respondent is vested with the right to make argument under CrPC Sec. 256 (2). They are compulsory provisions. It shall be understood that failure to honour those provisions is, whether it causes adverse effects on the trial or not, makes the case dismissed.” *Maung Ant Bwe vs State* 1948 Rangoon p. 863.

In practice defense final argument is often done through written submission, although this is contrary to the Courts Manual:

“The practice of permitting advocates and pleaders to file written arguments is prohibited. Arguments must be addressed orally to the court.” CM para. 154(12)

Whether orally or in writing, the attorney should include:

- A persuasive summary of the evidence;
- A review of the relevant court rulings and statutes;
- An analysis of the facts versus the ingredients of the charged crime;
- Evidence that mitigates the impact of the crime; and
- A request for acquittal as per CrPC Sec. 258(1).

Attorneys should also be prepared to remind judges that they are sworn to uphold the law and only render a guilty verdict if the prosecution has proven each ingredient of a crime beyond a reasonable doubt. Judges cannot use concerns about public opinion or public morals to accept an otherwise defective or inadequate prosecution.

Requirements For A Legal Verdict

The defense attorney should be ready to object to any procedural and substantive errors in the sentencing procedure.

- Judge’s verdict must be delivered in open court. CM para. 653
- Judges have to record verdicts in accordance with the Criminal Procedure Code, not just issue them orally. Courts General Letter No. 4/1956, Supreme Court, Rangoon, 20 Jan. 1956. Delays in the issuing of the written verdicts is a constant problem, as it prevents filing of a timely appeal or the evaluation of the reasoning to see if there were any factual or legal problems. In addition there can sometimes be verdicts that change from what was orally stated to what is filed with court.
- If two or more accused judgment must differentiate the evidence for each CM para. 655.
- While Judges can decide cases they haven’t heard, they must have heard the accused testify. *King-Emperor v. Myat Aung*, 4 LBR 135. (A judge who passed an order on the basis of evidence collected by his predecessors and without personally hearing from the accused had violated the law.) If this is not the case, the attorney should consider demanding the right for her client to testify again. At the very least she should object to preserve the issue for an appeal.
- The Judge must have advised accused of his right to an attorney if he doesn’t have one
- The Judge must consider accused evidence: Where a subordinate court had in a committal hearing not considered the defence’s evidence it amounted to an illegality. *King-Emperor v. Nga Khaing & One*, 6 Ran. 531.

Additional Sentencing Information

The Courts Manual gives the opportunity for the judge to request an “Assessment of Classification and Punishment of Prisoners.” CM para. 962.

- A criminal history prepared by the investigative officer (subsection 2)
- Information from the law officer “whether there is anything in the history of the accused of sufficient importance to be brought to the notice of the Court to assist in the assessment of punishment and/or classification of the accused as 'habitual' or 'non-habitual.'”(subsection 3)

The Courts Manual is silent as to the opportunity of the defense attorney to present additional, mitigating information about the accused. The defense attorney should object to the law officer's evidence described in CM para. 962 being submitted until after the Judge has made a verdict of guilt or innocence. And at the very least the attorney should request the opportunity to be heard after the information is submitted.

- See also *King-Emperor V. and Nga Ba Shein* (I.L.R. 6 Rang. 391). According to this report, the Judge may consider whether the accused committed the crime intentionally or ignorantly, the accused's character and criminal history.

Similar to evidence presented at a bail argument, mitigation at sentencing should include information that gives a fuller picture of the accused, emphasizing contributions to the community, family responsibilities, no or minimal prior criminal history, prior abuse or mental challenges. It may also include information that, while not arising to a legal defense, can explain the accused's actions. Evidence that should be considered should also include any current or prospective efforts of the client to obtain assistance for issues such as drug or alcohol addiction or mental health problems. When relevant attorneys should demonstrate that the client has stable housing, and the client's prospects for employment. The attorney should also explain the impact on the client's family if there extended incarceration were imposed.

Mitigating information must be collected from the beginning of the representation. See Skills: Interviewing the Client, Skills: Investigation.

Jurisdiction Of Magistrates And Judges

Defense attorneys should have raised objections to insufficient jurisdiction long before sentencing, of course.

Remember that elsewhere in the manual "Judge" is used to refer to both magistrates and judges. See **Types of Cases and Jurisdiction Section**.

The Punishments

A description of punishments can be found generally at Chapter III of Penal Law, as well as in the other statutes relevant to criminal justice.

1. Death (Capital Cases)

Death sentences are rare in Myanmar. While more than 800 people have been sentenced to death since 2008, all have been commuted by presidential pardon.

- Giving notice to the accused that appeal must be filed within 7 days. CM para. 584
- The president can change the sentence of death to some other sentence. PC Sec. 54

2. Transportation

- Under amendment Law of Penal Code (No 6/2016), "Transportation for life" was amended to "imprisonment for a term of twenty years".

3. Imprisonment

- Generally the possible sentences for each penal code are found within or immediately following each penal code provision, or in other criminal statutes. Remember to review to see if there have been subsequent amendments.

- The shortest period of imprisonment possible is twenty-four hours imprisonment under Penal Code 510 (Misconduct in public by a drunken person).
- Imprisonment is distinguished between rigorous (hard labor) and simple. PC SS. 53, 60.
- Consecutive sentences
 - Multiple convictions can result in “several punishments.” CrPC Sec. 35(1)
 - Presumption is that sentences are consecutive, “unless the Court directs that such punishments shall run concurrently.” CrPC Sec. 35(1)
 - Separate sentences issued at separate trials are consecutive unless the subsequent magistrate orders them concurrent. CM para. 688, CrPC Sec. 397. Attorneys must be aware of all of their client’s pending matters. You cannot adequately advise the client of their rights or how to proceed with knowledge of all pending charges.
 - CrPC Sec. 35(2) These aggregate sentences do not deprive a court of jurisdiction even if they exceed the sentence the court could render for one charge. But only if:
 - No sentence can be longer than 14 years. PC Sec. 35 (2(a))
 - The sentence imposed by a magistrate is no more than twice the magistrate’s normal jurisdictional limit.
 - For appeal purposes the aggregate sentence will be considered as one sentence.
 - Sentences are limited by PC Sec. 71 in cases involving charges of multiple sections of same penal code or multiple codes based on the same set of facts but under different theories of the case. Judges can give only one sentence on one of the charges.
 - Example: In a case charging both PC Sec. 380 (theft in house) (burglary) and PC Sec. 457 (trespass by night), the accused could not be sentenced consecutively on each, but only to maximum of the most serious charge
 - 1973 Interpretation of Law 22 is also relevant if someone commits crime with two sections possible applicable can only be charged with one of the sections.
- Repeat offenders

Attorneys must be aware of their clients’ prior criminal convictions and their impact on instant sentencing. This must be part of the initial client interview. See Skills: Client Interview

 - The possibility of aggravated sentencing may impact the jurisdiction of magistrates to hear certain cases. CM para. 640(1) g
 - Anyone convicted of a prior non-bailable offense (punishable by three years or more) who is convicted of a new non-bailable offense can be punished ten years or transportation for life. PC Sec. 75
 - Proof of this prior offense by certified copy from relevant court or warrant of commitment from prior case. CrPC Sec. 511
 - The impact of specific prior convictions is discussed in Chapter XXII of the Myanmar Courts Manual. See CM paragraphs 641, 642, 644, 645
- Special Laws –
 - According to Section 19 and 20 under Drug Law 1993, unlimited year Imprisonment: imprisonment that must be more than twenty years but no limited years (*Wan Sai and I vs the Union*, 1998, BLR, P.122)

- Under Section 3(h) of Anti- Human Trafficking Law, life imprisonment: imprisonment until he/she is dead

4. Fines

Fines were recently readjusted. There is a danger, however, that a readjustment of the fine schedule, and the imposition of alternative jail times on those unable to pay, may reinforce the perception that the rich can “buy” themselves out of jail. To counter that defense lawyers should ask that fines be set according to the ability to pay.

- To fine accused the court must inquire of financial situation of the accused. PC Sec. 67.
- If the accused fails to pay fine, for 5000 kyat is sentenced to 2 months and for 10000 kyat sentenced to 6 months. Amendment Law of PC Sec. 67
- If there is a situation there where there is both fine and imprisonment, if he can’t pay the fine, then he is subject to another one fourth of the sentence. CrPC Sec. 33
- CM para. 683 describes limits in fine only cases (up to jurisdiction of magistrate “up to the limit of his ordinary powers.”)
- Courts in other countries have ruled that it is improper to jail a client that is simply unable to pay a fine due to financial circumstances beyond their control.
 - *Government of Nepal v. Prakash Lama*, Decision No. 8215, 2066 Nepal Law Journal Vol. 9, page 1425. (non-updated laws imposing jail time when fines not paid resulted in the criminalization of poverty, and they are inconsistent with the Interim Constitution and international standards)
 - *Bearden V. Georgia*, 461 U.S. 660 (1983) (US Supreme Court).

Alternatives to Imprisonment

Attorneys should present alternatives to imprisonment.

- Judges have the power to release first offenders on probation. CrPC Sec. 562 (1), CM para. 696
 - *Ma Hla Yee v. Union* 1954 BLR 151 (High Court). Held that if there is no prior conviction and the offense is one of those specified, probation can be granted. It is not limited to the young.
- Detainees who are young can be released on probation of good conduct (under 21 years old). They must have a good background, and not facing a not serious crime – as this is not available for crimes potentially subject to the death penalty and transportation for life (which is now imprisonment for a term of twenty years). CM para. 697
 - The judge has to find the facts and situation to release on good conduct. If cannot find the proper basis the accused must be punished. *Ma Mya Tin v. Union* 1955 BLR 178
 - Criteria: CrPC Sec. 562(1)(a)
- Practice note: Judges may sentence to time served in cases to avoid an appeal. This is sometimes referred to as Sentence Release.
- Some Judges may be resistant to imposing a sentence less than 3 months, referring to the advice in Courts Manual 664 that they “do more bad than good.” This may mean that a crime which is so minor as to warrant a very brief sentence would better be resolved through a non-imprisonment sentence.

Restitution

Restitution in one form or another is available through different mechanisms. Recall as well that the complainant has the power to compound (seek to have the prosecution withdrawn) in many cases; that might be coupled with an agreement to compensate the complainant for injuries or losses

- Destruction or Confiscation may be made order according to Chapter XLIII of CrPC
- A person who is aggrieved, can file a tort for compensation (Such as Defamation)
- Victims can get compensation (Human Trafficking Law)

Youths

Myanmar law is not in accord with its treaty obligations under the Convention on the Rights of the Child (CRC), as it considers those over 16 and under 18 not to be “children” but rather “youths” with lesser protections and who will be tried in adult court. A youth can be tried in an ordinary court and convicted as an adult, but the Judge has to take into special consideration the age and character of the youth and his or her physical and mental condition and other circumstances when giving the sentence which cannot in any event exceed 10 years. See the Child Law SS. 67-71.

Pardons

Giving a Confession to Get a Pardon

Accused may be able to receive a pardon for their actions if they give a confession in regards to the action of others.

- The circumstances and authority for such a pardon are contained in CrPC SS. 337 and 338.
- The Law officer can, however, certify that the cooperating accused willfully concealed evidence or gave false evidence. In which case the accused may be sent to trial, the subject of which is both the original charge and whether or not he complied with the conditions of his pardon. CrPC Sec. 339

Amnesties

The President of the Union can issue amnesties, but they are often just conditional liberty.

- CrPC Sec. 401.
- Aung Hla Tun and Jason Szep, ‘Myanmar Frees Prisoners in Amnesty, Dissidents Included’, *Reuters* (18 September 2012)

Clients need to be advised of these conditions, as they may restrict their right of free speech, right of free association. This can put the accused in danger of being re-incarcerated if he or she angers governmental officials. See Client Counseling Section.

Amnesties have, in some ways, made up for the lack of transparency and rule of law in Myanmar criminal courts. The accused place their hope in mercy from the president because they have no expectation of justice in the courts. The very pattern of periodic, if irregular, amnesties, undermines the legal process. Attorneys in Yangon report that the prevalence of convicted individuals receiving amnesty was increasing their clients’ willingness to plead guilty to a charge in the hopes of

expediting the trial proceedings and avoiding the difficulties associated with detention, transport and courtroom conditions.

Amnesties are most often broad-based, rather than limited to specific individuals. However, in some cases attorneys should consider making individual appeals to the executive when appropriate.

REMEDIES: REVISIONS, APPEALS AND WRITS

While attorneys seek to enforce their clients rights in the trial court, they are often confronted with situations where they believe a judge has made a mistake of fact or law. Before the Judge has made a final decision and signed an order, an attorney can make oral advocacy seeking a judge to change the decision. But in criminal cases judges are not allowed to change their signed orders. So attorneys seeking to challenge decisions by judges must do so through the remedies discussed below by climbing the ladder of the judicial hierarchy. A revision allows an attorney to seek redress for a legal error, even whilst the trial is still ongoing. An appeal, while not an unlimited right, can encompass complaints about factual errors as well as legal errors at the termination of a case. Writs are a constitutionally-derived procedure by which attorneys can seek a remedy from the Supreme Court; it is under utilized in Myanmar. A similar statutory remedy is possible in the High Court.

Careful attention must be paid to time limits on filing requests for remedies. Clerks may use these time limits as leverage for bribes to provide the necessary certified copies of decisions.

General Legal Provisions:

- Chapter XXXI of Criminal Procedure Code, “Of Appeals.”
- Chapter XXXII of Criminal Procedure Code “Of Reference and Revisions.”
- Writs
 - Constitution Art. 378,
 - Union Judiciary Law (No. 20 / 2010)
 - Law on the Application for Writs (No. 24/2014).
- High Court Habeas Corpus CrPC Sec. 491

Objections Should be Made to Preserve Issues

No matter what remedy is being sought, attorneys should raise objections during the case proceedings in order to avoid waiving an issue. Attorneys must keep records of all objections made, and the rulings made on each objection. Attorneys must ensure that clerks are correctly recording this information in the court file. Failure to make the proper objections and preserve them for review may result in a court rejecting the defense application for a remedy.

“Explanation----- In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of Justice the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.” CrPC Sec. 537

Judges May Not Change Their Own Signed Orders

In criminal cases, judges are forbidden to “alter or review” their own signed judgment, except to correct a clerical error. CrPC Sec. 369

A different rule is in effect in civil cases, where judges may review and correct their own errors. This may be relevant to attorneys pursuing collateral civil cases for clients:

- Civil Procedure Code Sec. 114
- Order 47 Instruction # by Union Supreme Court
- Civil procedure order para. 41.

Revisions

Subject matter is limited to alleged errors in the law rather than disputes over the facts. Revisions can be filed by either party in a case. CrPC Sec. 439

Examples:

- Bail decision
- Charge Form Decision
- Evidentiary Rulings
- Final Decision and sentencing
 - Example: PC Sec. 380 theft in house (burglary) & PC Sec. 457 trespass by night. Pled guilty to both and sentenced to consecutive (6+5) sentence. Issues: 1 Can't sentence on two sections which sentence on same facts using different legal theories (PL 71). Couldn't file an appeal after guilt plea, but can file a revision.
- When accused has pled guilty, a revision can be used to challenge the sufficiency of a plea allocution.
 - Example PC Sec. 420 cheating issue of missing element of intentionality (which would make it a civil violation rather than a criminal charge)

Revision can be filed at any time within 60 days of disputed decision. CM para. 766

“Reference” by a Judge

In some cases the Judge may reserve the case and refer the matter to a higher court to get a decision on any question of law that would impact the outcome of the case. In that case the Judge can either remand the accused to jail or can admit the accused to bail. CrPC Sec. 434 (a) and (b).

Appeals

Issues can be of both fact and law. Defects complained of must be material and not merely technical.

- “No finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account... unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice.” CrPC Sec. 537
- Limited right “as provided by law” CrPC Sec. 404
- See, *Nga Hla U v. King-Emperor*, 3 Ran. 139. *King-Emperor v. Nga Po Min*, 10 Ran. 511

Remedy:

- Reduce sentence. CrPC Sec. 423
- Order full retrial: A retrial was invalid when the defence witnesses were not re-examined but merely had their earlier statements read back to them and were then examined by the law officer. *Hnin Yin (King-Emperor) v. Than Pe*, 9 LBR 92
- Dismissal of the case.
- Other Specific Relief.

Timing: The attorney files an appeal after the completion of the trial. The time limits are set in the Limitation Act SS 153-155.

- Township to district 30 days
- District to Divisional 60 days

- Divisional to Supreme Court 90 days

Attorneys file an appeal in the court immediately superior to the trial court. Subsequent appeals continue up the hierarchy of courts.

- Township to district
- District to divisional
- Divisional to Supreme Court (a bench of 3)
- Then to “special appeals court” – all members of the supreme court

Party: Prosecution can appeal an acquittal:

- Union Attorney General can appeal acquittal. CrPC Sec. 417,
- An appeal court can reverse an acquittal. CrPC Sec. 423
- Attorney General of the Union Law 2010, Advocate General of the region or state delegated by the UAG shall submit the appeal against acquittal case to the relevant High Court.

Challenges to the constitutionality of laws can be taken directly to the Constitutional Tribunal from any Court, or can be referred by Supreme Court. Chapter VI, Union Judiciary Law of 2010.

Procedure.

Appeals can take up to 4 months. For example, the district court needs to get file from township court and notify opponent.

- “Every appeal shall be made in the form of a petition .in writing presented by the appellant or his pleader, an every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of judgment or order appealed against, and, in cases tried’ by a jury, a copy of the heads of the charge recorded under section 367. “ CrPC Sec. 419
- Jailed person can present petition through jailer. CrPC Sec. 420
- Petitioner or pleader has right to be heard before summary dismissal. CrPC Sec. 421
- Court notifies petitioner and Attorney General of date of hearing. CrPC Sec. 422
- Accused may remain on bail or be remanded. CrPC Sec. 427
- Appellate court can take additional evidence. Must be in presence of petitioner or pleader. CrPC Sec. 428

Writs

The Writ of Habeas Corpus offers a potential mechanism to seek the liberty of an illegally detained person. Habeas Corpus writs can be filed as a direct complaint to Supreme Court by any family member or the accused’s attorney on behalf of detained person. While much has been written of them being used to address unjust politically motivated actions, defense attorneys should view them as a potentially powerful remedy in ordinary criminal matters where police, law officers or judges have not acted according to the law. Situations would include:

- When the law requires a warrant, a person is arrested without a warrant;
- A person isn’t brought promptly before a judge after being arrested;
- The government denies having detained a person after doing so, and the person’s location is unknown;

- A person is arrested and detained, solely for exercising the right to freedom of opinion and expression;
- A person is imprisoned following a unfair trial;
- A person is held after the end of a lawful sentence or after a court has ordered the person's release.

Relevant law

- Constitution Art. 378,
- Union Judiciary Law (No. 20 / 2010)
- Law on the Application for Writs (No. 24/2014).

See Generally *Handbook on Habeas Corpus in Myanmar*, International Commission of Jurists, 2016, for further information on writs.¹⁶ The relevant description of procedure is on pages 17-18.

The State or Divisional High Court Habeas Corpus

There is a remedy similar to the constitutional writ of habeas corpus. It is described in CrPC Sec. 491(1) (a) and (b). It confers the High Court with appellate criminal jurisdiction power to set free individuals who are illegally detained.

High Court of the Region or the High Court of the State, whenever it thinks it, can give the following habeas corpus-like directions (a) That a person within the limits of its appellate criminal jurisdiction be brought before the Court to be dealt with according to law; (b) That a person illegally or improperly detained in public or private custody within such limits be set at liberty. Chapter XXXVII on Directions of the Nature of Habeas Corpus, Section 491(1)

¹⁶ Available at: <http://www.burmalibrary.org/docs22/ICJ-2016-Myanmar-Handbook-on-Habeas-Corpus-en-red.pdf>

EVIDENCE AGAINST THE ACCUSED

Evidence against the accused can take many forms: oral statements made by witnesses during inquiry and trial; physical evidence (gathered or seized by police); identification (in court testimony or documentary reports on out of court identification of the accused by the complainant or other prosecution witnesses); admissions allegedly made by the accused; documents or scientific reports; and expert evidence. The attorney can defend against such evidence in three ways:

- By denying the importance or inculpatory value of the evidence;
- By challenging the existence, accuracy or truthfulness of the evidence;
- By challenging the procedure by which the evidence was discovered or created, thus seeking its exclusion.

Much of the evidence presented against an accused will derive from police investigation or action. Such evidence must be examined carefully to make sure that it follows constitutional standards and legal requirements. This includes not just confessions, but also Search Forms signed by the accused, that may be deemed to be an admission of guilt by either the law officer, or more important, by the Judge.

In order to defend against prosecution evidence, attorneys must have access to it, and sufficient time to prepare their defense. Attorneys must know and use the existing laws governing disclosure of evidence to the defense. Attorneys must make requests of police and law officers, and seek judicial remedies when these requests are not satisfied.

Attorneys should challenge evidence against the accused by seeking to exclude illegal or unreliable evidence presented by the law officer, as well as presenting evidence that contradicts or undermines prosecution evidence. Evidence gathered and presented by the defense is covered separately in “Defense Investigation.”

OBTAINING THE PROSECUTION EVIDENCE

In order to respond to prosecution evidence the defense attorney needs to review it as soon as possible. The Defense attorney has the right to view the contents of the court file. It is the duty of the Judge to furnish to the accused and his pleader a copy of relevant documents or extracts of documents. These court documents include the FIR, the police report, ultimately any statements made by potential witnesses, and all other documents submitted to the Judge in a police report. Such rights have been guaranteed and provided by the lawmakers. The attorney must review the judicial documents and materials pertaining to the case without delay.

- The law allows “inspection of the records of pending and decided cases” with permission from a judge, and provides that attorneys may inspect court records without permission for cases in which they are engaged. Courts Manual 1999, para. 103(43)
- This is consistent with global standards that the state is obliged to ensure that attorneys have “access to appropriate information, files and documents in their possession or control in sufficient time to enable attorneys to provide effective legal assistance to their clients.” UN Principle 18.

As a matter of practice, the attorney should consider filing a written request letter for all relevant statements, reports, etc., on the day of the first hearing in each case. This should do this arguing that without such information they are not able to properly review and prepare for the case as required by the Courts Manual.

- Advocates or Pleaders should be engaged in sufficient time to enable them to receive instructions and to study the necessary documents. The Advocate or Pleader shall examine the committal record and decide what parts of the record he/she requires to be copied to enable him/her to conduct the case properly. CM para. 457.

In the face of demands by clerks for bribes to get copies of the court documents, attorneys should consider using camera phones to make copies of necessary documents. Attorneys should make a contemporaneous record of any inappropriate behavior and should consider the possibility of making a formal complaint.

The Police File during the Investigatory Period

The evidence is first gathered in the file created by the investigatory police officer. This evidence is not generally available to the defense attorney prior to the case being submitted to court. Every case is different. But depending on the evidence, the police file could include:

- First Information Report (FIR) – the complaint made by the alleged victim or a friend or family member to the police. CrPC Sec. 154. Attorneys should inspect this carefully to see whether or not the accused is mentioned in the FIR. Attorneys should also be aware that police sometimes create a new FIR if their investigation contradicts the initial allegations in the first FIR.
- Search form including list of property seized
- Confessions
- Witness list (Police Charge Sheet) CrPC Sec. 173(1)(a)
 - Should include everyone - CrPC Sec. 252(1)
 - But can be amended, CrPC Sec. 540
- Witness statements (unsigned)
- Identification form
- Scientific Evidence
- Reports from Expert Witnesses

The police must be thorough in their preparation of the police file. Attorneys should be prepared to cross-examine on whether police have followed proper procedures in the gathering and safe-guarding of evidence. The procedures are discussed in Pathway of the Case and in specific sections below. Also see Police Manual.

- A magistrate could not accept written information from a police officer as evidence if it had not been prepared and submitted in accordance with the Criminal Procedure Code. *Queen-Empress v. Nga Saw & Five Others*, 1 LBR 59.
- Where police officers had only generally recorded how they had obtained information that two persons had murdered a third, the court refused to accept

their account and acquitted the accused. *Kha Law & Poo Sa v. King-Emperor*, 4 LBR 116.

In addition there may be other police generated documents, such as daily diaries, that are relevant to the case. Internal police documents may not be generally discoverable but may be if they are used to refresh a testifying officer's memory:

- “Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court but, if they are used by the police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Evidence Act, section 161 or section 145, as the case may be, shall apply.” CrPC Sec. 172 (2)
- See generally: Evidence Act Sec. 161 – evidence used to refresh the memory according to Evidence Act Sec. 159 and 160 must be shown to the adverse party.

During inquiry, attorneys should routinely ask if police have refreshed their memories by reviewing police documents. If they have done so, demand the documents are disclosed immediately, and that the hearing be adjourned for an appropriate period of time to allow you to review them before continuing your cross examination. See **Types of Evidence** below.

The Police File Becomes the Prosecution File

The police file is effectively converted to the prosecution file at the time of the presentation of the case for review prior to the first hearing. CrPC Sec. 170. In addition to the items mentioned above, the prosecution should include the complaint letter describing the suggested charges.

Disclosure is one of the most important issues in the criminal justice system and the application of proper and fair disclosure is a vital component of a fair criminal justice system. The "golden rule" is that fairness requires full disclosure should be made of all material held by the prosecution that weakens its case or strengthens that of the defense. It is thus important that you request information as soon as possible, as discussed above in demand letters.

FIR and Witness List in the Court File

Some of the evidence will be available in the court file. The court file will not contain everything that is in the police or prosecution file. Nonetheless the defense attorney should as quickly as possible secure copies of the entire file. At the very least it should contain that which is required by CrPC Sec. 173(1):

The officer in charge of the police-station shall - (a) forward to a Magistrate empowered to take cognizance of the offence on a police- report a report, in the form prescribed by the President of the Union, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the President of the Union, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

Some attorneys have expressed concerns about obtaining witness statements from the Court, as this may mean the judge will review them as well. If the testimony is consistent with the statement the concern is that this may reinforce the witness's credibility. It is our belief that it is always better to know as much as possible in advance about what a witness may say. You cannot be prepared to impeach a witness on a prior statement if you have not first seen the statement and properly prepared. The best practice is to always obtain the witness statements.

Law officers have also been known to impeach their own witnesses if their testimony varies from their initial witness statements. There are two things to keep in mind if this happens. First, the law officer must be prohibited from impeaching his own witness unless he first goes through the process to have the witness declared a hostile witness, as required by the Evidence Act, Sections 154 and 155. Second, as the defense attorney you will not be sufficiently prepared to rebut this impeachment (if it is allowed) unless you have received and reviewed the witness statements in advance.

Clerks May Create Problems

Attorneys may face obstacles to getting access to the court file, even though they legally have the right to it according to Courts Manual 1999, S. 103(43). Attorneys may face both logistical challenges to getting the physical file, and demands for fees from court personnel. The Supreme Court sets fees and rules relating to court documents, which it regularly updates and publishes via the Courts Manual.

- Union Judiciary Law (the State Peace and Development Council Law No. 20/2010), S. 73.
- The fees for official copies of documents, and for filing documents, has most recently been set by the Union Supreme Court in its 2014 Instruction.

Court clerks can sometimes use demands for “urgency fees” as allowed by Courts Manual 1999, S. 103A(42)(d) as thinly veiled demands for bribes. Court Fees should only be paid that are consistent with the law. Attorneys should make a contemporaneous record of any inappropriate behavior and should consider the possibility of making a formal complaint

Confession Must be Requested by the Attorney

There are specific procedures for getting copies of a confession.

- Courts Manual 103, Rule 20- 27, pg 110
- *Bo-gyi Oh Kyaw Myint v. Union* 1977 BLR 48.

Witness Statements

Some of the most important evidence in the custody of the prosecution are the prior statements by plaintiff witnesses. They are discoverable upon request by accused, however the Court may limit full access. Attorneys should request them as soon as possible, however they may be disclosed only after the witness has testified:

- CrPC Sec. 162 (2) “When any such statement as aforesaid has been reduced into writing the Court shall, on the request of the accused, direct that the

accused be furnished with a copy thereof: Provided that if the Court is of opinion that any part of such statement is not relevant to the subject-matter of the inquiry or trial, or that its disclosure to the accused is not essential in the interest of justice and is also inexpedient in the public interest, it shall record such opinion (but not the reason there for) and shall exclude such part from the copy of the statement furnished to the accused.”

- *Mg Oo Khinene v. Union, Rangoon Series, Volume 13, Pg. 1* states that the defendant has the right to make the request after the prosecution evidence has been given –with the implication that the request should only be made at that time.

Scientific Reports and Expert Witnesses Statements

These should be made available to defense attorneys upon request as they are not police-generated statements protected under CrPC Sec. 162(2).

An Example in India

Myanmar attorneys should consider advocating for legal reform to mandate early and full disclosure of evidence. Or at the very least they should use it as an argument for a model for voluntary disclosure by the law officer:

India: The Code of Criminal Procedure

s207: In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

- (i) the police report;
- (ii) the first information report recorded under section 154;
- (iii) the statements recorded under sub- section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub- section (6) of section 173;
- (iv) the confessions and statements, if any, recorded under section 164;
- (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub- section (5) of section 173: Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused: Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it.

The Process of Admitting Evidence

Before evidence can be used at trial, it must be admitted. The judge determines the admissibility of evidence. Attorneys should request that judges consider the following issues. Is the evidence:

- Material: does it relate to a substantive legal issue in the case?
- Relevant: does it support a claim one of the parties is making?
- Trustworthy: can it be relied upon or is it the result of mistake or bias?
- Obtained legally: did the police follow the law when they collected or created it?

Additionally, a judge has significant discretion to exclude evidence, despite its relevance, if its probative value is outweighed by its prejudicial value, if it could be confusing or misleading, or if its admission would cause undue delay.

Tips for Evaluating Materiality and Relevancy

Materiality and relevancy deal with the content of the evidence, not the manner in which it is offered. The questions to ask when evaluating materiality and relevancy are: What is the evidence being used to prove? Is this an important fact? Will the evidence tend to make the fact more or less likely to be true?

As a general guideline, relevant evidence relates to a time, event or person involved in the controversy that is the subject of the trial. For example, in a murder case, evidence that the criminal accused threatened the victim on the morning of the killing is probably relevant, however evidence that the accused threatened someone else twenty years earlier is probably not relevant, as it is not probative of a material issue in the present controversy. An attorney must be careful not to “open the door” for unfavorable evidence by, for example, having the accused testify that he has never threatened anyone.

The Burden to Prove Admissibility of Evidence Lies With the Law Officer

“The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.”
Evidence Act Sec. 104

An attorney must be ready after interviewing the accused, conducting investigations and fully reviewing the court file, to make objections to any improper evidence offered by the law officer. The defense attorney must ensure that the court make a determination that evidence is admissible BEFORE considering its reliability, weight, or useful.

The General Rules of Admissibility are found in Evidence Act Sections 6 to 16.

- Evidence Act, Section 6 – Admit all relevant facts
- Evidence Act, Section 7 – Those that are the cause or effect of material or relevant facts

- Evidence Act, Section 8 – Facts that show or constitute a motive/preparation for an act, including not only the conduct of the accused and the victim but also any statements that affected the conduct of either
- Evidence Act, Section 9 – Facts that are necessary to explain, introduce, support, or rebut other material or relevant evidence
- Evidence Act, Section 10 – Evidence that demonstrates a common design or scheme by co-conspirators
- Evidence Act, Section 11 – Irrelevant facts that become relevant when they are inconsistent with any fact in issue or relevant fact or where they make the existence of any fact highly probable or improbable
- Evidence Act, Section 13 – Facts that explain the circumstances under which a right or custom is claimed
- Evidence Act, Section 14 – Those that show the existence of any mental or physical state when the existence of that state is relevant or material
- Evidence Act, Section 15 – Those that show the intent of the accused
- Evidence Act, Section 16 – Those that demonstrate a particular habit or course of business

Relevant Cases:

- *Sein Hla v. Union of Myanmar* 1951 BLR 289
- *Daw Si Si v. Union of Myanmar* 1964 BLR 876

Attorneys Must Challenge Inadmissible Evidence at Every Stage of the Case

After discovering and evaluating the evidence being offered against their client, attorneys must be prepared to challenge both the procedure by which the evidence was gathered taken as well as its substance whenever they can. Myanmar prosecutions rely often on alleged admissions, but these strategies apply to other evidence such as physical evidence seized from the accused, and identifications of the accused by witnesses.

At Bail hearing:

- To the extent that the government relies on an admission to raise a charge from a bailable to non-bailable offense, the attorney should argue that this is illegal before a court has ruled upon the legality of the admission. Similarly attorneys should question the legality of searches or the reliability of the FIR. Bail should be granted.
- In bailable cases if the admission is not accurate in any way then the attorney should make clear to the Court that the accused denies the admission. If there are allegations of torture this should be used to argue that the use of torture to elicit an admission is evidence of an otherwise weak case and bail should be set at a low level, or release should be allowed without a surety.

At Inquiry

- Police-Created Evidence: Defense attorney should make oral and written arguments against the consideration of improper admissions, flawed identification

procedures or illegal searches. Whenever possible these motions should be prepared ahead of time.

- Cross-examination of the judge who took an in-court confession. The attorney should be ready with cross-examination to lay out the factual and legal grounds for written arguments prior to the framing of the charge.
 - Failure to meet procedure
 - Failure to separate accused from police
 - Failure to advise accused of rights
 - Failure to even see accused
 - History of taking accused statements
 - How many has she taken?
 - Has she ever refused one?
 - If she has refused a confession, in what cases did that happen?
 - Has she ever found an accused to under the influence of police?

At Framing of the Charge –

Defense attorney should renew criticism of the confession and other irrelevant or inadmissible evidence, as discussed below. In addition defense attorney should consider arguing that there is an insufficiency of other evidence to corroborate the confession under the legal principle that an accused cannot be convicted on his or her words alone. Evidence Act Section 31 provides that confessions are not conclusive proof of the matters admitted but they may operate as estoppels. Similar arguments should be made about physical evidence, identifications and other evidence.

Filing of a Revision

If the attorney believes the issue of admissibility is purely one of law rather than the weight or credibility of the evidence, the defense attorney should consider filing a revision. This will have the impact of stopping the proceedings, however. See Remedies/Revisions Section.

During the Accused Case in Chief

A defense attorney should be prepared to renew and expand arguments about inadmissibility during the accused case in chief. Upon denying the charges laid out in the charge form, the accused will be called upon to provide a list of witnesses. CrPC Sec. 211 (2).

- Recalling Plaintiff witnesses for more cross-examination. While Myanmar attorneys routinely reserve some questions for a second cross-examination after the framing of the charge there seems to be little reason not to make record clear prior to framing of the charge. Ask all relevant questions during the Prosecution Inquiry, unless there is a belief that a limited cross-examination will prevent the framing of the charge. Remember that recalling witnesses may also delay the case for a detained client.
- Accused testimony: There is no separate pre-trial hearing to determine the legality of a proffered confession. But arguably the testimony of the accused, either as “witness” or as the “accused” could be limited to the issue of the confession or a physical search, with a general denial of the charge in cases where an accused’s testimony as to the alleged crime would be unhelpful or a lie.

- Accused Witnesses Can Testify to Provide evidence that the prosecution evidence was illegally obtained or that it is unreliable.
 - Confessions: witnesses can testify on evidence of torture, an induced confession, improper procedures by confession magistrates, or can contradict a false confession by fact or alibi evidence.
 - Medical records and treating doctors;
 - Family members who visited with accused
 - Other detainees present in the police station
 - Alibi
 - Other factual or legal defenses
 - Identifications: witnesses can testify as to faulty procedures, or can undermine the credibility or accuracy of prosecution identifying witnesses.
 - Physical evidence: witnesses can testify about an improper search, or can challenge the connection of the accused to the evidence or the place where it was found.

At Final Argument:

Attorneys must renew, in writing and orally, the arguments made previously regarding the illegality, unreliability or irrelevance of any confession or any other evidence offered by the government against the accused.

Appeal and Writ

Evidentiary decisions are common subjects for appeals or writs. See Remedies Section.

Making Objections At Inquiry and Trial

Objections Should be Made to Preserve Issues:

No matter what remedy is being sought, attorneys should raise objections during the case proceedings in order to avoid waiving an issue. Failure to do so may result in a court rejecting the defense application for a remedy.

CrPC Sec. 537 “Explanation----- In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of Justice the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings

Two Reasons for Objections

There are two aims for objections. The first is to exclude improper evidence from the trial process so that the fact finder does not consider it. The second aim is to make a record for the appellate court that is clear and legally sufficient. Always keep in mind these two aims.

Things happen quickly during the trial process, and it is always good to have a second attorney or paralegal present, or at least an assistant who can help you with multiple tasks (organizing files, keeping track of evidence and objections).

Timeliness

An objection should be timely (contemporaneously with the alleged error). A failure to make a timely objection may result in the judge allowing in objectionable material.

Better to prevent the presentation of irrelevant material than to ask a judge to “forget it” afterwards.

Specific

The objection should clearly state the legal basis for the objection. If there is more than one basis for objecting, all objections should be clearly stated. You should raise both statutory, constitutional, and case law based objections. This will be more persuasive for the trial judge and help you lay the foundation for a revision or appeal if necessary.

Ruling

Be certain to get a ruling from the Court on your objection, and make certain the record reflects the basis for the ruling on the objection.

Continuing Objection

If the same issue is going to occur multiple times in the trial, you may want to ask for a continuing objection to a piece of evidence/question so that you do not have to keep interrupting the process for an issue the court has resolved. You would do this by asking “Your honor I would request for the record that I have a continuing objection to this (testimony/line of questioning/piece of evidence- choose the one that is appropriate). If the court allows me a continuing objection I will not have to keep repeating the same objection each time this happens”. If the court allows the continuing objection it does not necessarily mean that you have won the objection, rather it only means that you do not have to keep repeating your objection to preserve your record of the objection.

Offer of Proof

If you are trying to offer proof of a fact and there is an objection to your evidence that is sustained, be sure to make an offer of proof on the record. In an offer of proof you clearly state for the record what the evidence was you offered, and why you believe it should have been admitted. Keep in mind you are making the offer of proof for the appellate court, and the written record is all they will have to know what happened. If something important happened in the courtroom that is not reflected in the written record, be certain to include a description of that thing in your oral recitation of the offer of proof. For example, if someone in the courtroom made a threatening gesture to your witness while they were on the witness stand and it prevented you from getting the evidence you needed from the witness, you would have to make a statement for the record about what happened in order for the appellate court to know it occurred and the effect it had on the witness.

Fault (Opening the Door)

If you are the one that originally introduces objectionable evidence, the court may well allow the other party to respond to the objectionable evidence and introduce similar evidence. This is because a court may say that although the evidence was objectionable, you were the one that brought it in or “opened the door” to that particular piece of evidence.

Necessity of Objection

You also need to make a subjective determination of not only whether you **can** object, but also whether you **should** object. If the evidence is objectionable but not

particularly damaging to your case you may make a tactical decision not to object. For example, if a particularly vulnerable witness says something objectionable, you may decide not to object if the evidence is not very damaging as you might be perceived by the fact finding as bullying the witness. This is a strategic decision that you must make very quickly, and is the kind of thing an experienced attorney can help newer attorneys with. It will also depend on the judge, the local customs and community, and your own good judgment. But any time you decide not to object for those reasons, you are also potentially subjecting your client to additional criminal responsibility so it is important to make the best decision possible about what is in the client's best interest.¹⁷ You should also carefully consider whether to object to the other party's opening or closing statement. If the statement is obviously inappropriate and contrary to law, you may choose to object. If, however, it is only a small matter that is at issue, you may decide not to object (also keeping in mind the issue of Opening the Door- if the prosecutor [law officer] has raised an issue in his statement, maybe you think it is better to respond to it in your statement rather than try and exclude it from the court).

Some examples of the basis for objections

- Form of the Question. Chief examination may not be leading in form, or assume a fact not in evidence. Evidence Act 141-159.
- The answer is not responsive to the question. If a witness gives an answer which is not relevant to the question asked, a defense lawyer should ask that it be disregarded and not recorded.
- Lack of Foundation for the answer. Defense lawyers should demand that law officers establish the basis of knowledge for testimony for a fact witness. Thus in order to avoid hearsay, a witness must be asked about his or her personal knowledge of the subject of the testimony.
- Privileged information. Certain professionals, such as doctors and lawyers, are ethically forbidden from disclosing the confidences or secrets of their patients and clients. Evidence Act Sections 118-129.
- Opinion testimony. In general witnesses are forbidden from expressing their opinion on matters properly decided by the judge, such as about the intent or motivation of the accused. Unless qualified as an expert a witness should limit his or her testimony to that within his or her personal observations. Evidence Act Sections 45-51.
- Hearsay. Witnesses are forbidden from repeating information provided to them by other people. See Evidence Act Section 60.
- Prejudicial effect of the evidence outweighs the probative value. See Evidence Act Sections 149-156.

¹⁷ Practice Note: When you make a tactical decision, it is good to document your reasons for the decision at your earliest opportunity. Many things occur during a trial and it is often difficult to remember and recreate the reasons for the decisions you made with some contemporaneous documentation.

THE KINDS OF PROSECUTION EVIDENCE

Testimonial Evidence

Preparation for responding to ordinary witness testimony must begin before that witness testifies in the prosecution case in chief (Inquiry). The defense attorney must review all witness statements in the court file, conduct the necessary investigations, consult with the accused, and prepare expected areas of cross examination. See Skills: Questioning Witnesses and Legal Aid Tool Kit for Chapter 4 B5 Cross Examination at Trial p. 72.

Generally witnesses must be competent to testify, must testify derived from their own knowledge and not from what others told them.

- The witness must be competent, of reasonably sound mind and body. Evidence Act Sec. 118
- The evidence presented by witnesses must be direct, otherwise it is inadmissible hearsay. Evidence Act Sec. 60.
- Testimonial Evidence shall be recorded in narrative form rather than question and answer. CrPC Sec. 359

Defense attorneys should be vigilant against the testimony being altered, added to, or redacted by clerks for whatever reason.

Police Statements

Note that except in some of the situations noted below, the law officer cannot offer the police statement of a witness instead of an in-court witness. CrPC Sec. 162(1), CM para. 595(1).

Unless the witness has been declared hostile under the provisions of section 154 of the Evidence Act, Witnesses may not be questioned in examination-in-chief as to statements made by them to the police. CM para. 595(2)

First Information Reports

Special rules apply to relevance and admissibility of the First Information Report. These are covered in CrPC Sec. 594:

Section 162 of the Code of Criminal Procedure does not apply to information laid to the Police under section 154. The First Information Report may be proved and admitted in evidence in the following cases -

- (a) when the informant is dead and the information is admissible under section 32 of the Evidence Act and
- (b) when the informant is examined as a witness.

In the former case the information is substantive evidence of the facts stated in it, under section 32 of the Evidence Act. In the latter case the information is not substantive evidence of the facts stated in it, but may be used under section 157 of the Evidence Act to corroborate the testimony of the informant, or under section 145 to contradict him or under section 155 (3) to impeach his credit.

But if the complainant goes back on his complaint and gives a different account in evidence before the Court, his previous report (F.I.R.) becomes inadmissible as there being no substantive evidence for its corroboration. [*K.E. Ky. Nga Hlaing*, (1928). VI I.L.R., Ran., 481].

Impeachment of Witness by Prior Statements

The most important weapon the defense attorney may have is the statement given by the witness in the pre-trial police investigation stage. CrPC Sec. 162(2) allows the accused to request and use prior written statements made by witness in order to use it for impeachment as described in Evidence Act Sec. 145. The court may withhold those portions of the statement that it deems irrelevant to that purpose.

- Such a witness statement not preserved as questions and answers, but rather can be presented as a narrative. CrPC Sec. 164(2)
- The police are forbidden to take signed statements from any witness. CrPC Sec. 162(1).
- Witnesses can be charged with perjury if they vary between pretrial statement and in court evidence. PC Sec. 193

Dying Declaration

One exception to the hearsay rule and the general prohibition against the presentation of witness statements in court is that of a “dying declaration” as described in Evidence Act Sec. 32.

- Dying deposition can be used as admissible facts only if the statement is deemed reliable. *NGA Po Si v. Union* 1936 AIR Yangon 324.

Police Testimony

Police officers may be called to testify to present a narrative, describe the results of their investigation, introduce evidence, etc. Attorneys must be ready to object if the police attempt to offer hearsay statements by complainants or other witnesses. Attorneys should carefully review their paperwork and their adherence or failure to adhere to procedures set out in the Police Act and elsewhere in order to discredit their testimony.

- Investigating police officers may not be examined as to statements made to them by witnesses, other than statements the first information report and statements of which evidence is admissible under section 22 of the Evidence Act.

Case law:

- A judge could not accept written information from a police officer as evidence if it had not been prepared and submitted in accordance with the Criminal Procedure Code. *Queen-Empress v. Nga Saw & Five Others*, 1 LBR 59.
- Where police officers had only generally recorded how they had obtained information that two persons had murdered a third, the court refused to accept their account and acquitted the accused. *Kha Law & Poo Sa v. King-Emperor*, 4 LBR 116.

Attorneys should inquire on whether police have used other documents to refresh their memories before testimony. If the answer is yes, attorneys can then use that

admission to request disclosure of those documents. An example of the questioning is here:

- **Question by Defense Attorney:** Officer, at any time before testifying today, did you review any documents to refresh your recollection of the events at issue in this case?
- **Officer:** Yes, I did. Yesterday I reviewed documents.
- **Question by Defense Attorney:** List for the Court what documents you reviewed to refresh your recollection.
- **Officer:** I reviewed the First Incident Report, the Witness Statements of all the witnesses, and some internal police documents.
- **Question by Defense Attorney:** What were those internal police documents that you reviewed?
- **Officer:** I reviewed some police diaries, and some personal notes of the events surrounding the arrest.
- **Question by Defense Attorney:** Officer, did your review of all these documents help to refresh your recollection of the events of the arrest?
- **Officer:** Yes, it did.
- **Defense Attorney:** Your honor, at this time the Defense moves for the production of all documents used by the officer to refresh his recollection, including the internal police documents identified as police diaries and the officers personal notes. We further request that the proceedings be suspended for (INSERT HOW MUCH TIME YOU NEED TO REVIEW THE MATERIALS) to allow the defense to prepare for cross-examination of the officer based on any new information discovered.

Expert Testimony

In some cases, a witness will not be giving first hand account of the alleged crime or arrest, but rather her expert opinion about other evidence offered by the law officer.

The following are examples of situations where expert testimony may be introduced as relevant facts:

- Evidence Act, Section 47 – The Court must form an opinion about who wrote or signed a document.
- Evidence Act, Section 48 – The Court must decide whether a general right or custom exists or is recognized by the community.
- Evidence Act, Section 49 – The Court must determine the tenets of a particular family, religion, or group; the constitution or government of any religion or charitable foundation; the meaning of words and terms used by particular districts or classes of people or where persons are accused of trafficking items other than narcotics – tiger bones, jade.

Cross-Examination of the Expert

An attorney must prepare to cross-examine a prosecution witness by consulting, when possible with a defense expert, or reviewing treatises and scholarly article in the area. It is especially important to review and articles or treatises the expert has written if at all possible. The practicality of such a challenge is only dependent upon having access to experts, technical manuals, scholarly treatises, or scientific journal articles. Without this preparation, attacks on expert opinions can be futile.

- See UNODC, Criminal Legal Aid Manual for Law Practitioners in Somaliland, 2015

Cross-examination can include the same general areas that would be applicable for any witness:

- bias,
- prejudice,
- fraud,
- mistake,
- lack of opportunity to observe,
- lack of recollection
- prior inconsistent statements

But an attorney must also anticipate challenges specifically related to the expert opinion itself:

- Does the expert's education, training, or experience establish a generally accepted scientific basis for the expert opinion?
Example: The expert has a Ph.D. in Philosophy and claims to be able to tell if someone is lying by observing a glowing light surrounding her body, which the expert can see by looking inside his hat.
- Is the expert, based education, training, or experience, truly an expert in the area about which testimony is being offered?
Example: The expert claims to have conducted an autopsy on the victim and determined that the time of death was at 2:30a.m. on Tuesday. However, the expert's medical school diploma is from a school in Cambodia that is not recognized by any government or academic institution and for many years his only work has been with sheep.
- Did the expert use techniques recognized within the field of expertise?
Example: The expert has a degree in medicine from a well-respected university in Europe. He claims that by examining the victim's facial expression after death he can say that the victim died of poisoning.
- Did the expert correctly execute tests and follow accepted procedures?
Example: The expert used a special kit designed and manufactured in the United States to determine that the substance seized from the accused was heroin, however, the instructions on the kit say: "Do not expose to temperatures exceeding 25 C°" and the testing was done during the middle of the day in April in a laboratory in Mandalay that is not air conditioned.

A defense attorney may also bring in an expert witness to either testify on her client's behalf or to rebut what the prosecution says. Evidence Act SS 45 and 46.

Problems in Chain of Custody Relevant to Expert Testimony

Physical evidence is typically held at the bailiff's quarters on the court premises or at the police station. Attorneys should cross-examine the investigating officer and others on the procedures for safe guarding evidence. Protections against switching real evidence for fake evidence must exist, otherwise there can be no guarantee that evidence has not been tampered with. Such tampering can be either to ensure a conviction or (after bribes have been paid) undermine a prosecution. If the answers are unsatisfactory attorneys should renew motions to exclude both the physical evidence and the expert testimony that is based upon unreliable physical evidence.

Attorneys should also review the procedures required for sending items for analysis and returning reports in covered in Judicial Department "G" Circular No.15 of 1930 as subsequently amended by "G" Circular No. 60 of 1930. This is reproduced in Section 628 of the Courts Manual.

Expert testimony may also be presented through documentary forensic evidence. That is medical and scientific evidence prepared as part of the investigation and prosecution of the case. Defense attorneys must be prepared to challenge such evidence as being inadmissible if it is not complete enough or if it relies upon facts not otherwise described. See Section on Drug Crimes and Drug Users Section.

Relevant law includes:

- CrPC SS 509 & 510 – allows the presentation of a deposition from a Civil Surgeon or Chemical Examiner instead of live testimony. However, the judge has the power to demand the testimony of the deponent “if it thinks fit.”
- CM para 579 – the deposition of such a witness must be read to the accused in court before he or she is called to enter his or her defense.
- EA SS 32 & 33 – set forth the circumstances when either depositions or documents can be considered as evidence despite the general prohibition on hearsay or statements not subject to cross-examination.

Documentary Evidence

Documentary evidence must be authenticated, that is, shown to be what the proponent claims it is. Authentication can be accomplished through witness testimony or by certification procedures set out in the Evidence Act. Defense attorneys should be ready to object to evidence being improperly admitted through a document, rather than through a live witness. Photos and videos are now admissible per the 2015 amendment to the Evidence Act.

- Evidence Act, Section 61 – Documentary Evidence may be proved by either a primary or secondary source.
- Evidence Act, Section 3 – Documentary evidence includes both private and public documents. The Evidence Act defines document as any matter expressed or described via a letter, figure, mark, or any combination of these that is used for recording the matter. For example, a map or a photograph may be considered a document even though it does not necessarily include any writing.
- 2015 amendment to the Myanmar Evidence Act defines documents as including “any photograph;” and (2) “any film (including microfilm), negative, tape, disc or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;” and (3) “any record generated, sent, received or stored by means of electronic magnetic, optical or any other similar technologies in an information or for transmission from information system or for transmission from one information system to another.” The amendment notes that “the method and manner in which the electronic record was (properly or improperly) generated” and “the circumstances in which the devices were (properly

or improperly) used to generate, send, receive, or store the electronic record” may be relevant facts if the document itself is relevant.

Character Evidence

Defense attorneys need to be on guard against testimony being given that suggests that the accused has a “bad character.” This is not admissible unless – and until- the accused raises the issue of character.

- Evidence Act, Section 52 – Good character is relevant in court decisions.
- Evidence Act, Section 53 – Bad character is only relevant when it is a fact in issue or when it is used to refute evidence of good character that has already been introduced and relevant evidence of bad character includes previous convictions.
- Evidence Act, Section 53 – Relevant evidence of bad character includes previous convictions.

Physical Evidence

Overview: Physical evidence can include proceeds from a crime, items illegal in themselves (such as narcotics, weapons, counterfeit goods, or items in violation of the censorship laws), money, items of clothing or other things that either support the commission of the crime or the identification of the accused as the perpetrator.

Discrediting Physical Evidence

Physical evidence must be authenticated, that is, shown to be what the proponent claims it is. Authentication can be accomplished through witness testimony or, if the evidence is the type that can easily be tampered with (i.e. blood samples), authentication can be accomplished by offering evidence that establishes an unbroken chain of possession from the time the evidence was collected to the time it is offered in court. In addition to the legal and constitutional arguments made below, the defense attorney should investigate whether physical evidence has been properly identified prior to being returned to its owner or has been properly maintained by the police for trial (see above). Evidence that has not been secured for trial or identified by the complainant is not admissible as evidence against the accused. To understand the process by which physical evidence is presented in court see Presenting Defense Evidence Section.

- Cases in which the proof rests chiefly on the identification of persons or things are often dismissed by Courts because the identification is not properly made out. Police Manual para. 1718
- Property seized should be placed in a “line up” for it to be identified by the alleged owner. Police Manual para. 1721

Exclusion of Physical Evidence from Consideration

As a preliminary matter, the defense attorney, having reviewed the search warrant paperwork, should move to exclude evidence that was seized as the result of an illegal arrest or search. Under the Myanmar Constitution (Art. 357):

“The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution.”

If the police fail to follow the law in conducting searches or arrests, then the police activity is illegal.

In the United States it is clear that the evidence seized in an illegal search would be excluded from evidence. It is not at all clear that this is an argument that the remedy of excluding such evidence has been accepted in Myanmar, however, you should bring the matter to the court's attention and seek dismissal. There have been reports of cases in Myanmar that have been dismissed because of an illegal search (see cases reported below).

In order to prepare her argument, the defense attorney must review the relevant Myanmar Law and requirement for the conducting of searches. Arguments can be made based upon the face of the property form itself or after cross examination of the police, of other witnesses present. The argument can be renewed at the Final Argument after presenting accused witnesses or the accused testimony himself.

The Accused Having Signed the Search Form

Suspects are often forced to sign the Search Form created according to the provisions of CrPC Sec. 103. The language of the statute creates problems for the accused at trial, as it appears both to require that the person sign the form, and concludes that this is a "token of the correctness thereof."

(3) The occupier of the place searched, or some person on his behalf, shall be permitted to attend during the search, and, if present shall be required to sign the list prepared under sub-section (2) in token of the correctness thereof, and a copy of the said list shall be delivered to such occupier or person by the officer or other person making the search.

(4) When any person is searched under section 102, sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.

Defense attorneys must be prepared to challenge both the procedure and voluntariness of the signing of the document, and the legal effect of the signing.

- The signed statement is inadmissible as a matter of law. The signed statement on the search form is equivalent to a confession made to the police. Confessions made to the police are irrelevant and inadmissible. This is the strongest argument because it does not ask the judge to reject police testimony or to find that the police have acted illegally. Evidence Act SS 25 and 26.
- The police induced, threatened or offered promises to the accused to get the accused to sign the search form. This argument would require the accused or accused witnesses to testify and for a judge to find them more credible than to police. As such it is less likely to be successful. A defense attorney should decide whether it is better to forgo this argument in order to avoid undercutting the "inadmissible as a matter of law" argument. Evidence Act sec. 24.
- The search form is defective because the police did not follow procedures. In particular a defense lawyer may choose to challenge the search form witnesses who are presented to attest to the legality of the search. Given that these

witnesses are often used again and again by the police they are not truly independent of the police.

Arguments for Why Evidence Was illegally Seized:

1. The arrest was illegal
 - CrPC Sec. 46-86 arrests – the Police lacked sufficient evidence to make an arrest
 - The level of crime suspected did not allow for a warrantless arrest
 - But see *Emperor vs Maung San* (+4) 1892-96 Upper Burma Reports 123. If arrest illegal, we cannot release accused as issue of guilt is more important than illegality of arrest.
2. The Search was illegally conducted. See Police Investigation/Searches
 - CrPC SS. 96-103 search warrants
 - Police Manual Section VI,—The Conduct of Searches.
 - CrPC Sec. 103 and 165 search be made in the presence of two or more respectable persons. If possible, the headman of the village- tract will be present .The occupant of the place searched,or some person in his behalf, will be permitted to attend during the search. Care will be taken that the witnesses observe every part of the search.
 - PM para. 1708 Police “will search each other and satisfy themselves that none of their number is concealing anything which may be planted in the premises to be searched.”
 - Law Protecting the Privacy and Security of Citizens (2017) provides additional protections against warrantless searches or those done without being accompanied by minimum of two witnesses who should comprise Ward or Village Tract Administrators, Hundred- or Ten-Householder Head.

Myanmar courts exclude illegally acquired physical evidence. Attorneys should be prepared to alert judges to the relevant law and court citations. In addition to the examples listed below, attorneys should consult senior attorneys and treatises.

Court Citations:

- KMO Kyi Maung 001, Administration of Justice¹⁸ Articles, (1994) vol 1. In another case, narcotic drugs were found in possession, but those in question were acquitted on the ground of illegal search.
- Where a search warrant for gambling was not properly issued or based on credible information, the accused had been wrongly imprisoned. *Crown v. Majun & 12 Others*, 1 LBR 120, at 121
- Likewise, resistance to illegal arrest could not constitute an offence. *King-Emperor v. Taik Pyu & Nga Thaik*, 5 LBR 21.
- A district police superintendent who with a unit of military police had busted a gambling den saw his case thrown out because he had conducted the search improperly, had exceeded his authority, had acted illegally in delaying prosecution, had submitted a report that was inadmissible as evidence, and had ordered an announcement which inferred that he had authorised certain types of gambling in certain premises. *King-Emperor v. Maung Cho & Others*, 2 LBR 43.

¹⁸ Administration of Justice is the title of a booklet in which 11 essays written by a Judicial Officer Grade (1) were compiled and published in 1994 in Burma

- A search warrant issued simply to go “fishing for evidence” in the general contents of an office was unlawful, and the evidence obtained as a result of the search inadmissible. *V. S. M. Moideen Brothers v. Eng Thaung & Co.*, 9 LBR 45, at 47.

Drug Cases have lower requirements for Searches

Under **The 1995 Rules relating to Narcotic Drugs and Psychotropic Substances** anyone can seize drug users and deliver to the police. This undermines procedural protections guaranteed by criminal procedure code. This raises the danger of the “planting of drugs” and breaks in chain of custody of alleged illicit substances.

Whoever sees an offence being committed in his presence at a public place, may arrest the offender and seize the exhibits without a search warrant, and after such arrest shall hand over systematically to any member of the Myanmar Police Force without delay. If there is no member of the Myanmar Police Force, such offender will be handed over to the nearest police station systematically and immediately together with the exhibits. Rule 20, Narcotics Drugs and Psychotropic Substances Law.

Only Some “Physical” Evidence from Illegally Acquired Confession Can be Excluded

Unlike United States law, Myanmar law allows evidence derived from a confession subsequently deemed illegal to be submitted at trial. This would include the murder weapon and its location. Evidence Act Sec. 27. However a demonstration of the crime photographed during an inadmissible confession is not admissible. *Maung Tin Aung v Union* 1966 BLR (SC) 1238.

Identification Evidence

Overview: Every criminal charge requires, at least implicitly, that the identity of the perpetrator be proved in order to for the prosecution to meet their burden of proof. The prosecution can do that in two ways: through in court identification or through testimony about an out of court identification. Whether or not the accused has given a confession or has “admitted” in an interview with the attorney, the attorney should examine all available evidence in the court file, including the identification report, and the results of any investigation to determine if the identifying witness could be mistaken, is lying, or has been misled by a faulty police procedure.

In Court Identification

The Attorney should be ready to discredit any testimony about the accused being the perpetrator by creating cross-examinations around:

- Opportunity to observe
- Ability to observe
- Ability to recall
- Bias or reason to lie
- Police induced misidentification

The ability to observe is different from the opportunity to observe. The opportunity to observe means that the witness was at a location where he could have seen the events. The ability to observe means that not only could the witness have observed it, but also that he actually did observe it. Questions on this issue would relate, among

other things, to the vision of the witness, whether the witness was wearing corrective glasses or contacts, and when the last time the witness's vision was checked.

The ability to recall relates to the accuracy of the witness's memory. Questions on this issue could relate, among other things, on whether the witness's memory is consistent with the other uncontested facts of the case. If the witness's memory can be proved faulty on other matters, you can argue the identification of your client should also be viewed with distrust.

See USAID Legal Aid Toolkit, Chapter 4B5 Cross Examination.

Out of Court Identification

In those cases where the police or other government actor arrest the accused and then display him or her to the complainant for an identification, defense attorneys may wish to argue that the actions of the police led to an improper or mistaken identification by the complainant. These arguments need to be developed through examination of the police paperwork, cross-examination of the police, observing magistrate, complainant, and potentially through testimony by the accused.

The Police Manual states the power of the court to disregard poorly secured identification evidence:

Section VII.—Evidence of Identity.

1718. Cases in which the proof rests chiefly on the identification of persons or things are often thrown out by Courts because the identification is not properly made out. If the identification by a witness of a person or of an article of property is to be satisfactorily established, it must be shown that the witness was (or is) able to pick out the person or thing from among a number of others similar in appearance...

1719 sets out procedure for identification. Should be done in presence of magistrate or "two or more respectable persons unconnected with the case".

Since police can't give testimony about statements they have heard, testimony from the magistrate and witnesses is necessary. Potential areas of cross-examination include:

- Mistake: lack of opportunity to observe during incident, bad lighting, short period
- Unfair identification proceeding: police induced identification, dissimilarity between accused and other people in line-up
- Bias: Connection to police or complainant, animosity towards accused

Confessions

Overview: Like in many countries, including some developed ones such as Japan and the United States, Myanmar prosecutions often may rely upon confessions of uncertain reliability and voluntariness. This is not surprising. As one researcher wrote, “One aspect of the law that encourages the forcing of confession is that even if an accused person retracts a confession, it can still stand as proof of a crime if a court believes it is true and that it was made voluntarily.”¹⁹ Attorneys at the Justice Centres must thus be vigilant in their protection of clients against the creation and use of induced confessions. There is a large amount of international research on why individuals might falsely confess.

- *False Confessions or Admissions*, The Innocence Project, <https://www.innocenceproject.org/causes/false-confessions-admissions/>;
- *Police Interrogation and Suspect Confessions: Social Science, Law and Public Policy*, Richard Leo, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2937980
- *False Confessions*, Kassin (The Vera Institute), <https://www.vera.org/research/saul-kassin-false-confessions>
- *Mental Health and False Confessions*, Follett, et al; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3028918

Definition: A confession is a statement in which the accused admits criminal liability for the act. *Maung San Myaing v Union* 1966 BLR (SC) 634.

Other relevant Myanmar statutes

- CrPC SS. 164, 364, 533, 163(1),
- Myanmar Courts Manual (CM), paragraphs 475, 534, 570, 571, 600 – 607
- Penal Code SS. 330-331
- Evidence Act SS. 24-30

Attorneys must determine what kind of inculpatory statement is being presented: non-judicial admission or judicial confession.

Non-Judicial Admission:

On occasion the prosecution will attempt to introduce inculpatory statements allegedly made by the accused to non-governmental witnesses (complainants and other witnesses). These statements are not subject to hearsay exclusions (Evidence Law 32) because it is an admission by a party. These statements are not subject to some of the protections offered in judicial confessions against involuntariness and procedural rights, a attorney can and should develop attacks on their reliability, accuracy, and relevance through investigation of witness character and motives. To the extent that they may have been induced by torture, threats of violence or induced by promises of leniency or non-prosecution, the attorney should undermine their value.

¹⁹ Nick Cheesman, Thesis, p. 143 citing *Union of Burma v. Ah Hla (a) Maung Hla & 2*, 1958 BLR (HC) 29. See also: *Union of Burma v. Aung Tun (a) Aung Myint, Aung Tun (a) Aung Myint v. Union of Burma*, 1958 BLR (SC) 1.

- Evidence Act 24 appears to offer an opportunity to challenge extrajudicial confessions that are made to an employer, teacher or parent as being “a person in authority.” Further research would be needed to make this argument.

In some countries, prosecutors rely upon alleged admissions made by the accused to other prisoners in jail. There is a substantial body of information available to attack the reliability of “jailhouse” admissions (admissions of guilt by an accused allegedly made to a cellmate or other inmates in the jail).²⁰

Non-judicial confessions, like judicial confessions, cannot be sole basis for conviction. Evidence 31 provides that confessions are not conclusive proof of the matters admitted but they may operate as estoppels. The prosecution must present some independent evidence providing basis for the existence of a criminal act.

Admissions to Police are Not Admissible in Prosecution Chief Case

Confessions to police are explicitly excluded from submission during the inquiry.

- “No confession made to a police-officer shall be proved as against a person accused of any offence.” Evidence Act Sec. 25

²⁰ Pew Trust, *Jailhouse Snitch Testimony, A Policy Review*,
http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/death_penalty_reform/jailhouse20snitch20testimony20policy20briefpdf.pdf; Sklansky,
The Progressive Prosecutor’s Handbook,
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2916485

Covey, *Abolishing Jailhouse Snitch Testimony*,
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2589608;
Secret Snitches: California case uncovers long-standing practice of planting jailhouse informants, *ABA Journal*,
http://www.abajournal.com/magazine/article/secret_snitches_california_case_uncovers_long_standing_practice_of_planting; *Corruption bias: defendant entitled to attack jailhouse informant’s track record in past cases with extrinsic evidence*;
<http://www.pdsdc.org/professional-resources/criminal-law-blog/criminal-law-post/pds-criminal-law-blog/2015/04/27/corruption-bias-defendant-entitled-to-attack-jailhouse-informant-s-track-record-in-past-cases-with-extrinsic-evidence>; *Defense Responses to Jailhouse Informant Testimony*,
<http://www.thejuryexpert.com/2014/02/defense-responses-to-jailhouse-informant-testimony/>

- Police can take statements from potential witnesses, but they cannot have the witnesses sign the statements. CrPC Sec. 162(1).
- *Daw Sab Yee (2) vs Union* 1948 BLR 195

A Big Exception: Military Police

Attorneys may have to deal with statements allegedly made to military police by clients. Law created during the period of military control apparently reversed the previous law that these too were not relevant at trial. Attorneys should consider ways to undercut the reliability and accuracy of such statements using the same arguments discussed in reference to judicial confessions. Attorneys should also consider arguing that the court rulings made during the time of military control are illegitimate and that modern courts should return to precedents established during democracy.

Traditionally statements to military police were treated the same as those to ordinary police.

- See *Sobika Rahman*; မောင်ထွန်းတင်နှင့်ပြည်ထောင်စုမြန်မာနိုင်ငံတော် (ရုံးချုပ်) ၁၈၅။ [*Maung Tun Tin v. Union of Burma*, 1965 BLR (CC) 185];
မောင်သိန်းနှင့်ပြည်ထောင်စုမြန်မာနိုင်ငံတော် (ရုံးချုပ်) ၁၅၈။ [*Maung Thein v. Union of Burma*, 1966 BLR (CC) 158]; မောင်သိန်းနှင့်ပြည်ထောင်စုမြန်မာနိုင်ငံတော် (ရုံးချုပ်) ၂၄။ [*Maung Than v. Union of Burma*, 1973 BLR (CC) 24];
ဦးမင်းနှင့်ပြည်ထောင်စုဆိုရှယ်လစ်သမ္မတမြန်မာနိုင်ငံတော် (ဗဟို) ၂၂။ [*U Min v. Socialist Republic of the Union of Burma*, 1977 BLR (CC) 22];
မောင်ကိုးနီနှင့်ပြည်ထောင်စုဆိုရှယ်လစ်သမ္မတမြန်မာနိုင်ငံတော် (ဗဟို) ၇။ [*Maung Ko Ni v. Socialist Republic of the Union of Burma*, 1980 BLR (CC) 7];
ဦးစိန်ထွန်းနှင့်ပြည်ထောင်စုဆိုရှယ်လစ်သမ္မတမြန်မာနိုင်ငံတော် (ဗဟို) ၁၃။ [*U Sein Tun v. Socialist Republic of the Union of Burma*, 1980 BLR (CC) 13];
မောင်တင့်ဆွေနှင့်ပြည်ထောင်စုဆိုရှယ်လစ်သမ္မတမြန်မာနိုင်ငံတော် (ဗဟို) ၂၀။ [*Maung Tint Swe v. Socialist Republic of the Union of Burma*, 1980 BLR (CC) 20]; and, မောင်စိုးမြင့်နှင့်ပြည်ထောင်စုဆိုရှယ်လစ်သမ္မတမြန်မာနိုင်ငံတော် (ဗဟို) ၂၈။ [*Maung Soe Myint v. Socialist Republic of the Union of Burma*, 1981 BLR (CC) 28].

The rule was possibly altered during the authoritarian military period. *Union of Myanmar v. U Ye Naung & Another*, 1991 MLR (SC) 63, allowed the consideration of a statement to military police, finding it was not involuntary. This not being taken by a judge. Nonetheless it has been followed often since.

- ဒုရဲမှူးလှမြင့်နှင့်ဦးအေးကြူ (ခ) မုံရွာအောင်ရှင်ပါဂျ၊ ၂၀၀၀၊ ပြစ်မှုကြီးမှုအမှတ် ၂၃-၂၄၊ ရန်ကုန်တိုင်းတရားရုံး၊ ၂၀၀၀ ပြည့်နှစ်၊ ဒီဇင်ဘာလ ၁၄ ရက်၊ တွဲဖက်တိုင်းတရားသူကြီးဘဏ္ဍာ။ [*Police Captain Hla Myint v. U Aye Kyu (a) Monywa Aung Shin & 4*, 2000 Criminal Case Nos. 23 & 24, Yangon Divisional Court, 14 Dec. 2000, Additional Divisional Judge Ba Kyaw.] ဒုရဲမှူးရဲညွန့်နှင့်ဦးအောင်ကြီးပါဂျ၊ ၂၀၀၃၊ ပြစ်မှုကြီးမှုအမှတ် ၁၃၄၇၊ ဒဂုံသစ် (တောင်ပိုင်း) မြို့နယ်တရားရုံး

Attorneys should still challenge the consideration of such statements, and certainly oppose them being the sole evidence against an accused. See for support the single judge Supreme Court decision in *U Tin Ngwe, Daw Mya Mya Win (a) Daw Than Win v. Union of Myanmar*, 2006 MLR (SC) 1.]

Other Exceptions to exclusion of “police” statements:

- Headman and rural policeman appointed under the Village Act are not policemen under Evidence Act Sec. 25.
- Security police members appointed by the Customs Department are not police officers. *Sultan Ahmed vs Union* 1958 BLR 226.
- A forester is not a police officer, *State vs Ye Myint* Criminal Appeal 478/96 (4-3-98) Supreme Court (Yangon)

Ways a Police Statement Can Be Used:

Impeachment: Be aware that statements to police CAN be used to impeach the accused if he chooses to testify as a witness (but not as the accused) in her case. This appears to be limited to non-inculpatory statements. This apparent inconsistency is resolved because Evidence Act 26 supersedes the CrPC Sec. 162.

- CrPC Sec. 162.
- *Bo Lann Case* 1947 Rangoon 379-380,
- *U Chit Aung v Union of Burma* 1970 Appeal Case # 40 Mandalay. (If the accused is testifying as a witness, the plaintiff side can ask about police statement, however they cannot ask about the police statement that is regarded as a confession.)

The attorney should be prepared to oppose the consideration of the police statement, even in impeachment, based upon the same arguments about illegal arrest, involuntariness and unreliability as discussed above. Evidence Act Sec. 24.

Derivative evidence: as discussed above in regards to illegal judicial confessions, police confessions can be used to gather more evidence and arrest co-accuseds. Evidence Act 27.

Defense Lawyers Must Fight the Misuse of Search Forms

Defense lawyers must oppose the consideration of statements contained in search forms that are presented as admissions of possession, intent or other expressions of guilt at trial. This is particularly a problem in narcotics case.

Suspects are often forced to sign the Search Form created according to the provisions of CrPC Sec. 103. The language of the statute creates problems for the accused at trial, as it appears both to require that the person sign the form, and concludes that this is a “token of the correctness thereof.”

Defense attorneys must be prepared to challenge both the procedure and voluntariness of the signing of the document, and the legal effect of the signing.

- The signed statement is inadmissible as a matter of law. The signed statement on the search form is equivalent to a confession made to the police. Confessions made to the police are irrelevant and inadmissible. This is the strongest argument because it does not ask the judge to reject police testimony or to find that the police have acted illegally. Evidence SS 25 & 26.
- The police induced, threatened or offered promises to the accused to get the accused to sign the search form. This argument would require the accused or

accused witnesses to testify and for a judge to find them more credible than to police. As such it is less likely to be successful. A defense attorney should decide whether it is better to forgo this argument in order to avoid undercutting the “inadmissible as a matter of law” argument. Evidence Act sec. 24.

- The search form is defective because the police did not follow procedures. In particular a defense lawyer may chose to challenge the search form witnesses who are presented to attest to the legality of the search. Given that these witnesses are often used again and again by the police they are not truly independent of the police.

Reminder: Statements to an attorney are confidential and not admissible confessions

- CrPC Sec. Section 126 provides for the duty of confidentiality in respect of communications and documents between legal practitioners and their clients (legal privilege). While disclosure is not protected in respect of the furtherance of crime or the discovery of crime or fraud, the defence of a man known to be guilty is not a criminal purpose and thus a client’s confession to his attorney is protected.
- CrPC Sec. Section 127 extends the confidentiality duty in section 126 to interpreters and clerks and servants of legal practitioners. See Duty of Confidentiality in Rights and Duties of the Attorney Section.

Judicial Confessions

Judicial Confessions are accused statements made to a Judge under the provisions of CrPC Sec. 164. Much of the work of defense attorney is spent preventing, or trying to exclude from evidence or discrediting, alleged confessions by the accused. In this next section we discuss how confessions are created, how they are used, and then consider how they may be challenged.

The best defense against a confession is preventing it from being it made in the first place! That it is why it is important for defense attorneys to assert their representation of the accused as early as possible during the investigation stage and to prevent the accused from making confessions. Once they are made, it is very hard to “unmake” them. See Counseling the Client Section.

Arguments Against Confessions

Listed below is an outline of possible legal and factual arguments to exclude or discredit an alleged confession by the accused.

1. The Confession is the Result of an Illegal Arrest or Detention

The Myanmar constitution and statutes protect the accused against illegal arrest or detention. Under global standards an accused is protected against illegal search and seizure, and any evidence derived from such an illegality would be invalid. Although Myanmar Law (Evidence Act Sec. 27) allows the consideration of evidence derived from an illegal confession, there does not appear to be a parallel provision insulating an otherwise lawful confession from the taint of an illegal arrest. Attorneys should thus make the argument that since the detention was illegal, the confession was illegally obtained.

- Constitution Article 357

- CrPC SS. 46-86 regarding arrests
- CrPC SS.96-103 regarding search warrants
- CrPC Sec. 161(2) Right against self-incrimination

In this argument, the Myanmar attorney would have to argue that the police's failure to follow constitutional mandates or the law governing detention, made all subsequent statements by the accused invalid and involuntary (see below). The desired remedy would be the exclusion of the proffered statement. Cite to right to freedom from illegal search and seizure (see above in Physical Evidence section)

Global standard:

- ICCPR art. 9(1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. The Confession was Involuntary

It is established in Myanmar that involuntary statements cannot be used. Involuntary statements include those as a result of torture, but also those that are due to improper inducement, threats or promises.

An involuntary confession is irrelevant and inadmissible:

- Evidence act Sec. 24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.
- *Maung Tin Shwe (2) vs Union* 1960 BLR 125

This is consistent with international standards:

- ICCPR art. 14(3)(g): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... Not to be compelled to testify against himself or to confess guilt.
- ICCPR art. 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Torture by Police can invalidate a subsequent Judicial Confession

Allegations of torture need to be investigated and framed carefully due to their controversial impact. The historic rule is that the prosecution needs to disprove that the confession was induced by torture once it is raised. Although there were rulings shifting the burden to the accused, these rulings were made by military dictatorship era courts, and thus should be viewed as an aberrance or departure from Myanmar law.

Burden of proof:

- Generally the prosecution has the burden to show lack of "any inducement, threat or promise" once this defense has been raised by the accused. Evidence Act 104

- But, a case from 1989 (military government) puts the burden of proof on accused to show he has been tortured. *Ye Naung Union of Myanmar v. U Ye Naung & Another*, 1991 MLR (SC) 63.
- Also *Daw Yi Yi Win & 3 v. Union of Myanmar*, 2006 Criminal Special Appeal No. 19, Supreme Court, Yangon, Application to grant leave for special appeal, 24 Jan. 2006.

Judges must investigate carefully allegations of torture:

- CM para. 475. (1) Allegations of tutoring of witnesses, of the manufacture or suppression of evidence, and of extorting confessions of guilt by threats or inducements are sometimes adopted as the line of defence in the Criminal Courts of this country and it is inevitable that Court should express their opinion freely on such allegations. It is however essential, both for the maintenance of public confidence in the administration of justice, and also for the protection of the police-force, that judicial comments on such allegations should be carefully weighed, should not go beyond the evidence available, and should lead when necessary to adequate investigation.

Issues of Involuntariness are not limited to physical torture.

A statement can be involuntary, even if the accused was not actually tortured. The law refers to “any inducement, threat or promise.” Accused must only show fear was justified, not that he was actually physically tortured.

- A person who claimed to have confessed because he was afraid of the police did not have to prove that they had treated him poorly, only that his fear was justified (*Maung Nyi & One v. Union of Burma* 1952) (High Court).

3. The Judge did not follow procedures to prevent inducement

An attorney should consider arguing that the judge failed to follow the requirements of the Criminal Procedure Code while taking the statement, and thus the confession is defective and should not be considered. Under section 80 of the Evidence Act, once a confession is recorded *in accordance with procedure*, the judge in a trial is entitled to presume it is genuine. An attorney can argue the opposite, saying that a confession not recorded in accordance with procedure cannot be presumed to be genuine. The defect must be unfixable and must have resulted in a substantive injustice.

The Supreme Court has issued strict instructions concerning the taking of confessions so as to protect the rights of the accused. See Courts General Letter no. 15/1959.

The most extreme argument that could be made is that the judge in fact did not take the confession according to law, but “rubber-stamped” a confession created by the police or some other actor. According to some legal professionals, judges in Myanmar routinely sign off on confessions without actually hearing from—or sometimes even seeing—the defendants. Attorneys should be cautious about making such accusations absent strong, independent evidence of such institutional failures. Attorneys may be more successful making an argument that focuses on specific failures in procedure:

- The Judge did not take the confession in open court. CM para. 602 (1)

- The Judge did not separate the accused from the police. If she or he doesn't, there is the danger (certainty) that an accused will still be under the control of the police and in fear of torture or punishment when she or he makes a statement at court. CM para. 602 (5)
- The Judge did not assess the factors necessary to ensure confession was made voluntary. Factors to be considered: "exact circumstances leading up to the confession, the length of time during which the accused has been in the custody of the police and whether any action on the part of the police may have induced the accused to confess." CM para. 602(3)
- The Judge did not give the accused "a few hours for reflection in circumstances in which he cannot be influenced by the police." CM para. 602(3)
- The Judge did not advise accused of right to remain silent CrPC Sec. 164(3)
"A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him"
- The Judge did not make a record that "he has reason to believe that it was made voluntarily." CrPC Sec. 164(3)
- The Judge did not record in accused's language, did not show or read it to him or did not have it translated for him, did not give him opportunity to "explain or add to his answers." CrPC Sec. 364
- The Judge did not sufficiently compensate for illegal inducement by police. Even if the Judge believes that the statement was initially induced illegally by police, that concern can be cured by if "any such inducement, threat or promise has, in the opinion of the court, been fully removed." Evidence Law 28. Failure for the court to utilize the procedures set out (described above) could be the basis for an argument that the threat has not been removed.
- The Judge herself made illegal promises or threats. "Except as provided by sections 337 and 338, no influence, by means of any promise, threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge." CrPC Sec. 343 However, magistrate can promise secrecy (Evidence Act Sec. 29) and offer a pardon (CrPC SS. 337 and 338).
- The Judge did not write confession in the proper form (question and answer). "When the confession is taken in one continuous narrative, contrary to the provisions of the Code, no presumption of genuineness arises under section 80' Evidence Act, and the confession as it stands is not admissible as evidence." CM para. 604 (2)
- The Judge did not record in writing the confession herself or explain why she did not. CM paragraphs 600-607.
- The Judge did not have jurisdiction to take confession. Only 1st and 2nd class magistrates can take them (the latter only if so authorized by the President)

Important: Attorneys must argue that error resulted in substantive injustice and is not fixable after the fact.

- CrPC Sec. 533(1) even if a judge finds that a confession has not been recorded in accordance with procedure, she can still take certain measures to correct it and accept it as evidence provided that “the error has not injured the accused as to his defence on the merits” *Ko Hmei v. Union of Myanmar*, 1994 MLR (SC) 149.] [*Thein Htay (a) Khayu / Ange Le (a) Ohn Kyaw v. Union of Myanmar, Union of Myanmar v. Khayu (a) Thein Htay and Another*, 1999 MLR (SC) 77.]
- CrPC Sec. 537 “no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account... unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice.”

4. The Confession is Unreliable

As you make constitutional, statutory, or procedural arguments, do not forget that a judicial confession or non-judicial admission are subject to the same attacks about reliability as any piece of evidence. These in turn may buttress the other arguments. Possible arguments: the client is illiterate or not conversant in the language of the confession; facts in the confession don’t match other evidence.

5. There is no other evidence proving the crime.

Corpus Delicti (body of the crime in Latin) stands for the principle that an accused cannot be convicted on his or her words alone. There must be some other evidence to show that a crime occurred.

- *The Union of Burma v Ah Hla(a)Maung Hla and Two Others*, 1958 BLR(HC) 29 “The confession of co-accused is not evidence in the ordinary sense of the term as defined in s 3 and cannot therefore be made the foundation of a conviction; that it can only be used in support of other evidence.”
- *Maung Saw Pe and three others v The Union of Burma*.(1966) BLR (SCCAC) (Special Criminal Courts Appeal Court) 57. “Parts of the confession which are extracted [from the confession as a whole] and accepted [by the Court] must be corroborated by other independent evidence.”
- Evidence Act Sec. 31 provides that confessions are not conclusive proof of the matters admitted but they may operate as estoppels.

6. Confession did not include all ingredients of the crime.

While an accused may admit to being present or to having committed some acts, the confession may lack a necessary ingredient, such as intent or knowledge.

Use of Co-Accused Confession

Myanmar law allows the use of confessions of one accused against another co-accused. The general rule is that they cannot be the sole basis for conviction.

- These judicial confessions cannot be the sole evidence against the co-accused. *The Union of Burma v Ah Hla(a)Maung Hla and Two Others*, 1958 BLR(HC) 29.
- The confession of a co-accused or approver could not in itself be used to convict, and nor could it be used to fill gaps in missing parts of evidence. *Khaw Taw & One v. Union of Burma*, 1948 BLR (HC) 310. *Maung Aye Maung*
- But see to the contrary *Aung Kyaw Soe v The Union of Myanmar Naing-Ngan*, Criminal Appeal No. 197/93 (accused convicted in narcotics case) as reported in KMO I Kyi Maung 001, Administration of Law: Articles, (1994) vol 1. 16-17. See full discussion of facts in Myint Zan, "Divergent Burmese Rulings" 349-351v. *Union of Burma*, 1956 BLR (HC) 273.

An attorney should raise the same challenges to the consideration of a co-accused statement as he or she would against the consideration of his or her own client's confession. Evidence Act Sec. 30.

Please note that the uncorroborated in-court **testimony** of an accomplice CAN be sufficient to convict. Evidence Act Sec. 133. In that situation, of course, the defense attorney must cross-examine vigorously on bias, accuracy, etc. See USAID Legal Aid Tool Kit Section Chapter 4. Also Skills: Questioning Witnesses.

Confessions That Are Both Inculpatory And Exculpatory

On occasion an accused may make a confession which, while admitting to some ingredients of the crime, may also be useful in that they offer defenses, excuses or mitigation. In those cases the legal officer (or the judge) may attempt to argue that the statement should be considered only for in the inculpatory elements. There is support for both arguments.

Most court rulings allow the consideration of both inculpatory and exculpatory parts:

- "Where there is no other evidence to show affirmatively that any portion of the exculpatory element in a confession is false, the court must accept or reject the confession as a whole and cannot accept only the inculpatory element, while rejecting the exculpatory element as incredible." *Aung Tun v The Union of Burma*, (1958) BLR (SC) (Supreme Court) citing the 1881 case of *Maung Po Thin v The Queen- Empress*¹ 1881 Selected Judgments of Lower Burma 324, "The only fair method is to take the confession as a whole."

But some say courts can disregard the exculpatory sections:

- "When a confession is judicially considered it is not the case that the entire confession must be believed [accepted] (or) that the entire confession must be discarded. What is believable [credible] in the confession must be extracted and accepted and what is considered to be incredible or unbelievable in the confession needs to be discarded. [However] parts of the confession which are extracted [from the confession as a whole] and accepted must be corroborated by other independent evidence." *Maung Saw Pe and three others v The Union of Burma*. (1966) BLR 57 (Special Criminal Courts Appeal Court).

Arguably the accused-friendly decisions, those which state that the Judge should consider both inculpatory and exculpatory elements, are still good law, and have

never been overruled by the subsequent prosecution-friendly cases (which was a court ruling by the Special Criminal Court Appeals Court (SCACC) an inferior court to the Supreme Court, that did not have authority to create a new standard of law).

Suing the Police

In the context of an ongoing criminal case, the remedy sought in response to illegally acquired evidence is for it to be excluded from the trial. However an accused who has suffered an illegal police search or seizure can submit a civil or criminal action against the police.

PC Sec. 330: “whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or any person interested in the sufferer, any confession or an information which may lead to the detection of any offense or misconduct...or to cause the restoration of any property or valuable security... shall be punished with imprisonment...which may extend to seven years.”

This is unrealistic for a very poor person, most probably in jail. Nor does it help accused in criminal case, where he or she may be facing years in prison. Nonetheless it is an option that the client should be made aware of.

PART THREE: SPECIAL POPULATIONS

Attorneys should be aware of their special responsibilities to guarantee access to justice for vulnerable populations. This part of the Manual focuses on some special populations that may present unique needs and may face additional burdens as accused in the criminal justice system. Attorneys may wish to reach out to experts to ensure they are being client-centered and comprehensive in their representation of these groups.

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2013

Principle 10. Equity in access to legal aid

Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures.

JUVENILE CLIENTS

Children (under 16) and Youth (16-18) are particularly vulnerable to mistreatment in the criminal justice system. Justice Centre attorneys have a responsibility to seek them out and to ensure that they receive the full protections afforded to them according to the law. Myanmar sets a very low minimum age for criminal responsibility. It lacks strong protections for the young offenders, and unclear procedures to determine whether the youngest of offenders (7-12) have the requisite mental state to be tried in juvenile court. Attorneys thus must be very careful to elicit all information from clients they believe to be under 16 years old. They should be ready to advocate for transfer to juvenile court, and in the case of the youngest persons, demand that their cases be dismissed.

There are efforts to reform Myanmar law to bring it in line with Myanmar's treaty obligations, including raising the age of adult criminal majority to 18, and eliminating criminal responsibility for those under 12 or 14.

The Brains of Children Are Different from those of Adults

The United States-based Coalition for Juvenile Justice explains why juveniles must be treated differently from adults in the criminal justice system:

Advances in brain science and technology are helping us better understand how the adolescent brain functions. We now know that young people's brains continue to mature until their early- to mid-20s, and adolescents' brains are different from adults' both structurally and in how they are influenced by chemicals produced by the body... Adolescents are more likely to be influenced by peers, engage in risky and impulsive behaviors, experience mood swings, or have reactions that are stronger or weaker than a situation warrants. These differences do not mean that youth behavior that is harmful to themselves or others should be ignored. Rather, it means that courts, agencies and practitioners should use this knowledge to inform and perhaps modify their practices and policies.²¹

Make Sure the Child Understands

The attorneys, judges and police must use language that a child can understand. When the defendant is a child, there are additional barriers to understanding, including lack of sophistication and immaturity. Moreover, children and juveniles are particularly vulnerable in the court system, and may feel intimidated and afraid to indicate that they don't understand the proceedings. The defense attorney should carefully and thoroughly discuss the case with the juvenile client in meetings before court hearings to facilitate the child's understanding and ability to participate in his/her own defense.

²¹ <http://juvjustice.org/our-work/safety-opportunity-and-success-project/national-standards/section-i-principles-respon-din-10>

Myanmar Law:

Child Law of 1993

Rules Relating to the Child Law (Myanmar) (2001)

Rights of the Child

The child accused has all the rights of an adult accused, including the right to defense by an attorney. Additional rights are set out in Chapter 5 of the Child Law; attorneys should review these, particularly those in sections 13-16.

Global Standard:

Child Law is one of the areas that Myanmar has signed onto international conventions relevant to criminal practice. The Child Law is the implementing legislation for the Convention on the Rights of the Child ("CRC"):

Art. 3(1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Art. 37 State Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Art. 40(1) States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

UN Convention on the Rights of Persons with Disabilities, Article 7 – Children with disabilities:

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

Although Myanmar is not a signatory to the International Convention on Civil and Political Rights, its provisions also stress the need to address the special needs of juveniles:

ICCPR art. 14(4) In the case of juvenile persons, the [criminal] procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

Jurisdiction and Age of Criminal Responsibility

Myanmar's law on the minimum age of criminal responsibility (7) and the maximum age of jurisdiction for juvenile court (under 16) is inconsistent with the Convention on the Rights of the Child and other international norms and standards. There have been ongoing efforts to amend the law to conform to international standards. Note that in the case of co-accused, one a child, one an adult, the cases are separate, with the case of the child going to the Juvenile Bench.

- Nothing is an offence which is done by a child under 7 years of age. Child Law Sec. 28(a)
- Nothing is an offence which is done by a child above 7 years of age and under 12 who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. Child Law 28(b)
 - "Myanmar law also creates a test of criminal responsibility for a child between 7 and 12 years, however, does not specify how the determination of maturity or understanding is to be ascertained; who will be responsible for making the determination; the standard of proof required; or the procedures by which the determination will be reviewed." UNICEF
- Jurisdiction of Myanmar Juvenile Courts is only with respect to a child who has not attained the age of 16 years at the time of committing the offense. Sec. 41(b) Child Law
- This jurisdiction continues even if the prosecution commences or continues after him having become 16. Sec. 41(d) Child Law
- The minimum age for criminal responsibility is age 7. PC Sec. 82 & PC Sec. 83
- A Police Officer or a person authorized to take cognizance : - (a) shall send up the juvenile case for prosecution to the relevant juvenile court. Child Law Sec. 38(a)
- (b) in a case of joint commission of offence by a child and an adult, [a police officer] shall send up the child for prosecution to the relevant juvenile court and the adult to the relevant court; Child Law Sec. 38(b)

Note that there is a separate category of "youth" who has attained 16 years but not 18 years of age. Child Law Sec. 2(a). Such clients may be eligible to special treatment, albeit in adult court.

Transfer from Adult Court

Attorneys may encounter young persons incorrectly being prosecuted in adult courts. Attorneys have the obligation to do the necessary investigation, gathering witness and documents needed, to transfer the case to the Juvenile Bench. Arguably in the first instance it is the obligation of the police to provide evidence of age. However, police may find it easier to categorize a child as being older than 16.

Child Law 41 and Rules related to the Child Law 68 set out the acceptable evidence:

- Birth certificate
- National Registration Card (NRC)
- Registrar number at the school
- Medical age assessment
- Other evidence which may be sufficient.
 - A witness who knows them. (better a non-relative)

[A police officer] in sending up a child for prosecution, supporting evidence in respect of his age shall be sent together. Child Law Sec. 38(c)

The procedure to accomplish the transfer is outlines in CrPC Sec. 540. The attorneys must file a written argument with the instant court, submit relevant documents, and present, if necessary, witnesses. Rarely, if ever, is this motion opposed by law officers. Once the case is transferred the Juvenile court must accept case and review the documents. *Union v. Aye Nawt* 2009 MLR 48

In those cases where judges refuse to transfer children to the juvenile bench, attorneys should follow the possible steps set in the Remedies Section. Attorneys should strongly consider filing a writ of habeas corpus.

Pretrial Procedures

Detention of a juvenile for any reason should be a measure of last resort. Juveniles should not be detained with adults even when the juvenile centre is full. Juvenile clients should preferably be released to the custody of their parents during the investigation period.

Child Law Section 37. Police Officer or a person authorized to take cognizance shall abide by the following when arresting a child accused of having committed an offence;

- (a) shall not handcuff the child or tie with a rope; [also Rule 64]
- (b) shall not keep the child together with adult prisoners; if it is a girl, shall keep her, with a woman guard;
- (c) shall not maltreat or threaten the child;
- (d) shall not send the child together with adult prisoners from one place to another; if it is a girl, shall send her with a woman guard;
- (e) shall inform the parents or guardian concerned as soon as possible; (f) shall send up the arrested child to the relevant juvenile court as soon as possible;
- (g) shall release the child on execution of a bond, if the child cannot be sent up as soon as possible to the juvenile court under sub-section (f) ;
- (h) shall send the child to a temporary care station or to another appropriate place, if the child is not released on a bond under sub-section (g);

Rules under Child Law:

- Children can be arrested, but not with handcuffs. Rules 64.
- Children can be held by police for 24 hours. If the police need more time to investigate they can get extension from judge, but must be held at child rehabilitation centre. CA Rule 65
 - Yangon has a rehabilitation centre, run by the Ministry of Social Welfare Relief and Settlement near mile 8.
- Absent a rehabilitation centre, the child “must be kept safe place.” 37(h).

Advocacy Issues:

Your interview with the child should cover the issues that are especially important in protecting the rights of the child. They include:

- Behavior of the police at arrest
 - Did the police identify himself or herself?
 - What was she wearing?
 - What did she say?
 - Did she explain, in plain language, the child’s rights?
 - Were the child’s parents present for any of this?
- Parental involvement
 - Were the parents informed?
 - Were they present for any interrogation
 - Why not?
- Location of questioning
 - Where did questioning happen?
 - Was it in a police station, a cell, an office?
 - Was the child handcuffed?
 - Was the child sitting or standing?
- Length of interrogation
 - How long did interrogation last
 - Was it more than an hour
 - Was it taken at night
- Health of child
 - Was health of child checked at a hospital
 - When
 - Is this information in file?

Attorneys should use the same list of questions when cross-examining police, but making sure to make them leading. See Skills: Questioning Witnesses Section.

If any of the procedures are not followed: Raise these violations at the remand hearing or at the first court hearing. Request your client’s release on the grounds that the investigation was not conducted in compliance with the law, and therefore violated your juvenile client’s rights.

Trial Procedures

The Law

- In general a juvenile proceeding is governed by the same legal concepts as an adult crime. The presumption of innocence is an explicit right under the Convention on the Rights of the Child, which Myanmar has ratified. CRC Article 40, Section 2 (b) (i),
- Each District Court should have a separate Juvenile Court, or at least designated courtroom to try juvenile cases.
- If possible punishment is less than 3 years trial will be summons case (see Types of Cases). This means the accused will be asked to admit or deny prior to the presentation of prosecution witnesses. Query whether the child accused would also be able to demand dismissal if the complainant fails to appear on the first court date.
- In theory, any case which carries a sentence higher than 3 years, life imprisonment or the death penalty would require a warrant trial procedure. According to at least one source, “in the administration of Justice in the Union of Myanmar a juvenile offender is usually tried summarily by a competent court irrespective of the severity of the offence.” The Judicial System and Court Proceedings in Myanmar (Union Supreme Court) p. 27.

Sentencing

The goal of sentencing in juvenile matters is very different from adult matters. Attorneys need to stress this repeatedly in advocating for their clients.

- “To reform the character” Child Law Sec. 44
- “In ordinary circumstances the legislature intended the juvenile offender to be punished as leniently as possible so that he or she may be able to enter the mainstream of life with a clear conscience, confident, efficient and with high normal. To achieve that spirit, juvenile offenders cannot be sentenced to death or transportation for life, or whipping.” The Judicial System and Court Proceedings in Myanmar, p 27

Considerations in sentencing:

- Child’s age and character
- Environment or atmosphere
- Child’s motivation or reason to commit the crime
- Report from supervisor at rehabilitation centre
- In the interest of the child

In some parts of Myanmar, the Courts are using social workers to assist with juvenile cases. These individuals are important persons to work with in preparing a mitigation strategy, and are also a possible referral source for new juvenile cases.

There are clear limitations in sentencing. For example, in cases which would carry possible death penalty or life imprisonment the child can “only” be sentenced for seven years. Child Law Sec. 46

The possible sentences are discussed in Child Law Rules 80, and Child Law SS. 46-48. The presumption is against imprisonment. Child Law Sec. 46.

- Judge can release child after due admonition. Child Law Sec. 47(a)
- Judge can release child to parents but with bond valid for 3 years. Parents must fill out form 31 Child Law Sec. 47(b)
- Judge can release child under supervisor of respected person (or social welfare department) Child Law Sec. 47 (c)
- Judge can sentence child to at least 2 years or until child reaches 18 years old in a rehabilitation centre. Judge will fill Form 33.
- If the judge would otherwise release child to parents (under Sec. 47a) or to a supervisor (under Sec. 47b), but they are unable to take child, the Judge can place in rehabilitation centre, but must explain on Form 33. Child Law Sec. 47(d)

A child or youth sentenced to prison should be segregated from adult prisoners. Child Law Sec. 52.

Use of Juvenile Records in Adult Proceedings

Appeal

The child has a right to appeal.

Child Law Sec. 49. (a) There shall be right of appeal or right of revision in accordance with the provisions of the Code of Criminal Procedure against the order or decision passed under this Law by the juvenile Court; (b) If a sentence of imprisonment is passed on the child by a juvenile Court, or Appellate Court or Court of Revision, a copy of the sentence shall be sent to the Ministry.

Youths

Myanmar law is not in accord with its treaty obligations under the CRC, as it considers those over 16 and under 18 not to be “children” but rather “youths” with lesser protections and who will be tried in adult court. Potential imprisonments are limited to 10 years. See Chapter 18 of the Child Law, Sections 67-71.

Speedy Trial

One of the greatest concerns when dealing with child clients is not to delay their trial or prolong their detention. Arguably since most, if not all, juvenile matters are dealt with summarily as summons cases, rather than subject to the longer warrant case procedure, cases should be dismissed on the day of the first court appearance if the prosecution is not ready to proceed. Obviously on the other hand, defendants do have the right to review the evidence and to investigate a case before make decisions on how to proceed. See Speedy Trial Section.

Juvenile proceedings must be kept confidential

Disclosure of the child’s name, face, or identifying information about his/her family can be incredibly stigmatizing for the child, regardless of innocence or guilt. Ensure that the juvenile bench is truly a closed bench. Object to the presence of any person not authorized to be present under Children’s Act, and ask the court to direct such

persons to leave before the proceedings begin. Communicate with the police investigators directly and request that no details or photos about the case be disclosed to the media. If the police don't agree, request at a minimum that the child's name, age, family name and residence, and photos not be disclosed. If the police refuse to maintain the child's privacy, file a petition requesting the court direct the police to respect CRC art. 40(2)(b)(vii), and refrain from any mention of the child or the case to the media. See Child Law Sec. 42(d)

Age Assessment

Attorneys representing children often struggle to prove that their client's age in order to take advantage of the Juvenile Courts. Attorneys should argue that the burden is on the government that the child is not a juvenile. But attorneys should still proactively seek proof of their client's age

Since Myanmar is a signatory to international conventions in this area, attorneys should reference global standards when necessary in dealing with age assessment issues:

- "If an assessment of the child's age is necessary, the following considerations should be noted:
 - a. Such an assessment should take into account not only the physical appearance of the child but also his/her psychological maturity.
 - b. When scientific procedures are used in order to determine the age of the child, margins of error should be allowed. Such methods must be safe and respect human dignity.
 - c. The child should be given the benefit of the doubt if the exact age is uncertain.

Where possible, the legal consequences or significance of the age criteria should be reduced or downplayed. It is not desirable that too many legal advantages and disadvantages are known to flow from the criteria because this may be an incentive for misrepresentation. The guiding principle is whether an individual demonstrates an "immaturity" and vulnerability that may require more sensitive treatment."

UNHCR, *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, Guideline 5.11, February 1997

- "Age-assessment includes physical, developmental, psychological and cultural factors. If an age assessment is thought to be necessary, independent professionals with appropriate expertise and familiarity with the child's ethnic/cultural background should carry it out. Examinations should never be forced or culturally inappropriate. Particular care should be taken to ensure they are gender- appropriate. In cases of doubt there should be a presumption that someone claiming to be less than 18 years of age, will provisionally be treated as such. It is important to note that age assessment is not an exact science and a considerable margin of error is called for. In making an age determination separated children should be given the benefit of the doubt."

Separated Children in Europe Programme, *Statement of Good Practices*, "Age Assessment," Practice C.8, page 18 (3d ed. 2004).

WOMEN AS ACCUSED

Women make up a relatively small percentage of the accused. But attorneys should understand the particular circumstances that cause women's involvement in the criminal justice system—poverty, mental and physical illness, trauma, gender-based discrimination and ethnic and religious discrimination. Lack of access to steady employment and economic opportunity has led to increasing numbers of women being arrested for non-violent offenses like prostitution, drug or property crimes.

Women often suffer abuse once arrested. Police officers discourage women from offering a defense by claiming that will result in a more severe sentence. Women accused report inappropriate touching by police officers during transportation between detention centres and courts, as well as being intermingled with male detainees on benches while awaiting court hearings. Women continue to be handcuffed in public despite the law against that practice. Judges may chastise women in the courtroom for “bringing shame” on themselves.

Prostitution

Women often come to court facing charges of prostitution. Some women turn to sex work after being displaced after being ostracized by family for consensual and non-consensual pre-marital sex, after other domestic violence, land disputes, or being excluded from other regular employment.²² Sex work may seem to be the only way for them to support themselves and their families. Sex workers report being entrapped, informants and police officers engaging women for services before arresting them. Since the prostitution is illegal, sex workers have no legal remedy if police or clients are violent, refuse to use a condom, or do not pay.²³

Media reports include stories of women falsely accused because they are in the “wrong place” at the wrong “time” or have money that they cannot sufficiently account for to police. Police may make accusations hoping to receive bribes. Periodic public morality campaigns result in mass arrests in areas known for prostitution or drug use. In those situations, judges are reluctant to do anything but convict the accused. Judges may rely upon a woman's general reputation rather than the specific evidence in front of the court to find guilt. Although reportedly the possession of condoms is no longer admissible to prove the charge of prostitution, this is not being observed in practice.

Women may choose to admit guilt even when the charges are not true. They may do so to speed up the trial proceedings and avoiding the difficulties women associated

²² Bhattacharjya, M., Fulu, E., Murthy, L., Seshu, M. S., Cabassi, J. & Vallejo-Mestres, M. (2015). *The Right(s) Evidence: Sex Work, Violence and HIV in Asia*. UNFPA, UNDP, Asia Pacific Network of Sex Workers, SANGRAM. Retrieved from http://asiapacific.unfpa.org/sites/asiapacific/files/pub-pdf/Rights-Evidence-Report-2015-final_0.pdf

²³ DVB, Sex worker law in reformists' sights, but can govt deliver? 24 April 2017 <http://www.dvb.no/news/75176/75176>

with detention, transport and courtroom conditions. Some also hope that by pleading guilty they will be able to benefit from the periodic amnesties. Unfortunately, since prostitution and drugs cases are warrant cases, such women still need to wait until the end of the inquiry and the charge is framed.

Other Charges

In addition to the charges of prostitution, women can be also vulnerable to the same sodomy offenses and “in the shadows” offenses discussed in the section on LGBT clients. Section 377 deems these relations criminal acts of “carnal intercourse against the order of nature.” Women in same sex relationships undergo an immense amount of stigma, which often affects their employment opportunities.

Women’s autonomy is restricted by old laws and new ones. Abortion is illegal, and women caught carrying condoms are vulnerable to accusations of prostitution. The recently passed “Race and Religion Protection Laws” outlaw polygamy, require citizens wishing to convert religions to first obtain consent from a state board, grant authority to regional and state governments to request presidential approval to impose birth spacing restrictions on residents, and restrict the right of Bamar women to marry non-Buddhist men. These restrictions can disproportionately harm women.

Defending Against the Monogamy Law Charges

(To be added later.)

Battered Spouse Syndrome

Sometimes women that have been the subject of physical and emotional abuse strike back at their attackers, and then are themselves charged with a crime. These women frequently suffer from “battered spouse syndrome,” and there is a substantial amount of research about the effect of this syndrome and its use as a potential defense in court.²⁴ This can be relevant in preparing a specific defense such as “right of private defense.”

Women Are Disempowered and Unprotected Even as Complainants

Defense attorneys represent the accused not the alleged victims in the criminal justice system. Nonetheless it is important that attorneys understand the way that the

²⁴ Walker, *Battered Woman Syndrome*, <http://www.psychiatrictimes.com/trauma-and-violence/battered-woman-syndrome>; *The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials*, USDOJ Report (1996); <https://www.ncjrs.gov/pdffiles/batter.pdf>; Field, et al, *Women Accused of Homicide: The Impact of Race, Relationship to Victim, and Prior Physical Abuse*, <http://www.scirp.org/journal/PaperInformation.aspx?paperID=78345>; Burke, *Rational Actors, Self-Defense, and Duress: Making Sense, not Syndromes, Out of the Battered Woman*, 81 N.C.L. Rev. 211 (2002), http://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1105&context=faculty_scholarship;

criminal justice system fails to protect women as complainants. The antiquated Penal Code protects against insults to women's modesty (PC SS 509 & 354), but lacks specific prohibitions and punishments for domestic violence. Indeed attempts to remedy that have failed in Parliament. The Rape statute excludes spousal rape, except if the victim is under 13 (PC Sec. 375). Under the Evidence Act, a woman's previous conduct and sexual character may be admissible as evidence.

Woman must often seek "permission" of their local ward administrator to file a complaint. Complaints are often diverted into administrative or customary mechanisms that are not governed by rule of law principles or notions of gender equality. There is no provision for a woman (or any other person) to receiving a restraining order against a violent relative, boyfriend, intimate partner or spouse.

Attorneys Must Work for Gender Equality in Criminal Justice

In a recent survey assessment of women's access to justice made specific recommendations that should be pursued by criminal defense attorneys:

Work with men and women court clerks, attorneys, law officers, advocates, police officers, relevant medical personnel, civil servants and judges at each tier of the judiciary to increase gender sensitivity and accurately define their roles in improving women's access to justice and preventing violence against women and girls.

Introduce or continue to improve secure conditions for women in courtrooms, detention centres, police transport vehicles, jail cells and prisons.²⁵

Attorneys must work to improve the conditions for individual female clients and for women as a class so that they can fully exercise their constitutional right to a defense. They should consider collaborating with programs like REAct (Rights- Evidence-Action): a monitoring and response system, promoted by the International HIV/AIDS Alliance in Myanmar to defend sex workers' rights. The REAct system provides support for young sex workers who have been arrested as well as collecting data and evidence to inform advocacy. See Resources below.

The Relevant Law

Constitution:

- Constitution Articles 237 and 348 guarantee legal equality of all "citizens" and prohibit discrimination on the basis of sex. The limitation to "citizens" may be problematic not just for those denied citizenship but also to those who often live in rural areas and cannot easily travel to cities to acquire the formal documentation needed to prove their citizenship, or who are distant from their place of birth.
- Constitution Article 351 grants "equal rights" specifically to "mothers, children, and expectant women," thereby leaving out women who are not captured in those categories.
- Article 350 guarantees that women are entitled to the "same rights and salaries" as men in civil service posts but Article 352 goes on to say,

²⁵ Women's Access to Justice in the Plural Legal System of Myanmar (2016 Justice Base), p 90-91.

“However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only.”

Statutes

- Law Amending Suppression of Prostitution Act, 1949, § 2(a).
- The Ordinance on the Prevention of Suppression of Prostitution, 2003.
- PC Sec. 312 Whoever voluntarily causes a woman with a child to miscarry shall, if such miscarriage be not caused in good faith for the purposes of saving the life of the woman, be punished with imprisonment of up to three years.”
- Monogamy Law, Religious Conversion Law, Myanmar Buddhist Women’s Special Marriage Law (Interfaith Marriage Law) and Population Control Law.
- PC Sec. 377 see LGBT Clients Section
- Rangoon Police Act (1899) states that a person who is “found between sunset and sunrise, within the precincts of any dwelling house or other building whatsoever ... without being able satisfactorily to account for his presence therein ... may be taken into custody by any police officer without a warrant, and shall be liable for imprisonment for up to three months.”[4](#)

Modesty Laws: PC SS. 352, 354, 509

Special Procedural Protections

- India Act 9, 1894, Section 46(12). Prohibits handcuffing of women in public

Global Standard

- CEDAW Article 5 the state must “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices,
- CEDAW Article 15(1). States must grant “women equality with men before the law,”
- CEDAW Article 2(c). states must “establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.”

Resources:

Gender Equality Network
6/6A No. 48 New University Avenue
Bahan Township
Yangon, Myanmar
Phone: +95 9421144394
Genmyanmar.org

Sex Worker in Myanmar Network (SWIM)
swimnetwork2011@gmail.com, thwn428@gmail
09-43200489

Legal Clinic Myanmar (often represents women complainants)
Daw Hla Hla Yee

Myitta Shin
No-561, Themin Bayan Street, Myaing Thar ward, Mawlamyaing Township, Mon
State, Myanmar.
+95-9-09255928847

International HIV/Alliance in Myanmar
No.24, 2nd Street, Hlaing Yadanamon Housing. Hlaing Township, Yangon Division,
Myanmar.
+95-1-537 342, 500 619, 525715.

Assessment and Reports

Justice Base, *Women's Access to Justice in the Plural Legal System of Myanmar*
2016

Myanmar Now, "Rape victims struggle to find justice in Myanmar," 17/02/2016
<http://www.myanmar-now.org/news/i/?id=aa0320cc-cb14-4750-ad79-25d085739969>

International HIV/AIDS Alliance, *Upholding the rights of young women who sell sex
in Myanmar*, 2016

LGBT CLIENTS

Long-standing colonial era laws have been used to harass and arrest lesbian, gay, bisexual and transgender people in Myanmar. Justice Centre attorneys need to be educated as to the needs of those individuals and be aware of the impact of the criminal justice system on their lives. Attorneys should be aware that many individuals are vulnerable to extortion or violence because of their fear of being revealed and shamed to family and friends. Attorneys need to be client-centered and determine the specific goals of clients before making legal and factual arguments. In addition they should coordinate with existing LGBT civil society organizations and attorney groups prior to initiating broad focused litigation.

Definitions:

- Sexual orientation – the gender to which one is sexually attracted.
- LGBT – lesbian, gay, bisexual, transgender. The acronym used to describe individuals who either have same sex attraction or who express their gender differently than that assigned at birth
- MSM – men who have sex with men
- Gay – used to describe men who are sexually and emotionally attracted to other men. Can also be applied to women who are sexually and emotionally attracted to women (see lesbian).
- Lesbian – used to describe women who are sexually and emotionally attracted to other women.
- Bisexual – men or women who are sexually and emotionally attracted to both men and women
- Transgender – this is a term that covers all people who depart from the biological gender (male or female) they had at birth. This includes people who seek surgical alterations to become their “true”gender, cross-dressers who adopt the clothing of the “other”gender, as well as drag kings or drag queens, etc.

Myanmar terms (mostly relevant to transgender people):

- Apwint – biological men who appear and act like women.
- Apône – men who present as men, but who may intend in the future to present as women.
- Na pone tha ka pan dote - people with characteristics of both genders or have no clear gender distinctions.
- Thu nge – men who present as men and are willing to be the active sexual partners of apwint and apône.

The Laws used against LGBT individuals:

- PC Sec. 377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- Rangoon Police Act 4/1899 Section 30(d) “any person found within the precincts of any dwelling-house or other building whatsoever [or in a back-drainage space] or on board any vessel, without being able to satisfactorily to account for his presence therein; may be taken into

custody by any police officer without a warrant, and shall be liable to imprisonment which may extend to three months.”

- Police Act 1945, Section 35. “(c) any person found between sunset and sunrise having his face covered or otherwise disguised, who is unable to give a satisfactory account himself; (d) any person found within the precincts of any dwelling-house other building whatsoever, or in any back-drainage space, on board any vessel, without being able satisfactorily to account for his presence therein...may be taken into custody by any police-officer without a warrant, and shall be punishable on conviction with imprisonment for a term which may extend to three months.”
- PC Sec. 269 “Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”
- PC SS. 290 and 291 committing a public nuisance;
- PC Sec. 292 obscene materials;
- PC Sec. 496 “Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven-years, and shall also be liable to fine.”
- Emergency Provisions Act (section 5j) bans any activity that may “affect the morality” of an individual or society in a negative way.

Police may arrest people, particularly transgender people, and initially charge PC Sec. 377. It can also be used against “masculine” gay men who are vulnerable to extortion because they do not want their sexual orientation to be revealed. LGBT individuals particularly vulnerable to arbitrary arrests and extortion by police as they may be unwilling to publicly fight embarrassing charges. Although police may not actively enforce laws criminalizing same sex relations they may arbitrarily enforce laws regarding curfew, assembly and indecent behavior. Many of these charges are cognizable, allowing an arrest without a warrant. CrPC Sec. 54

Preparing a defense in these cases may be difficult because the initial charge is one thing, but then it is changed into something very different at trial. Also some of these cases are summons cases that necessarily go to trial quickly. Although police may initially charge PC Sec. 377, attorneys report these cases rarely go to trial as such due to the difficulty of proving up the allegations, as witness should be necessary; confessions are arguably not sufficient absent some other evidence.

The provisions of the Rangoon Police Act and the 1945 Police Act are vague and allow abuse by the police. A recent report by Colors Rainbow reports that these provisions give a police the right to detain a person if that person is found between sunset and sunrise in any backside alleyway but cannot give satisfactory reasons for their presence there. However, the police are taking LGBT individuals into custody without reason whenever they are spotted on roads, shops and public places. In arresting the LGBTs, the police act outside the authority of the law. They suggest that

public education with the police on the purposes of the law should reduce illegal arrests.

There is a coalition of CSOs and attorneys that are considering challenges to the use of these colonial laws against LGBT individuals. Possible grounds include public Interest Litigation challenge, arguing violations of the right to equality (Constitution Art. 347), right to non-discrimination (Constitution Art. 348) and the right to privacy (Constitution Art. 357). As noted above the laws may be challenged as being too vague.

Resources:

- Kings N Queens LGBT Group (MyJustice Funded)
+95 9 42001 0409
lgbt.kingsnqueens@gmail.com
- Colors Rainbow Myanmar
Room. A1 to A5, No.388/389, 3rd Floor, Sin Min Tower,
Corner of Sin Min Street and Kyee Myindaing Kanner Road,
Ahlone Township, Yangon
Email: colorsrainbow.crb@gmail.com
Colorsrainbow.com
- Strategies and Guidelines to Promote the Rights of LGBTs in Myanmar (Colors Rainbow). Contains a list of organizations and attorneys prepared to provide legal assistance to LGBT individuals.

MENTALLY ILL CLIENTS

Defense attorneys will represent clients who are emotionally disturbed. This emotional disturbance is often due to mental illness. This section discusses the ways to detect mental illnesses, the types of mental illnesses, and techniques for working with mentally ill clients. It also discusses how mental illness can impact the legal issues of mental incapacity to be tried and the defense of insanity. Many of the scientific references are the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), published by the American Psychiatric Association.

Not all emotional disturbed or intellectually impaired clients have mental illness. Many other factors can contribute to a person being emotionally disturbed, including substance abuse, medical conditions, and situational stress. Attorneys should also consider other disorders that are not mental illness. These can include neurocognitive disorders such as dementia, intellectual disability (mental retardation), developmental disorders.

Sometimes mental illness can be caused by a medical condition or the taking of drugs such as steroids or methamphetamines. What appears to be a mental disorder may also just be a person under stress or a personality trait. Some clients may also be faking a disorder to avoid responsibility for their actions.

Mental illness is an condition of having a mental disease or a mental condition which is exhibited by a disturbance in behavior, feeling, thinking or judgment to such an extent that the person requires care, treatment or rehabilitation. Someone with mental illness may have problems with mood and emotional expression, unrealistic thoughts, bizarre or inappropriate behavior or sense perception. These symptoms may be obvious, subtle, or in remission (not apparent at the time of an interaction). These symptoms may be chronic (ever-present), acute (severe in the moment), or intermittent. Attorneys must be alert to the possibility that mental illness and substance addiction may be both present in the same client. In the United States 25% to 50% of all accused with mental illness have a substance abuse, with than number being up to 75% for mentally ill accused in jail.

Manifestations of Emotional Disturbance and Mental Illness²⁶

- Verbal Evidence
 - Unusual Speech Patterns: extremely slow, extremely fast, word repetition, nonsensical speech
 - Extreme and Inappropriate Hostility or Excitement: talking loudly; unreasonably hostile, argumentative; threatening harm
 - Content and Quality of the thoughts: disorganized thought process (illogical, tangential, jumbled up words); disordered thought content (paranoid, delusions, obsessions)
- Behavioral Evidence
 - Physical Appearance: disheveled, poor hygiene; inappropriate to environment; bizarre clothing or make up

²⁶ Steven Ciric, M.D. “Identifying Mental Illness in the Courtroom,” Presentation October 24, 2014.

- Body Movements: strange posture or mannerisms; lethargic; pacing, agitation; repetitious, ritualistic movements
- Appearance of responding to voices
- Confusion or lack of awareness of surroundings
- Lack of emotional response
- Causing injury to self
- Environmental clues: odd decorations, personal waste, trash, hoarding

Types of Mental Illness

- Psychosis: an impairment that grossly interferes with the capacity to meet the ordinary demands of life. DSM-5. Someone suffering from this makes an incorrect evaluation of the accuracy of perceptions and thoughts. That person makes incorrect inferences about reality, even in the face of contradictory evidence.
- Delusions: has firm, fixed, false belief that is experienced as a completely valid reality. In responding to delusions, the professional should not argue or endorse the belief, but instead should seek to create an alliance with the client. Example: “That must be very hard. We have a problem here. Let’s think together how to solve it. What can we do?”
- Hallucinations: are sensory perceptions “with the clarity and impact of a true perception” but that occur without external stimulus. DSM-5. These can be auditory (most common), visual, tactile, olfactory, and gustatory (taste). Because they are real to the person, the best response is to inquire what they are experiencing rather than if they are hearing something “that isn’t there.” A psychiatrist would ask if the voices are ordering the person to do something, such as harm to self or to others.
- Schizophrenia: is a condition that interferes with the ability to think clearly, manage emotions, make decisions and relate to others. About 1% of the population suffers from this. Life expectancy is greatly reduced, as 10% of sufferers commit suicide. This can often appear in late adolescence or early adulthood.
- Mood Disorders are a pervasive and sustained emotion that colors the perception of the world. DSM-5. They include:
 - Major depression: this is beyond sadness, loss or a passing mood status. It is persistent and it significantly interferes with thoughts, behavior, activity and physical health. It may occur at any age, although peak incidence is in the 20s.
 - Bipolar disorder: shifts in mood, energy and functioning. It is characterized by episodes of mania and depression that can last from days to months. The age of onset is often late adolescence or early adulthood.
 - Anxiety: the apprehensive anticipation of future danger or misfortune accompanies by a feeling of unhappiness. The focus of the danger can be internal or external. DSM-5.
 - Post-Traumatic Stress Disorder (PTSD): this can impact a person greater than 6 years old who is exposed to actual or threatened death, serious injury or sexual violence. This includes directly experiencing, witnesses or learning of it, or repeated exposure (such as first responders – police, fire fighters, aid workers, etc.). Trauma is re-experienced through thoughts, nightmares, flash-backs. People can

respond by both “fight” (combative behavior) or “flight” (avoidance).
DSM-5

- Personality Disorders are enduring patterns or inner experiences and behaviors that deviate markedly from the expectations of an individual’s culture, affecting relationships, world-view, emotional expression and impulse control.
 - Antisocial Personality Disorder: violates the rights of others through deceit, manipulation, otherwise charming behavior, rationalizing bad behavior, lack of genuine remorse.
 - Borderline Personality Disorder: unstable self-image; unstable emotional expression; unstable relationships; suicidal threats; inappropriate rage; impulsivity.
 - Paranoid Personality Disorder: suspects others are exploiting, harming or deceiving; reads hidden demeaning or threatening meaning into benign remarks or events; perceives attacks on character; recurrent suspicions., such as about fidelity of spouse.
- Substance Abuse Disorder

Treatments for mental illness can include psychotherapy, rehabilitation, and psychiatric medications. These manage symptoms – rarely are they a cure. Often times individuals on medication may stop taking them because of side effects, they feel better, they like the symptoms of the mental illness (such as the “high” associated with mania), they lack the mean money to pay for the medication, or they are ashamed.

An attorney may wish to seek a metal status exam or a psychiatric assessment to better understand the client. A mental status exam will review general appearance, speech, thought process and content, mood and affect, perceptual disturbances, cognition, insight, judgment and impulse control. A full psychiatric assessment should include an interview for background history, including social, medical, psychiatric, and substance abuse. The interviewer will both make observations and ask questions to uncover less obvious conditions. This should also include a review of collateral information (from others) and records.

Emotional disturbance and mental illness in the criminal justice process may present in different ways. If it is overt, there may be a need for immediate treatment, or to raise competency issues. If it is less obvious, the attorney may need to rely upon personal history, family reports, or medical examinations. Some accused may behave and appear perfectly fine but still have a mental illness.

Guidelines for working with clients with mental illness²⁷

- Chose a quiet place for conversation to avoid distractions
- Encourage communication through open ended questions
- Use short, clear statements
- Avoid jokes or sarcasm
- Show respect, do not talk down to clients

²⁷ Representing Clients With Mental Illness: A Resource for Louisiana Defenders © 2011 by Louisiana Appleseed and Louisiana Justice Coalition

- Keep calm, especially when clients become agitated
- A trusted friend may help the client relax. However this may compromise confidentiality.
- Don't argue with clients
- Reinforce communications with written materials

Practice Note- If it is necessary to have a friend or family member present in order to obtain the trust and cooperation of the client, have the friend or family member sign a confidentiality agreement. It is not known exactly what legal protections this will or will not provide but it at least provides you with the argument that the individual is now part of the defense team and must abide by the confidentiality agreement. Be sure and explain the agreement to the friend or witness and ensure that they understand their responsibility to maintain confidentiality. A copy of a sample agreement can be found in Appendix 2.

Mentally Ill Clients in Detention

Mentally ill clients who are in detention are especially vulnerable to abuse. They may have difficulty communicating their needs, or may respond inappropriately to the demands of jailers. Unfortunately Myanmar jails and prisons rarely provide necessary psychiatric health care. Attorneys should work to improve conditions so that Myanmar facilities meet the minimum standards set forth over 60 years ago in the United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955.³¹:

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.

Incompetency to Stand Trial

Some mentally ill clients may be so impaired that they are not competent to face criminal charges. This situation is dealt with Chapter XXXIV of the Criminal Procedure Code. The presiding judge has the power to order an evaluation of the accused. The primary sections are:

- If a Judge has a reason to believe the accused is of unsound mind, she can order an evaluation of the accused, and discharge the case. CrPC Sec. 464
- The accused can be released on bail or “detained in safe custody in such place and manner as he or it may think fit”. CrPC Sec. 466
- The accused can be brought back to court for re-evaluations. CrPC Sec. 467

Insanity or “Unsoundness of Mind” as a Legal Defense

A related concern is whether an accused, while of sound mind at the time of the inquiry and trial, “he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law.” CrPC Sec. 469.

This is a defense described in Penal Code Section 84:

- “Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to the law.”

The accused’s attorney must show that the accused suffered from an unsound mind at time of offense that destroyed the accused’s cognitive capacity to know the nature of the act performed or that such conduct was whether wrong or contrary to the law. Since the law presumes that people are sane, the burden of proving the defense is on the accused. See also Evidence Act Section 105, burden of proving a defense.

Unsoundness of the Mind can Lead to Indefinite detention

The defense of “unsoundness of mind” is a defense to any charge. However, the successful defense leads to a qualified acquittal that the accused is not guilty because of unsound mind. Although people who successfully plead the defense of unsoundness of mind are free from blame, they may be a threat to themselves or others. The usual disposition is that accused is subject to compulsory detention to special therapeutic regime with social protection as underlying priority – this can be for indefinite time.

- Lunacy Act Chapter XXVII, para 844-859.
- CrPC Sec. 471.

Thus for some accused a better defense may be to use the same circumstances to argue that the accused lacked the requisite intent and so should be given a full acquittal.

Attorneys Should Consider other Defenses

Imperfect defense of unsoundness of the mind may nonetheless provide basis to show that prosecution has failed to prove the intent ingredient of the charge. See *Dahyabhai Chhaganbhai Thakker v. State of Gujarat*, 1965 3 SCR 194 at 198.

If unsoundness of the mind was fleeting and has not been internalized by the accused, the accused does not present an ongoing threat, and thus should be deserving of an unqualified acquittal. This is related to a defense that the physical act was “involuntary” or not “intentional.”

Ingredients of the Defense

1. At the time of the offense, the accused was suffering from an unsoundness of the mind

2. This negated the accused's capacity to know...
3. EITHER the nature of the act OR that what the accused was doing was either wrong or contrary to the law.

At the Time of the Offense

The incapacity must exist at the time of offense, not only prior or after the offense. *The Union of Burma v U Hla Khine (1958) BLR 143, at 148*

Suffering from Unsoundness of the Mind

Unsoundness of mind is not defined in penal code. It must be long enough and severe enough to impact cognitive abilities. There is a distinction between temporary impact of alcohol or drug use, which are covered under the defense of intoxication, and situations where chronic alcohol or drug use has permanently destroyed capacity to understand.

- Can include epilepsy. *(Nga) Maung Ant Bwe v. Emperor AIR 1937 Rang 99; Sinnasamy v. Public Prosecutor (1956) MLJ 36*
- The court rejected the unsoundness of mind defense where the accused was drunk, walked under hot sun, and was hit on head by B. Accused chased B, but attacked uninvolved women instead. The Medical expert opined that the accused was not fully responsible because of above. But the Court rejected defense under s 84 because the causes were external to him and not an internal and lasting manifestation. *Maung Gyi v. King Emperor 7 LBR 13.*

Negates the Capacity to Know

- The accused's unsoundness of the mind must lead to the specific result of an incapacity to know. *(Nga) Maung Kan Tha v. Emperor AIR 1933 Rang 144.*
- Bizarre behavior alone (such as cutting off a finger) without an additional showing of incapacity to know is not enough not enough. *Ko Thet Oo v. the Union of Myanmar (2008) MLR 107.*
- Lack of motive is not always sufficient proof (although it may be relevant) *(Nga) Maung San Pe v. Emperor AIR 1937 Rang 33 at 33*, cited with approval in *The Union of Burma v. U Hla Khine (1958) BLR 143 at 146.*
- But sometimes lack of motive is enough. Accused was walking with mother in law and stabbed her without motive, showed was incapable of knowing nature of act. *The Union of Burma v. Maung Than Chaung [1965 BLR 132]*

Special situation are volitional Disorders. Sometimes unsoundness of the mind impacts capacity to control conduct, rather than their perception of their conduct.

- Soldier who slept walked, was counseled on this, but one night while sleeping grabbed and fired gun. *Maung Aye Kyaing v the Union of Burma (1965) BLR 9.*

The Nature of the Act

Having an unsound mind is not enough – it must also be of kind and severity which destroyed capacity to know (1) the nature of act or (2) that it was wrong or contrary to the law.

“Nature of act” is not defined in section 84.

- May be complete lack of understanding of what one is doing, such as cutting someone’s throat but thinking one was slicing a loaf of bread, or shooting a person but thinking one was shooting a demon. *Maung Aye Khaing v The Union of Burma (1965) BLR 9*.
- Can also be a more superficial incapacity to understand the harmful consequences of the act. Accused may know he is attacking a person, but may not understand the severity or consequences of the act. The cognitive incapacity is partial. This would also undermine a showing of the requisite intent ingredient of a crime. This is a section 84 defense because someone with this incapacity would not be deterred by a threatened punishment.

Wrong or contrary to the law

Defense attorneys most often chose to argue that the accused does not understand what she or he is doing is wrong or contrary to the law. Accused admits that she or he did have capacity to understand what he or she was doing (nature of act) but was not able to comprehend the wrongness or illegality of act. This will be very dependent on inferences from the behavior of the accused at the time of the act.

- Accused stabbing victim with scissors while screaming to those nearby “this is none of your business. Do not interrupt and do not come near.” Court inferred that accused knew nature of act, and knew was wrong. *Ko Thet Oo v. The Union of Myanmar (2008) MLR 107*
- Appeal from conviction of attempted murder of a monk (phongyi). Appellant claimed he had done so because monk was holding his (nonexistent) sisters in his monastery. Court found the appellant had successful s 84 defense because although he knew he was trying to kill the monk, he did it thinking it was to protect family this he did not know was contrary to the law. *Nga Maung Pyan v. King Emperor* 4 BLT 267.

Wrong versus contrary to the law.

Penal code countries have distinguished the meaning of this phrase, with wrong meaning “morally wrong” versus legal wrongness (contrary to the law). A man may kill child under delusion he is sending child to heaven (not knowing it is morally wrong). Or he may kill someone thinking he is protecting himself (not knowing it is legally wrong). Failure to understand moral wrongness would include spirit possessions. Canadian courts have described moral wrongness as violating the ordinary standards of reasonable members of society.

- *Queen-Empress v. Kader Nasyer Shah (1896) ILR 23 Cal 604*
- *Sa Pont (alias) Paw Lu v the Union of Burma (1950) BLR 352*.

Type of Proof

Expert Proof Often Required

The defense must differentiate between “bad” (but sane) people and “insane” people who need treatment. So proof often relies on medical records and clinical experts. But ultimate decision is for trier of fact (the judge). *See Bharat Kumar v State 2004 Cri LJ 1958; Rajendra v. State 2004 Cri LJ 2458.*

International Convention

Myanmar is a signatory to the Convention on the Rights of Persons with Disabilities.

Convention on the Rights of Persons with Disabilities (CRPD) art. 1 ... Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Art. 13 *Access to justice:*

(1) States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

(2) In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Art. 14 *Liberty and security of person:*

(1) States Parties shall ensure that persons with disabilities, on an equal basis with others: (a) Enjoy the right to liberty and security of person; (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

(2) States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.

Art. 15 *Freedom from torture or cruel, inhuman or degrading treatment or punishment:*

(1) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

(2) States Parties shall take all effective legislative, administrative, judicial or other measures to prevent

persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

DRUG CRIMES AND DRUG USERS

Defense attorneys need to be prepared to represent individuals accused of drug possession and drug sale, as well as clients charged with other crimes, but who also abuse drugs. Principles 10 and 11 of the **UN Principles on Access to Legal Aid in Criminal Justice Systems** designate drug users as a vulnerable population needing free criminal defense services.

Myanmar is the world's second-biggest opium producer after Afghanistan. Methamphetamine production here is increasing. Currently, no official data are available on the number of drug users in Myanmar, although the number of people (males only) estimated to be injecting drugs is approximately 83,000. Based on anecdotal reports, heroin and opium remain the primary drugs of use, followed by synthetic drugs, the use of which is perceived to be increasing.²⁸ Heroin in Kachin State can cost as little as 1,000 kyat (US\$1) per dose, making it more popular than traditional opium-smoking. Abused substances produce some form of intoxication that alters judgment, perception, attention, or physical control. All this can lead to behavior that leads to arrest or vulnerability to police abuse.

The small numbers of treatment facilities are hampering efforts to reduce use.²⁹ The Ministry of Health and Sports operates 46 methadone clinics throughout the country that have about 10,000 registered patients. In addition to the rehabilitation centre in Pyay, the Ministry of Social Welfare, Relief and Resettlement has a total of 12 centres, in Yangon, Mandalay and Tanintharyi regions and Kachin, Kayin and Shan states, which treat registered drug addicts.

Existing laws have resulted in wide-spread arrests and incarceration of those accused of drug possessions and use. 49,072 people were arrested on drug related charges between 2011-16, with an increase of 4,403 arrests from 2015 to 2016.³⁰ In 2015 alone, drug-related cases were brought against 9,188 suspects, according to official figures. In 2014, 70% of Myanmar's 60,000 prisoners are there for drug-related crimes.³¹ Drug users often enter a cycle of arrest - treatment - re-arrest, and many drug users are being imprisoned for substantial periods.

Drug cases in Myanmar can pose special challenges to defense attorneys. As discussed below, normal procedural protections governing arrest and searches for not exist. Not only police but also normal citizens are authorized to seize suspected drug users and their possessions. Drug possession is often confirmed through forced mandatory blood testing, making the crime in some ways a strict liability crime. The failure to seek treatment is itself a crime. Also many communities and families, facing the social stigma and petty crimes associated with drug users, themselves turn on drug users, further isolating them and reducing chances for rehabilitation.

²⁸ UNODC, "UNODC to conduct first ever nationwide survey on drug use in Myanmar," 16 February 2016. Also Tim McLaughlin, Myanmar Times, November 8, 2013

²⁹ IRIN, "Drug control efforts go local in Myanmar's Kachin State," 14 August 2014

³⁰ Tin Htet Paing, "Treating Burma's Drug Problem," the Irrawaddy, 29 March 2017

³¹ Transnational, Institute, Towards A Healthier Legal Environment A Review Of Myanmar's Drug Laws, February 2015

Relevant Myanmar Laws

Myanmar's existing laws prohibits anyone from planting poppy, coca, cannabis or any kind of plant from which drugs are derivable or extractable. It also criminalizes possession and use of any drug that the ministry declares to be a narcotic or psychotropic substance as well as substances containing such drugs. Colonial laws prohibit the possession of hypodermic needles. Drug users are required to undergo treatment at government-recognized medical centers; failure to do so can mean three to five years in jail. Those found guilty of cultivating illegal plants or possession, transportation, or distribution of illicit drugs can be imprisoned from five to 10 years. If the defendant is found guilty of any of these offenses along with the intent to sell the drugs, the sentence is a minimum of 10 years. Those convicted of manufacturing or importing drugs can be sentenced from 15 years and even to death.

Three laws and regulations govern the prosecution of drug-related crimes in Myanmar: the 1917 Burma Excise Act; 1993 Narcotic Drugs and Psychotropic Substances Law; and the 1995 Rules relating to Narcotic Drugs and Psychotropic Substances.

The 1917 Burma Excise Act

- Prohibits the use, making, possession, sale or distribution of hypodermic needles or other syringes suitable for injection without a license. Section 13.
- Exception for "a person who possesses or uses any such syringe or apparatus on the prescription of a medical practitioner." Section 13(c).
- Punishment is 6 months in jail or "1000 rupees" fine or both. Section 33.
- Police routinely search suspected users and confiscate needles.
- Seized items are sent to analysis for illicit drugs, leading to prosecutions for 1993 Law.
- In 2001, the Myanmar Police Force Headquarters issued a directive not to arrest drug users for possession of needles and syringes. This directive was meant to ensure drug users to get better access to harm reduction services and change the enforcement practices at the level of township police, but currently seems to be largely ignored by local authorities.

Law amending the 1993 Narcotic Drugs and Psychotropic Substances Law

- Important amendments reducing punishments against drug users.
- Section 19 repeals penalties under former Section 15 "Former offences and penalties under Chapter 8, Section 15 shall be repealed."
- See discussion below.

The 1993 Narcotic Drugs and Psychotropic Substances Law

- Covers narcotic drugs. Section 2(a)
 - "Poppy plant, coca plant, cannabis plant or any kind of plant which the Ministry of Health has, by notification declared to be a narcotic drug."

- Drugs, which the Ministry of Health has by notification, declared to be a narcotic drug, and substances containing any type of such drug
- Covers psychotropic substances. Section 2(b)
 - Drugs which the Ministry of Health has, by notification, declared to be a psychotropic substance.
 - There are no clear standards by which the Ministry makes these determinations or issues notifications.
- Creates requirement that drug users register for treatment
 - “A drug user shall register at the place prescribed by the Ministry of Health or at a medical centre recognized by the Government for this purpose, to take medical treatment”. Section 9(a)
 - A registered drug user undergoing medical treatment shall abide by the directives issued by the Ministry of Health. Section 9(b)
 - “The Court shall order the drug user to be sent to a relevant medical center or a rehabilitation center for a term of 6 months if he fails to follow the conditions contained in his parole or if he did not take a parole.” Section 9 (g)
- Pre-amendment law imposed long prison sentences for failure to register or adhere to directions
 - “A drug user who fails to register at the place prescribed by the Ministry of Health at a medical center recognized by the Government for this purpose or who fails to abide by the directives issued by the Ministry of Health for medical treatment shall be punished with imprisonment for a term which may extend from a minimum of 3 years to a maximum of 5 years.” Section 15
- Note new amendment to law repeals Section 15:
 - “A drug user who is convicted of violating the directives and conditions issued by rehabilitation and medical center operating for the purpose of section 9 (g) of this law, shall be imposed with punishment to perform, in person by himself wearing a uniform which does not amount to a discriminatory manner, social municipal activities such as gardening, cleaning, in the process of building or repairing bridges and roads in cooperation with other social working groups, in the presence of a supervisor appointed in this behalf, working 2 hours per day for no payment, which may extend from a minimum of 240 hours to a maximum of 360 hours in total.”
 - Possible defense to old law
 - New amendments should be retroactive, reflecting new understanding of drug abuse
- Creates Special Rules on Search and Seizure. Section 13
 - These are outlined in 1995 rules. Essentially set aside protections in Criminal Procedure Code.
- Sentencing is Severe.
 - Simple possession or cultivation of narcotic drugs subject to sentences of 5-10 years. Section 16.
 - Opium cultivation linked to poverty
 - Opium traditionally used as painkiller

- Punishment of 5 years for cannabis plant contradicts possible license under 1917 Excise Act 11, and the 6 month sentence for violating that act
 - Possessing for purpose of sale or offering for sale results in 10 year to life sentence. Section 17.
 - Production or importation of narcotic drugs or psychotropic substances subject to at least 15 years in prison or the death penalty. Section 20.
 - Disproportionate to sentences for rape, violent robbery or murder
 - Inconsistent with ICCPR
- Weights set to trigger presumption that possession is for purposes of sale are low. With presumption there is apparently no need to otherwise prove intent to sell.
 - “If a person is found with possession of 3 grams of heroin, 3 grams of opium, or twenty- five grams of cannabis, he or she should be sentenced to imprisonment considering that the possession is for the purpose of sale.” Section 26
 - Includes people who may be possessing for person use
 - Overlooks other ways of distinguishing use and sale. Attorneys should consider introducing evidence of paraphernalia for use, absence of additional packaging for sale, or money consistent with sales.
 - Does not distinguish between low-level and higher-level distributors.
- Potential exceptions for those offering treatment with authorization of a ministry or registered medical practitioner. Section 28
 - Attorneys should consider presenting this as an affirmative defense when defending harm-reduction workers

The 1995 Rules relating to Narcotic Drugs and Psychotropic Substances:

These rules give more specific details on how the 1993 law should be implemented, especially in relation to arrest, search and seizure of drugs as well as registration and treatment of drug users.

- All drug users must register:
 - The drug user shall, if he has attained the age of 18 years appear personally or if he has not attained the age of 18 years, appear together with his parent or guardian at the drug user registration centre near to him and register thereat. Rule 4.
- Drug Users must report changes in residence. Rule 6.
- Medical Providers are mandatory reporters of drug users who are not registered. Rule 13
- Treatment at a non-authorized treatment facility is illegal. Rule 13
- Unauthorized treatment providers are in violation of the law. Rule 13
- List of organizations that have right to use and possess drugs. Rule 48

The Rules create Special Rules on search and seizures:

Anyone can seize drug users and deliver to the police. This undermines procedural protections guaranteed by the Code of Criminal Procedure. Raises the danger of the “planting of drugs” and breaks in chain of custody of alleged illicit substances.

- Whoever sees an offence being committed in his presence at a public place, may arrest the offender and seize the exhibits without a search warrant, and after such arrest shall hand over systematically to any member of the Myanmar Police Force without delay. If there is no member of the Myanmar Police Force, such offender will be handed over to the nearest police station systematically and immediately together with the exhibits. Rule 20.

Attorneys should also be aware of two relevant nation-wide goals:

- 15-year Drug Eradication Plan (1999-2014) (extended to 2019). This sets the unreachable goal of eradicating all drug use by 2019. It encourages a punitive, policing strategy rather than a harm-reduction, public health strategy.
- National Strategic Plan on HIV/AIDS (2011-2015). This has the goal of reducing transmission of HIV through unsafe sexual contacts and IDVU and increasing access to health services by people in prisons and rehabilitation units.

Dealing with Experts and Scientific Tests

Drug cases in Myanmar are often dealt with as strict liability crimes, where the prosecution focuses on evidence showing possession of an illegal substance without proving intent to possess. This possession can be on the accused’s person or in the accused control, such as in a vehicle or a house. Possession is also proven by taking blood from the accused and subjecting it to scientific tests to show the presence of the illegal substance.

The procedure for sending items for analysis and returning reports is covered in Judicial Department "G" Circular No.15 of 1930 as subsequently amended by "G" Circular No.60 of 1930. This is reproduced in Section 628 of the Courts Manual.

Working with a Client with Drug Addictions

When a client is addicted to drugs, including alcohol, the attorney is faced with a number of challenges. The client may be unable to realistically participate in communication necessary for a productive attorney-client relationship. The addiction may also be related to mental health problems. An attorney who represents clients with addiction problems must have a general understanding of addiction, its causes, and its proper treatment.

Obviously, each client presents a different set of challenges. Gender and cultural distinctions are vital. Understanding what is important to the client is critical to understanding the options that are available to him. There is a difference between a teenager who is smoking marijuana and a widow abusing alcohol to overcome grief about the death of her husband. Ultimately, it is critical to abandon the one-size-fits-

all approach to treatment and to understand that treatment, however defined, must be tailored to the individual.³²

Addiction is a chronic disease characterized by drug seeking and use that is compulsive, or difficult to control, despite harmful consequences. The first decision to take drugs is voluntary for most people, but repeated drug use can lead to brain changes that challenge an addicted person's self-control and interfere with their ability to resist intense urges to take drugs. Most drugs affect the brain's "reward circuit" by flooding it with the chemical messenger dopamine. Long-term use also causes changes in other brain chemical systems and circuits as well, affecting functions that include:

- learning
- judgment
- decision-making
- stress
- memory
- behavior

Despite being aware of these harmful outcomes, many people who use drugs continue to take them, which is the nature of addiction. Many substances, such as alcohol, tranquilizers, opiates, and stimulants, over time also can produce a phenomenon known as tolerance, where you must use a larger amount of the drug to produce the same level of intoxication. As with most other chronic diseases, such as diabetes, asthma, or heart disease, treatment for drug addiction generally isn't a cure. However, addiction is treatable and can be successfully managed. People who are recovering from an addiction will be at risk for relapse for years and possibly for their whole lives.³³

Commonly Used Drugs

- **Alcohol** consumption can damage the brain and most body organs, including the heart, liver, and pancreas. It also causes deadly vehicle accidents. Areas of the brain that are especially vulnerable to alcohol-related damage are the cerebral cortex (largely responsible for our higher brain functions, including problem-solving and decision-making), the hippocampus (important for memory and learning), and the cerebellum (important for movement coordination).
- **Heroin** is a powerful opioid drug that produces euphoria and feelings of relaxation. It slows breathing and can increase the risk of serious infectious diseases, especially when taken intravenously. Regular heroin use changes the functioning of the brain, causing tolerance and dependence. Effects of heroin intoxication include drowsiness, pleasure, and slowed breathing. Withdrawal can be intense and can include vomiting, abdominal cramps, diarrhea, confusion, aches, and sweating.

³² Timothy David Edwards, "The Lawyer as Counselor Representing the Impaired Client, GPSolo Magazine - October/November 2004

³³ USA National Institute of Health, "Understanding Drug Use and Addiction,"

Revised August 2016. Found at

<https://www.drugabuse.gov/publications/drugfacts/understanding-drug-use-addiction>

- **Methamphetamine** (also known as yaba): is a powerful stimulant that increases alertness, decreases appetite, and gives a sensation of pleasure. The drug can be injected, snorted, smoked, or eaten. It shares many of the same toxic effects as cocaine –heart attacks, dangerously high blood pressure and stroke. Withdrawal often causes depression, abdominal cramps, and increased appetite. Other long-term effects include paranoia, hallucinations, weight loss, destruction of teeth,, and heart damage.
- **Ecstasy-** (often in tablets marked WY): is a form or derivative of amphetamine, and similar to it. Can be made in small laboratories and the purity of the drug will therefore vary significantly.
- **Cocaine** is a short-acting stimulant, which can lead users to “binge”—take the drug many times in a single session. Cocaine use can lead to severe medical consequences related to the heart and the respiratory, nervous, and digestive systems. Cocaine users can also experience severe paranoia, in which they lose touch with reality.

Law Reform is Necessary

In addition to their individual representation of clients, attorneys should consider engaging in law reform to better align Myanmar law and public health responses to international best practices. There are efforts to change Myanmar Drug Laws. Draft amendments published in March 2017 would exempt drug users who are first-time offenders from imprisonment, instead referring them for treatment at a government medical center. According to the draft, second time offenders would have to sign a letter of intent at a court to seek treatment and third time offenders would be sent to rehab centers for three to five months. Specific recommendations issued in 2014 are discussed below.

A UNODC Conference of major stakeholders made the following recommendations³⁴ in 2014 Conference:

1. Create a Legal Framework for Harm Reduction and Effective HIV Response: The amended Law should include harm reduction services and define a comprehensive package of harm reduction services, including: needle-syringe programs; opioid substitution therapy, availability of emergency management of suspected opioid overdose and outreach education as a legal and necessary intervention.

2. Removal of compulsory registration and treatment requirements

The compulsory registration requirements for drug users should be removed as it is a deterrent for people to access services. In addition, treatment and rehabilitation is most successful when voluntary and provided at the community level.

³⁴ UNODC, Executive summary of the report on recommendations for the amendments of the Myanmar 1993 Narcotic Drugs and Psychotropic Substances Law of Myanmar, December 2014

3. Decriminalize of possession of small quantities of drugs for personal use: Prison penalties should be removed for people who possess small quantities of drugs for personal use. The possession of trace amounts of drugs should be decriminalized so that users carrying used syringes with trace amounts are not subject to prosecution and imprisonment. The Drug Law should have a primary focus for punishment is on drug traffickers rather than drug users. Additionally, the amended Drug Law should remove the minimum 5-year sentence for other drug offences, such that only a maximum sentence is stipulated.

4. Alternative Sentencing and Judicial Authority

Law officers and courts should be empowered divert drug users to treatment services as an alternative to imprisonment or criminal prosecution. Courts should be allowed to suspend prison sentences on conditions that the person is of good behavior and/or commits to attend a treatment service. Importantly, the minimum sentence of 5 years and the option of death penalty must be repealed without condition.

Resources

Drug Policy Advocacy Group-Myanmar
Coordinator Dr (Daw) Nang Pann Ei Kham
coord.dpag@gmail.com

International HIV/Alliance in Myanmar
No.24, 2nd Street, Hlaing Yadanamon Housing.
Hlaing Township, Yangon Division, Myanmar.
+95-1-537 342, 500 619, 525715.

PART FOUR: SKILLS

SKILLS: CLIENT INTERVIEWING

The First Client Interview

The criminal defense attorney should meet with the client as soon as possible in order to gather preliminary information for building an effective defense. In the first interview, the attorney should inform the client of the legal procedures of his case and explain his role as the criminal defense attorney. The goal of the Justice Centres is to meet with clients before the 24 hour Remand Hearing. But the counsel should meet with the client within 48 hours after the client has been placed in custody.

Establishing the Attorney-Client Relationship

The initial interview is the most important meeting that the criminal defense attorney will have with the client. The first impression is lasting and is key in shaping the client's judgment of the attorney. Therefore, the attorney's primary objective in the initial interview is to establish an attorney-client relationship grounded on mutual confidence, trust and respect. See Counseling the Client Section.

Listen to the client's story

To be an effective interviewer and communicator, you must learn to use basic listening skills. Try to understand your client's goals and concerns. Tell your client that you are not there to judge the client but are, in fact, trying to get the client out of trouble using the most painless methods possible. Tell the client that any information the client shares about the alleged crime is confidential; however, inform the client that you cannot do anything illegal on the client's behalf. Let the client know that the client has control of the interview, for example:

1. Encourage the client to give a full narrative of what happened.
"Let's do this: why don't you tell me first why you think the police arrested you. I'll take a few notes and then ask you some questions. Then, we'll try to figure out what we can do to help you. Does that work for you?"
2. Listen and observe. By listening to others, you show your respect for them. Use body language that demonstrates you are listening and seeking to understand what he is saying.
 - Do not fold your arms. Lean forward as he talks. To show him you're listening and to encourage him to share more, nod your head and say, "Uh huh," "I see," or "I understand." Echo back what the client said. Look directly at the client and make steady eye contact, indicating your interest and concern.
 - Take brief notes to guide you in asking follow-up questions. Note taking also expresses your interest.

- Before taking notes, remember to ask if they mind and explain that you are only taking notes in order to remember the details.
- Avoid long, silent pauses when recording notes.

Give some control to the client during the beginning portion of the interview.

It is helpful to give control of the interview to the client at the beginning of the narrative segment of the interview. This allows the client to get his troubles "off his chest" by sharing it with you, the problem-solver, and most clients appreciate the opportunity to vent their frustrations, fears, anger, and anxieties. The only negative aspect of giving the client control is that he may tell you more than you need to know at this early stage.

After listening to the client's narrative, repeat it back to him. In this way, the client will know that you have been carefully listening and that you understood his narrative.

In the client interview, what responsibilities does the criminal defense attorney have?

When interviewing the client, the criminal defense attorney must inform the client about what he can and cannot legally do to assist the client and must advise the client of his client's rights. See "Rights of the Accused Section" and "Rights and Duties of the Attorney" Section.

Information to be obtained in initial client interview:

1. Facts of the case relating to your client;
2. Any witnesses or jointly accused persons who should be found;
3. Any evidence of misconduct by the police or law officer that has infringed on the client's rights;
4. Any evidence that can be preserved; and
5. Whether your client is capable of attending the trial and his mental state at the time of the alleged crime.
6. The criminal defense attorney must try to answer the client's most pressing questions!
7. Try your best to meet your client's most urgent needs, for example, providing contact with his family members or employer, or providing him with medical or mental treatment!

Client Interview Checklist

1. Circumstances of the Arrest
 - When were you arrested?
 - Where were you arrested?
 - Who arrested you?
 - Were you informed of the reason for your arrest?
 - Did you understand the reason for your arrest?

- At the time of your arrest, were you shown an arrest warrant or summons?
- Were you able to read and understand the arrest warrant?
- Were you provided a copy of the warrant or summons?
- Were you informed of your legal rights?
- Was your family or work unit notified of the reasons for your detainment and of the place of custody?
- Where you presented before a Judicial Magistrate within 24 hours of your arrival at the police station?
- Did the Magistrate sanction you to remain in custody? If so, for how long?
- Were you presented a FIR or told on what grounds you were being detained?
- Was anyone else arrested at the same time you were? If so, do you know their names, addresses and telephone numbers and how to contact their family members? Do you know what offenses they were charged with?

2. Search and Seizure

- Were you strip-searched?
- What has been taken from your person?
- Were any of your clothes seized? Were any articles taken from your clothes?
- Were any of your bodily fluids or hairs taken for testing?
- Was a search conducted at the place of your arrest?
- Was a search conducted at your residence?
- Was a search conducted at your workplace?
- Do you know of any other people or places that were searched? If so, what are the people's names, addresses and telephone numbers? What are the addresses of the places searched, and what types of places are they (e.g., residences, workplaces)?
- Did you see the police or investigators seize any evidence?
- What objects were seized?
- Was there a search warrant, and did you see it? Did you understand it?
- Were there any witnesses present at the time of the search? If so, what are their names, addresses and telephone numbers?
- Was the search recorded? Did the investigators sign it? Did you sign it? Did anyone else sign it?
- Did the investigators make a detailed list and duplicate copy of the articles and documents seized at the scene? Did they give a copy of the list to the owner of the seized items?

3. Violence in Detention

- Describe the place where you were detained after your arrest.
- How many public security officers were present during your arrest?
- Were any compulsory measures taken against you before your interrogation?
- Were you threatened with physical abuse during and after the arrest?
- Were you treated with violence during or after the arrest?
- Were you verbally abused or threatened during and after the arrest?

4. Interrogation

- What was said to you at the time of your arrest?

- What was said to you after your arrest?
 - Who interrogated you; did they wear nametags or other means of personal identification? How many people interrogated you?
 - Who initiated the conversation with you?
 - How did you respond to them?
 - What was your state of mind at the time? Were you ill, drunk?
 - Were your statements recorded?
 - Did you write a statement yourself and did the police attempt to get you to sign anything?
 - Were you allowed to adequately review and modify your statements?
 - Were you allowed to write down your opinions?
 - Have your jointly accused persons been interrogated? If so, do you know what they said about you?
5. Statement before the judge
- Were you taken in front of a judge or magistrate
 - Where was this?
 - Were the police present when the magistrate spoke to you?
 - How long were you separated from the police?
 - Who else was in the court?
 - What did the magistrate say to you?
 - Did the magistrate ask about your injuries (if you had them)
 - Did the magistrate ask if you'd been threatened?
 - Did you tell the magistrate about being threatened
 - Did the magistrate advise you that you did not have to give a statement?
 - Did you give a statement
 - What did you say?
6. Requests for legal aid
- Did you ask for a legal aid attorney?
 - Did anyone inform you that you could have a legal aid attorney? When?
 - Have you seen your family members, friends, or co-workers since the arrest?
7. Information about the alleged victim
- Do you know the alleged victim? If so, describe your relationship with the alleged victim.
 - Do you know the alleged victim's name, age, address, telephone number, and vocation? Does he have a criminal record?
 - Has the alleged victim been physically or mentally injured? If so, what type of injuries and how serious are the injuries? Has the alleged victim recovered? Has the alleged victim suffered any property damage? If so, tell me about the nature and the extent of damage.
 - Has the alleged victim received any compensation? If so, when, how much and who paid the compensation?
 - What are your feelings about the alleged victim?
8. Information about the co-accused persons

- Do you know the co-accused persons? If so, describe your relationship with them.
- What are the names, ages, addresses, telephone numbers, vocations and criminal histories of the co-accused persons?
- Do you know whether the alleged co-accused persons have been arrested? If so, do you know what items, if any, were seized from them?
- Do you know what statements, if any, the co-accused persons made about you? What is your response to their version of events?

The Criminal Charges

1. Do you understand the nature of the criminal charges against you? (Have the client explain his understanding of the charges to you)
2. Do you understand the legal meanings of the charges?
3. Do you understand the defenses you might have to the charges?
4. What part of the charges do you believe to be inaccurate?
5. Is there anyone else who was charged or who should be charged? If so, what are their names, addresses and telephone numbers? How would you describe their involvement in the case?

Quick Investigation

1. Who should I contact? What are their names, addresses and phone numbers?
2. Are there any witnesses I should talk with? If so, can you give me their names, addresses and telephone numbers? What information do you think they might be able to provide? Do you think they are credible?
3. Is there anyone who can attest that they were with you at the time of the crime, but away from the scene of the crime? If so, what is their name, address and telephone number?
4. Is there any evidence that must be secured? If so, can you tell me what it is and where I can find it? Do you know whether it has already been seized? Are you aware of any CCTV evidence?

Client Background Questionnaire

Refer to IBJ case management forms.in Appendix 3.

SKILLS: INVESTIGATION TO COLLECT EVIDENCE

See USAID Legal Aid Tool Kit Chapter 2

Myanmar law allows the defense attorney to review the judicial files and conduct limited discovery. The issue of access to witnesses is still very much in flux in Myanmar (for both prosecution and defense), but there should be no legal barriers to defense attorneys interviewing any witness in a criminal case. There is a pervasive belief that just speaking to a prosecution witness might expose an attorney to a charge of tampering with a witness. This belief is not grounded in the law as long as you do not try and improperly influence the witness.

The following suggestions may help you in the investigation of the relevant evidence:

- Take Prompt Action
 - Begin the investigation as soon as possible.
 - If you delay investigating, you risk losing material evidence and witnesses can more easily recall recent events.
- Guard against Risks
 - Conduct your investigation with a companion. It is always preferable to record witnesses (with their consent)
 - Get the signature of any person who provides evidence.
 - If the law officer has a concern about you interviewing witnesses, if no other alternative is available, offer to conduct the interview in the presence of the law officer
 - Your questions of the witness should always be focused on what the witness personally observed or experienced. You should never try to shape the witness' statement towards a particular goal in an interview.
- Valuable Sources of Information
 - First Incident Report
 - Legal investigation
 - Statements of the co-accused(s)
 - Client interview
 - Witnesses
 - Experts' conclusions
- Visit the Scene of the Alleged Crime
 - If permitted and possible, visit the scene of the alleged crime as soon as possible.
 - Use sketches, charts, photos, videotapes, measurements, etc., to record evidence found at the scene.
 - Search for undiscovered evidence.
 - Confirm who are the witnesses and write down how to contact them in the future; and
 - Search for witnesses who have not been questioned by the police.

- Identify any possible sources of cctv recordings (even if they exist, they may be recorded over if no effort is immediately made to secure a copy)
- Witness Interview
 - Consider recording the witness interview with videotapes, cassette tapes or on cellphones.
 - Is the witness capable of providing testimony? A minor who lacks the ability to distinguish right from wrong, or a person who cannot clearly and correctly express himself, or understand and respond to questions cannot act as a witness. Someone considered insane or mentally handicapped however, who is capable of understanding and responding to questions, is capable of being used as a witness.
 - If possible, interview the prosecution's witnesses.
 - Meet the eyewitnesses.
 - Draw on your own personality when encountering a witness who may be reluctant to give evidence and persuade him to do so.
 - The interview should be conducted in a safe and comfortable environment.
 - Make a record of the witness's background and details of current employment.
- Statements of the Witness and the Victim
 - Are there any videotape or cassette tape records of the statements made by the witness and the victim?
 - Did the witness and the victim themselves personally write their statements?
 - What motives do the witness and the victim have to provide testimony? Does the witness have any personal interests relating to the case?
 - Has the victim been injured? If so, has the victim provided detailed information relating to the degree of his injury?
 - What is the relationship between the victim and the accused? The witness and the accused? The witness and the victim?
 - Has the victim been compensated in any form? If so, when, how much and who paid the money?
 - What is the mental condition of the witness and the victim?
 - Does the witness and the victim have the capacity to accurately perceive and recall events (for example, does the witness wear glasses and if so, how long since the vision of the witness was tested; for all witness, especially the elderly, how accurate is their ability to recall)
 - Is the witness' statement based upon the witness' and the victim's own firsthand observation or based upon hearsay?
 - Has the witness' and the victim's testimony been obtained in legal ways? Has the testimony been obtained through torture, coercion, inducement, deception or other illegal ways?
 - Is the witness' testimony consistent with the victim's testimony? If not, what are the contradictions? Are the inconsistencies helpful or harmful to the defense of the client?
 - Are the witnesses' and victim's testimonies consistent with the accused's statement? Are they consistent with the co-accused's

statement? If not, what are the inconsistencies? Are the inconsistencies helpful or harmful to the defense of the client?

- Material Evidence
 - How did the police obtain the material evidence?
 - Was the search warrant that the police used valid, was the warrant executed by the person listed on the warrant as entitled to carry out the search or arrest?
 - Is there a detailed list of all the seized articles? Do the listed articles match the material evidence gathered by the prosecution?
 - Is there any relevant material evidence?
 - Can more than one interpretation be applied to the evidence?
 - Is the collected evidence first-hand or second-hand evidence?
 - Is the evidence of a fragile or stable nature? If fragile, have proper steps been taken to preserve it?
 - Has the evidence undergone any changes due to the passage of time, changes in the environment or any other factors?
 - If evidence was obtained through photography or filming, were there at least two participants at work? Has the photographer or the videotape recorder made a complete record of the evidence?
 - Has the evidence been verified?
- Documentary Evidence
 - Was the search warrant that the police used valid?
 - Is there a detailed list of all the seized documents? Are the listed documents consistent with the evidence gathered by the prosecution?
 - Is there relevant documentary evidence?
 - Are there different interpretations of these documents?
 - Are these documents genuine or fabricated? It is the responsibility of the defense to repudiate seemingly authentic documents and other evidence.
 - Are the signatures and seals on the documents genuine and complete?
 - If the documentary evidence is a duplicate or photocopy, why has the original not been submitted as evidence? Have the duplicates or photocopies been made with at least two persons present? Does the person who duplicated or photocopied the documents have any interests related to the case? Are the duplicates or photocopies entirely identical to the original?
 - Have the duplicates or photocopies been verified as genuine?
- Expert Evaluation – See Presenting Defense Evidence/Using Expert Evidence
 - What evidence has the expert examined?
 - What are the expert's fields of expertise?
 - What treatises does the expert recognize as being authoritative in the area of expertise in question?
 - What articles or treatises has the expert authored?
 - In what cases has the expert testified?
 - it is very important if at all possible to get transcripts of the prior testimony of the expert in other cases. Very valuable information

will be developed that can be the basis of critical cross-examination of the expert.

- How long has he been considered an expert in his field?
 - What are the expert's qualifications? Has he been authorized and does he have the credentials to be an expert evaluator?
 - Is the expert equal to the work of his own field? Are the expert's methods and techniques in accordance with the relevant national or professional standards? Has the expert used up-to-date technology to conduct his evaluation? Does the evaluation require the expert to cover subjects beyond his area of expertise or beyond the technical and evaluation capacity of the judicial expert examination apparatus?
 - Are the materials that are the foundation for the expert's conclusions sufficient and authentic? Are the materials suitable for evaluation or assessment, or do the materials conflict with the evaluation requirements?
 - Consider whether there is a need to advise the defense expert to independently verify the evidence.
 - Does the client have any physical or mental injuries that need an expert evaluation and technical explanation? If so, apply for the court to provide expert evaluation on the client's physical health or mental state. Provide the expert with the client's relevant medical records and biographical data.
- Witness' Character Traits and the Scene of the Alleged Crime
 - When reviewing an eyewitness testimony, focus on the following aspects listed below. An understanding of the witness' character traits will help the attorney narrow the range of investigation and identify the strengths and weaknesses of the witness' testimony. The items listed below affect how the witness might have observed facts of the case.

Witness' Traits	Surroundings of the Scene
<input type="checkbox"/> Gender <input type="checkbox"/> intelligence <input type="checkbox"/> memory capacity <input type="checkbox"/> educational background <input type="checkbox"/> employment history <input type="checkbox"/> language <input type="checkbox"/> speech impediment <input type="checkbox"/> age <input type="checkbox"/> temperament <input type="checkbox"/> mental state <input type="checkbox"/> state of health <input type="checkbox"/> alcoholic consumption <input type="checkbox"/> trauma caused by medicine or illegal substance abuse <input type="checkbox"/> eyesight <input type="checkbox"/> hearing <input type="checkbox"/> relationship with the victim <input type="checkbox"/> relationship with the accused <input type="checkbox"/> relationship with the co-accused <input type="checkbox"/> motive <input type="checkbox"/> partiality towards the client, victim or co accused <input type="checkbox"/> bias towards the victim or <u>witness</u> <input type="checkbox"/> was threatened before, during or after the alleged crime	<input type="checkbox"/> lighting conditions <input type="checkbox"/> daytime or nighttime <input type="checkbox"/> exact time during the day or night <input type="checkbox"/> moonlight <input type="checkbox"/> rain <input type="checkbox"/> fog <input type="checkbox"/> coldness <input type="checkbox"/> heat <input type="checkbox"/> number of people present <input type="checkbox"/> duration of observation of the occurrence <input type="checkbox"/> realistic ability to see all the people present and their activities at the scene <input type="checkbox"/> criminal weapon <input type="checkbox"/> natural plant life <input type="checkbox"/> buildings <input type="checkbox"/> automobiles <input type="checkbox"/> traffic conditions <input type="checkbox"/> observation angle or position <input type="checkbox"/> bird's eye view <input type="checkbox"/> upward view <input type="checkbox"/>

SKILLS: INTERVIEWING WITNESSES

When we discuss witnesses, we mean anyone with personal knowledge or relevant expert knowledge of a relevant issues for the trial. This may include someone who directly witnessed the events in question, can testify on the relationship between the accused and the complainant, can testify to the whereabouts of the accused (alibi witness), knows the character of the accused or the complainant. Expert witnesses are those able to use their professional knowledge to explain or analyze other evidence in case. This would include witnesses for the prosecution, witnesses identified for you by the accused, and those you learn about as you conduct your investigation. It is only after you have conducted a thorough investigation and spoken to witnesses that you can decide which witnesses to include in the list the defense provides the judge after the framing of the charge.

See also USAID Legal Aid Toolkit Chapter 2 “Interviewing Witnesses”

1. Before the Interview

Before interviewing any witness, you should make proper preparation. It is always best to have another person with you that could be available to testify in case the witness changes his testimony, or alleges that something improper happened during the interview. A paralegal is a good choice of the other person to take with you.

Record the statement of the witness if at all possible. You should first obtain the consent of the witness to record the statement. You can truthfully tell them that a recorded statement ensures their words are accurately preserved, and that their words will not be taken out of context.

If it is not possible to record the statement, consider writing down the witness’s statement. Read it back to them afterwards, making any necessary corrections, and then ask them to sign the statement. Offer to provide the witness with a copy.

2. Open and Closed Questions

Open-ended questions usually require a more detailed answer than “yes,” “no,” date or place.

Closed-ended questions can be answered simply with a “yes,” “no” or a simple fact.

In general, you want to ask open-ended questions rather than closed-ended questions in your interviews, because the answers to these questions provide much more of the information that you want to know. Also, these questions invite the witness to converse with you instead of simply answering questions. By asking a general question that requires a narrative answer, you will also learn unexpected information.

Examples:

OPEN	CLOSED
Tell me about your family background?	Where were you born?
Could you describe one of the arguments you had with your husband?	Did your husband hit you?
Can you tell me about the first time you drank alcohol?	How old were you when you started drinking alcohol?

When to Use Closed Questions

When you need to obtain specific information such as birth dates or identification numbers, a witnesses' short response is fitting. You will also probably use more closed questions toward the end of the interview. Additionally, some witnesses may be confused by open-ended questions. In these situations, you will need to adapt your questioning to fit the witness's ability to answer questions. You may find it easier to get the information you need by asking the witness a series of very specific closed-ended questions.

2. Leading Questions

Leading questions will often elicit unreliable answers.

LEADING	REPHRASED
I'm sure you loved all of your children equally, didn't you?	When your children were small, how were they different from each other?
You never knew what Kyaw Kyaw and his friends were up to, did you?	Tell me about your relationship with Kyaw Kyaw before he was arrested.
Kyaw Kyaw does not know how to read, does he?	What kind of student was Kyaw Kyaw?

3. Follow-up and Probing Questions

The following are ways of eliciting more information from the witness when answering one of your open-ended, non-conclusive questions:

Nudging or encouragement: Verbal encouragement in the form of "uh huh" and "go on" will let the witness know that you are following and are interested in what he is saying, and that you do not wish to interrupt him.

Silence: You may choose to remain silent for a moment, signaling to the witness that you are waiting for him to elaborate, perhaps nodding and wearing an expectant look on your face.

Clarification: You can seek clarification from the witness in a number of ways that lets the witness know that you are interested in what he has said and that you want to make sure you correctly understand what he has said. For example:

- Ask the witness to define his terms: "What do you mean by 'not very long'?"

- Ask the witness to provide a more thorough answer: “Tell me more about that,” “What else happened that day?”
- Ask for missing details: “I don’t understand. How did Kyaw Kyaw Moe get home from the hospital?”
- Ask for additional details: “What did you see U Kyaw Kyaw Moe do when the fight started?”

4. Avoid “Why” Questions

It is usually a bad idea to ask people “why” questions about life events. “Why” questions often place blame and put a witness on the defensive. Many witnesses simply do not know the answer to why something happened and will invent a seemingly rational reason for their behavior when, in fact, they have no idea what really motivated them. Such answers then become facts that are not particularly helpful to the client. Examples:

“WHY” QUESTIONS	REPHRASED
Why didn’t you leave your husband?	Was there a time when you thought about leaving your husband?
Why did your husband hit you?	Can you tell me what happened between you and your husband that day?
Why do you think you married an alcoholic?	Tell me about your relationship with your husband.

5. Tips and Tricks

Confrontation

Pursuing a direct line of questioning is usually not the most effective way of eliciting the witnesses’ true account. Confronting the witness by pointing out all the contradictions in his account or inconsistencies with other witnesses’ accounts can be a very serious mistake. For example, by asking direct questions about abuse, you may push the witness into a state of denial, which would make it difficult for him to disclose the actual situation afterwards. Examples:

- Your nephew told me that you molested him when he was seven years old, is that true?
- You said that you quit drinking two years ago, but your wife told me that you were drunk this past weekend. Why did you lie?
- You’re just pretending to read that. You cannot really read, can you?

Do Not Talk Too Much!

Inexperienced interviewers tend to talk too much. During the interview, you should aim to spend 80% of the time listening to the witness and 20% of the interview talking with the witness.

Listen Attentively

Listening intently requires discipline and practice. Listening, unlike hearing, is not automatic. Listening to a witness answer questions during an interview is entirely different from listening to friends chat. In social settings, you are able to multitask while listening to a friend; for example, while formulating a response, you might also be observing your surroundings or having an internal dialogue that has nothing to do with the other person. During an interview, however, you need to focus on listening to your witness with total concentration and must really pay attention to what they are saying, instead of formulating the next question, looking around the room, or figuring out how the witness' account fits into your defense line.

Listen with an Open Mind

Sometimes we only hear what we expect to hear, rather than what was actually said. If you have already reached certain conclusions about who your witness is and what he will say even before the interview, you will unconsciously filter out information that is not consistent with your preconceived ideas. If the witness belongs to a certain group, you might make assumptions about him based upon your own impressions of that group. You might assume that the witness is racist, ignorant, provincial or superstitious. Once you think you can predict what the witness will say, you will not carefully listen to him. You may also mistakenly form a negative opinion of the person's value as a witness. If the witness' information does not conform to your understanding of the situation, you might dismiss it as an aberration, thus forfeiting an opportunity to develop an important relationship with the witness, one that could result in testimony helpful to your client's case.

Become Comfortable with Contradictions

You should be aware of and keep track of any contradictions, but do not directly question the witness about these contradictions. Different people will often describe the same event very differently, and one person may even describe the same event differently with each telling. Contradictions may actually result from miscommunication. For example, a witness might tell you that she had never consumed alcoholic beverages, but later tell you how she once went out to drink beer. Although this might be inconsistent, you may discover that the witness thought that drinking alcohol only meant drinking hard liquor, not beer.

Double-Checking

Communication between any two people is a complicated process that can lead to both trivial and serious misunderstandings. During an interview, everyone communicates, receives and decodes information, and misunderstandings are liable to occur at every stage of the process. Since every piece of information is based on any previous information, any miscommunication that is not addressed will have long-term consequences.

It is essential that you, the interviewer, confirm that the witness understands your questions and that you understand his answers. In the following example, the

interviewer is checking to see if he and the witness are discussing the same thing, because they each give different meanings to a word:

WITNESS	INTERVIEWER
My father used to beat me but treated Phyu Phyu better.	Do you mean he didn't beat Phyu Phyu?
Right, only me, with his fists. He didn't do that to Phyu Phyu.	Do you mean he never hit Phyu Phyu at all?
Oh, he would whip her, you know, with his belt.	You mean he would punish Phyu Phyu by whipping her but not by punching her with his fists?
Yes.	Can you describe one time when you saw him whip Phyu Phyu?

In this example, the witness has a specific meaning for the word "beat" (hitting using one's fists) that the interviewer needed to clarify.

Reflecting

Reflective dialogue, or mirroring, is the immediate repetition of part of the conversation, which allows what has just been said to be adjusted or confirmed.

WITNESS	INTERVIEWER
I never knew my father. Well, I kind of did, but that was later. I met him once with my cousin, and she said, that's your father.	You didn't grow up with your father?
Right, he never even saw me.	Who told you that your father never saw you as a baby?
My mom	But your family knew who he was.
Oh yes, they knew. Of course they knew. Only I didn't know.	You said you met him with your cousin?
Yes, once in Mandalay.	Tell me about that.

6. Conclusion

Interviewing requires mutual communication. Although your goal is to gather information, you, the interviewer, are also unconsciously and consciously communicating a great deal of information to the witnesses through your words, your clothing, your body language and facial expressions, and the types of questions you ask. It is essential that you refrain from using judgmental or critical language, whether verbal or non-verbal.

SKILLS: Defense Line

See also USAID Legal Aid Tool Kit Chapter 4 “Trial Skills” Section A1 “Defense line”

Introduction

A criminal defense attorney should always develop an argument for why the accused is not guilty. The defense should begin to develop a theory of the defense as soon as the case is received. In Myanmar a case theory is often called “structure of the case” by law officers, and “defense line” by defense attorneys. Some defenses are directed at a failure of proof (e.g., alibi or consent) whereas others are more general and are applicable even if all the elements of the crime are proved (e.g., self-defense, insanity, entrapment). The approach you take will determine many subsequent actions. Even when an attorney focuses on a generalized failure of the law officer to carry the burden of proof, the attorney must be specific in what the failure is, and link it to the presumption of innocence.

Creating a defense line

The first step in creating a defense line is to review the information available to determine with what crime the accused is being charged. During the investigation stage this may be limited to the accused’s interview and informal information from the investigating officer. Once the case has been presented in court, this should include the FIR, the Police Letter to the Law Officer, search form and witness list. See Evidence Section.

Check the law to determine the essential ingredients of the crime.

The second step is to thoroughly investigate the facts of the case:

- If possible, interview eyewitnesses to the alleged crime to obtain their version of the facts.
- If possible, interview other potential witnesses who may have relevant information regarding the alleged crime, or the character of the accused.
- Inspect and examine carefully all documents and other materials made available by the prosecution.
- If applicable, examine the scene of the alleged crime.
- Check to determine if the accused’s constitutional or legal rights were violated.
- When arrested, was the accused advised that he could remain silent?
- When arrested, was the accused allowed to have an attorney present for questioning?
- Was there an unreasonable search and seizure of accused’s person and/or property? Was there probable cause for any arrest or any search warrant?

The third step is to determine how you will go about developing your defense in the courtroom. An attorney should consider both sides of case during his/her case preparation in order to determine:

- Are there some facts the parties can agree on – these facts will not need to be contested at trial. You should only agree on those facts that you are certain can be proven by the law officer and that you will not be able to controvert;

- What facts the parties disagree on – these facts will be the main points of contention in the case: your case theory must focus on showing that your version of these is the correct one;
- What are the weaknesses in your and your opponent's case – you will want to do what you can to counter your weaknesses and use your opponent's weaknesses to undermine their case. To evaluate the strength and sufficiency of the case of the law officer, use forms like the IBJ Ingredients and Case Review Worksheets provided in the appendices. Are there gaps in the proof of necessary facts to establish all the elements of the offenses charged?
- Identify the facts you will need to establish (e.g., eyewitness has poor eyesight or the accused has an alibi).
- Identify the witnesses you will need to establish those facts.
- Determine whether the prosecution's witnesses have significant credibility issues.
- Visit the scene of the crime to verify, for example, that an eyewitness could not possibly have seen the crime from where he was located.
- Identify any facts that undercut your theory (e.g., the accused's alibi is a close personal friend with a motive to lie)
- No matter what strategy seems best, criminal defense attorney should always emphasize the heavy burden that the prosecution bears, and the presumption of innocence.

An accused is entitled to raise multiple defenses so long as the proof of one does not necessarily disprove the other. Although it is possible for an accused to raise more than one defense (for example where the facts are compatible with more than one defense), it is not recommended. You should choose the best defense that is available to your client, and buttress as best as is possible. Raising more than one defense would be the exception, and not the rule.

Storytelling Methods

During the course of investigation and preparation for trial, a criminal defense attorney should gradually build and develop a defense line, as well as continually revising it. A defense line consists of three parts: the relevant law, facts of the crime and emotional factors. In the court, a criminal defense attorney uses a defense line to tell the client's story. The storytelling is composed of three parts: the general defense line, several supporting sub-theories, and the oral presentation to the court. Varied tones of voice, proper rhythm and tempo in questioning, body language, and application of different rhetorical skills... these factors make for effective storytelling, creating an atmosphere that both is engaging to the fact finder, and builds a positive environment for the argument of defense. It is in such an environment that the court will evaluate the evidence.

Execution:

- A criminal defense attorney should build a general defense line centered on the client's best interests and based upon the actual situation, which will help

him evaluate what choices to make throughout the defense process.

- The criminal defense attorney should allow the defense line to guide his focus during the investigation and trial preparation process. You should investigate and expand upon the facts and evidence forming the defense line. Nevertheless, the counsel should not become a “prisoner” to his defense line. As your investigation proceeds, it may become clear to you that your theory is not likely to prevail, and another theory is better for the case and the client.

Work form for developing a defense line

The following questions may help a criminal defense attorney to build a complete and coherent defense line:

1. What is your defense line? (e.g. innocence, alibi witness, misidentification, self-defense)
2. Why do you believe this is the best defense line?
3. What is the relevant law? What are the ingredients of the offense? How will your defense line prove the client’s innocence?
4. What are the unalterable facts that you need to confront and explain in the defense line?
5. What are the facts in favor of the client?
6. What is the key emotional theme in the case?
7. What emotional themes is the law officer most likely to use in his argument? How will you use your defense line and emotional theme to refute these emotional themes?
8. Make a list of the prosecution witnesses with specific questions attached to their names. Briefly list your potential cross-examination for each, and what points you wish to make with each witness.
9. Make a list of the defense witnesses, and under each of their names, write out how you plan to question them. Finally, briefly indicate the style of questioning.
10. List your main desired objective when directly questioning the accused, if he chooses to testify. How will the accused’s testimony strengthen your defense line? What are the positive and negative aspects for the case if the accused does, or does not, testify?
11. What further investigation do you need to do to complete your defense line?
12. Do you need to solve any problems with the evidence? Are these problems likely to strengthen or weaken your defense line? How will you explain the evidence that is inconsistent with your defense line?
13. Make a brief, effective statement for your defense line.

Storytelling: Test your defense line and themes at Court

To defend your client effectively, the attorney must understand how to tell a story to the court. The more convincing and touching the story is, the more persuasive the argument becomes to the judges, who ultimately decide the facts of the case. Every well-knit story needs a plot, and for a defense argument, a plot provides the best tool for explaining the facts of your defense line.

Why must the criminal defense attorney use storytelling methods in the court?

Storytelling allows the criminal defense attorney to set the stage, introduce the characters, create an atmosphere, and organize ideas into a carefully crafted narrative format, thereby impacting the way each judge perceives a given case. Without such a framework, judges will understand the evidence and testimony in accordance with the law officer's argument. Once the criminal defense attorney successfully executes a framework, he can use the client's experiences to influence the judges' imagination, leading most judges to understand the evidence in the context of the client's past experiences.

More importantly, storytelling will cause judges to use both their hearts and minds in considering the defense's argument. "One who relies on reason" is more likely to change their judgment, because they often use the following thought pattern to reflect on and analyze a case: "My (the attorney's) view is based on logic. Therefore, if you (the judge) reasonably point out any flaw in my thinking, I will consider changing my views." In contrast, "one who relies on his heart and emotions" will reflect on and analyze a case in a different way: "I am right, and you are wrong, so you must change your view."

Conclusion

To develop a defense line, counsel should objectively evaluate the law officer's case, and then, in accordance with applicable laws, structure a moving story based on the facts of the crime and emotions that will serve as a rebuttal. The defense line will influence the investigation, which witnesses will testify at trial, and what demonstrations will be held in court. Through telling a reasonable and convincing story, the attorney can persuade the judges to find the client innocent, mitigate his sentence, or exempt him from criminal responsibility.

SKILLS: FORMING SPECIFIC DEFENSE LINES

The following are possible defenses for an accused under the Myanmar legal framework and applicable circumstances to raise such defenses.

Has the prosecution met the burden of proof?

Remember that your client is entitled to the right of being innocent until proven guilty. No person shall be found guilty without being judged according to law. It is the prosecution's duty to prove that the client is guilty of the charges. It means the prosecution must prove that the facts are clear and the evidence is beyond a reasonable doubt. See Rights of the Accused.

Before forming other defenses, the counsel should critically scrutinize evidence available to confirm whether the alleged crime has really occurred or not. If it has occurred, further consider whether the prosecution has presented evidence sufficient enough to support the charge. Consider whether another charge (a lighter charge) fits better with the case evidence. The following are necessary questions for your consideration:

- What are the ingredients of the accused offense? For example:
Self-driven act: Did the client act from his own free will? What evidence has the prosecution presented to prove that the client acted of his own accord?

State of mind: Under what state of mind would the client's act constitute a crime (for example: intentionality, disregard of the outcome, negligence)? Is the crime a strict liability crime (The law officer has no burden to present evidence concerning the accused's intent)? What evidence has the prosecution presented to prove that the client in his actions had the requisite criminal intent, had specific knowledge or skill necessary for committing the act, or was criminally negligent?

Cause and effect: Did the client's act result in the ultimate injury?

Direct cause: Were the client's actions far enough from the charged crime that he should not be subject to any legal responsibility?

Legal obligation: In this situation, does the law stipulate that the client must act in specific ways to exercise his distinctive legal obligation?

- What laws define the ingredients of a crime? Are these laws contradictory with each other?
- Should the law officer have charged the client with a lighter offense?
- How much evidence must be presented in order to sufficiently meet all the required elements of the accused crime? What are the ingredients of the crime that the client should have been charged with, but was not?

- Does the evidence presented meet the evidence requirements for all the ingredients of the alleged offense? What are the legal stipulations regarding evidence for ingredients of the accused crime? What evidence supports the prosecution's case? What evidence is not consistent with the prosecution's argument?
- If the law officer cannot present sufficient evidence to support the charged offense or even support a lighter offense, the criminal defense attorney shall point out the insufficiency of evidence to the court and request that the court either judge the client as innocent or dismiss the charges.

Is it possible to make an exculpatory defense if the facts of the crime cannot be denied?

In an affirmative defense, the counsel does not deny the ingredients of the alleged offense but still attempts to prove the innocence of the accused. Such a defense requires the counsel to present sufficient evidence, including witness testimony or material evidence. Even if the attorney does not deny that the accused committed the alleged acts, the defense will try to prove that the acts were justified or provide another legal defense for negating the accused's criminal liability.

The exculpatory defenses in the Penal Code are in the "General Exceptions" in Chapter IV (Section 76 to 106). They apply to both charges within penal code and those outside the penal code.

- Mistake of Fact. PC SS. 76, 79.
- Private Defence of person and property PC SS. 96-106
- Duress PC Sec. 94
- Necessity PC Sec. 81
- Unsoundness of Mind PC Sec. 84. See Mentally Ill Clients Section.
- Intoxication PC SS. 85-86
- Consent PC SS. 87-92
- Provocation Exception A to PC Sec. 299(2)
- Partial Defenses to Murder
 - Exceeding Private Defence Exception B of PC Sec. 299(2)
 - Sudden Fight Exception D to PC Sec. 299(2)

Can the criminal defense attorney prove the innocence of the accused?

This is one type of affirmative defense and aims to prove that the accused did not commit the crime, i.e. that the accused could not possibly have committed the alleged offense. The most common methods of proving the accused innocent are: proving the accused's alibi, using the material evidence to prove that the alleged offense could not have happened, or demonstrating that someone else had the same opportunity to commit the offense and may be guilty instead of the client.

Alibi: the criminal defense attorney can provide credible evidence, such as the testimony of a witness to prove the accused was elsewhere at the time of the alleged criminal act. Or the attorney can present someone who was present at the scene of the alleged crime to testify the accused was not present.

Impossibility: the attorney can present credible evidence demonstrating the weaknesses of the material evidence against the accused. The attorney would use this evidence to explain how these weaknesses exclude the possibility of the alleged offense. For example, suppose the evidence provided by the law officer indicates that the victim was stabbed by an assailant who used his right hand. If the attorney can provide credible evidence that the accused's right hand was previously injured and that he could not have used it at the time that the crime was committed, this demonstrates that the accused could not have committed the alleged offense.

Can the criminal defense attorney justify the crime committed by the accused?

Justifying the crime for the accused is another type of affirmative defense wherein the accused does not deny the alleged offense, but argues that he should not bear legal responsibility for it. The defense line for the accused will take the form of "I did, but ..." arguing that the accused committed the alleged offense for justified causes that are socially accepted or that conform to moral principles.

Did the accused complete the crime?

Although being only at a certain stage of the crime (e.g. an intermediate stage) cannot count as evidence that proves the accused's innocence, it can lessen the accused's punishment in the court's final sentencing and even result in the accused being exempted from punishment. Thus, the criminal defense attorney must carefully research the accused's acts to determine whether the following circumstances exist so as to request a mitigated punishment or exemption from punishment. This would include looking at crime preparation, an incomplete attempted crime, and a crime that was abandoned or discontinued.

Is there anyone who should take more responsibility than the client for the alleged offense?

Does the accused have any other jointly accused persons? If so, the criminal defense attorney must investigate the concrete role of every co-accused to determine the actual role of the client. The attorney needs to pay particular attention to joint crimes. Was your client the ringleader in the course of the crime? Did your client organize, plot, or direct/lead the criminal group or other jointly accused persons? Was your client playing an important role in the course of joint crimes? Did your client instigate others to commit a crime?

Did your client play a secondary role in the course of the preparation and commission of the crime?

Obviously in this situation the criminal defense attorney cannot represent both the minor and major actor. See Duties of the Attorney/Avoid Conflicts.

Is your client eligible for a lighter or mitigated punishment?

The court can be allowed to give the accused a mitigated punishment or exempt him from punishment under some circumstances according to law.

Can the attorney still seek a mitigated punishment for the client if there are no statutory specifications about mitigation?

Yes, The following are some points of evidence that may help in obtaining a mitigated punishment:

1. The accused does not have long-term criminal record.
2. The accused has expressed sincere remorse and self-examination for having participated in the crime.
3. The accused has compensated the victim for all his or her losses.
4. The accused is still a minor and also wants to continue schooling; his school also allows him to continue enrollment.
5. The accused needs to take care of elderly and young household members.
6. The accused is mentally retarded and cannot sensibly make judgments, and is thus easily taken advantage of by others.
7. The accused had a difficult childhood (for example, he was ill-treated at home) that has affected his long-term personal development.
8. The accused has had to overcome great hardships that have tested his limits and abilities as a person (for instance, domestic violence, drug-addiction).
9. The accused has good work experience or educational background, or has made significant contributions to society.
10. Any other mitigating circumstances about the accused. The criminal defense attorney should think of any means to describe the accused as pitiable and condonable.

In order to discover these points of evidence for a mitigated punishment, the criminal defense attorney must win the trust of the client, his family members, and other important persons in his life (such as his teacher or boss). The evidence for a mitigated punishment must form an important part of the defense line. When presenting the evidence for mitigated punishment in court, the criminal defense attorney does not need to conceal his own feelings. The criminal defense attorney's objective is for the court to see his client's more humane side and thereby to give him the opportunity for reform.

Conclusion

In the course of developing the defense line, the attorney needs to carefully consider whether the law officer bears the burden of proof. Furthermore, after the conclusion of the investigation, the criminal defense attorney can judge whether the client's act constitutes a crime, whether there is any possibility that the client has a reasonable and legitimate defense, whether the client has actually completed the crime, whether the client is only an accessory, and whether there is evidence supporting mitigated punishment. Only after the analysis of the above questions can the criminal defense attorney present a complete, persuasive defense line in court.

SKILLS: QUESTIONING THE WITNESSES AT INQUIRY AND TRIAL

See Also USAID Legal Aid Tool Kit Chapter 4 Section B5

Prosecution Witness

The following form will assist you to evaluate and prepare your defense against the statements of the law officer's witnesses:

Prosecution witness evaluation Form

Name of Witness:

Analysis

List the reasons why this witness helps the law officer prove the crime charged.

List the reasons this witness's testimony will hurt the defense of your client.

List the reasons (if any) this witness will help the defense of your client.

List the ways (if any) in which this witness's testimony is inconsistent with their previous statement, statements of other witnesses, the victim, accused and jointly accused persons, and the evidence presented.

List the ways (if any) that this witness's testimony may be utilized to advance the defense attorney's defense line.

Pages in the case file where this witness appears:

Supporting Evidence

List the evidence to be used when asking this witness questions.

In case the prosecution witness changes their previous statements, the criminal defense attorney can use the following prompts:

You can ask the witness: "You previously said...", and the witness will in all likelihood say "yes," or argue with his or her previous statement. If the witness says "no," or contradicts his or her previous statement, you can:

Refer to trial documents or other evidence:

Call an already prepared defense witness to the stand to refute the prosecution witness' claim:

Sample Questions

Is this witness helping your case? If so, remember to:

1. Let the chief testimony stand without repetition. Re-asking a question expecting the same helpful answer will mostly result in a changed, less helpful answer.
2. First ask the witness easy, supportive questions in order to make them comfortable, then you can ask more difficult or aggressive questions. Examples (of easier, introductory questions) But even these questions must be leading. Do NOT ask How or Why questions:
 - You've been doing your work for XXX years? (if the witness is an expert witness, teacher, policeman, etc.).
 - You've known the complainant since you were a child?
 - Details are important to you, aren't they?
 - You see well without needing glasses, don't you?
 - ?

Is this witness against, or hurting, your case? If so, try to demonstrate inconsistencies and problems in their testimony. Examples:

- You are friends with the victim, aren't you?
- You didn't write down any of your observations at the time of the event?
- You did not speak with the police until 5 weeks after the alleged crime?

Your concluding question should be your strongest one and one that:

1. You safely know the answer to, and
2. The answer supports your case?

Example: Isn't it true that my client called the police?
He waited for the police at the scene?

Defense Witness Evaluation

The following form serves as a guide to help you evaluate and prepare for the testimony of witnesses that may help your case.

DEFENSE WITNESS EVALUATION FORM

Defense Witness # _____

Name of Witness: _____

Address: _____

Phone number: _____

Family member(s): _____

Place of work: _____

Relationship to accused (if any): _____

Reputation for honesty or dishonesty: _____

Capacity/mental health issues (if any): _____

Prior arrests/criminal convictions (including juvenile record): _____

Pages in the case file where this witness appears: _____

Law officer's evidence we need to discuss or explain:

1. description of crime scene
2. knowledge of complainant/victim
3. knowledge of prosecution witness
4. expert testimony on:
 - blood
 - tests by prosecution
 - reconstruction of the crime scene
 - victim's injuries/mental health status

Defense evidence to identify or admit:

1. knowledge of accused's:
 - character
 - habits
 - mental health status/limitations
 - physical health status/limitations
 - business practice
 - family
2. knowledge of the crime scene
3. alibi evidence
4. new evidence, such as:
 - scientific testing
 - diagrams
 - reconstruction of the crime scene
 - results of mental health evaluation of accused
5. When preparing questions, remember to consider how each witness's testimony can be developed to advance the defense attorney's defense line.

Preparing for the Prosecution to Question Your Client

1. The theory of most prosecution questions promotes the following false logic:
 - Story has changed from the original account or is different from the police's account,
 - The accused is lying, and so therefore,
 - He must have committed the crime.
2. Prepare your client for the law officer's tone.
3. Your client should answer the law officer as he or she questioned you, with the same voice inflection, the same eye contact, and a body language that indicates they are telling the truth.
4. Your client should respond with short answers, essentially answering "yes" or "no."
5. Approach prosecution questions about damaging evidence carefully. These questions must be answered directly by the accused, with no attempt to either evade or explain. The accused's body language must not convey any effort to evade touchy questions.

Evasion makes the client look untruthful.

Explanations can become opportunities for a law officer to start tearing holes in the accused's account.

Therefore, let the client know that you can return to these issues during re-questioning and clean up some damage. During re-questioning, be sure to ask questions that will advance your defense line.

6. If the accused does not know the answer, he or she should not be afraid to say "I don't know." *This may be especially important if a law officer tries to make your client admit to a certain number, or quantity:*

A law officer will try to show that your client is incorrect about something, anything at all: A frequent trick is to ask how *long* the red light lasted, how *many* meters it was across the room, or how *many* beers were consumed, etc.

Even if the accused first says that he or she does not know, the law officer may badger them to assent to an *estimate*, or a *range*.

Questioning Defense Witnesses during Trial

1. Start with simple background questions to put them at ease.
Examples:

What is your....

Name

Place of Birth
Work history

2. Ask a few “foundation” questions about the witness; they can be general but should be *consistent with the main testimony*. Examples:

- If the main testimony is about a character trait or habit of someone connected to the case, ask how long they’ve known the person.
- If the testimony is mainly about neighborhood layout or traffic, ask how long they’ve lived there, or how good the lighting is.
- If the testimony is an expert opinion, ask how many and what types of materials the expert reviewed before coming to a conclusion. How much time did he spend on the review? Who did he interview?

3. Ask the “main” questions clearly and understandably.

GO SLOW. BE CLEAR. Witnesses get nervous up on the witness stand. There is a significant chance that your question will be confusing, even if you have discussed it ahead of time. There is a very real risk of getting an answer you do not want.

4. Phrase the main questions you ask each witness in a way that will advance the defense line.

5. If there is evidence that hurts your accused, bring it out before the law officer’s questioning. Examples:

- Tell us why you did not talk with the police before coming here.
- Tell us why you’re saying this today, but said something different earlier.
- Tell the judge, please, why you didn’t go to the police and explain this alibi the day your husband was arrested.

Examination in Chief and Cross-Examination

Questions to Consider

Regardless of whether the criminal defense attorney is preparing for examination in chief or cross-examination, he should prepare his inquiry by answering the following questions:

1. What is the overall defense line?
2. How does this witness fit into the overall defense line?
3. How can you fit this witness's story into the story that has already been told and the story that will be told after this witness testifies?
4. How will the witness's testimony help you to develop your client's story? To counter the law officer's story?
5. What evidence do you need to introduce or rely on during examination in chief? During cross-examination?
6. What evidence will the law officer rely on during examination in chief? During cross-examination? What questions can you ask or what evidence can you use to counter the law officer's evidence?

Purpose of Examination in Chief and Cross-Examination

Although the criminal defense attorney should ask the six questions listed above when preparing for either examination in chief or cross-examination, he should be aware that examination in chief and cross-examination have very different purposes and techniques.

Examination in chief requires the witness to tell a story. The goal of examination in chief is for the criminal defense attorney to elicit the witness's story in the witness's own words in a manner that will advance the overall defense line.

Cross-examination, on the other hand, is a selective, targeted attack on the law officer's defense line. It is not simply rehashing the testimony that was developed during the direct examination of the witness. The criminal defense attorney seeks to develop points that will show that the witness's testimony is inconsistent with other testimony or evidence; that the witness is biased against the accused; that the witness has a motive to testify against the accused; that the witness (if he is a co-accused) had the opportunity to commit the crime; that the witness lacks knowledge of the facts and the evidence in the case; and that the witness was unable to see, hear, perceive, and observe the major events in the case.

Types of Questions to Ask

Open-ended questions: Since the purpose of examination in chief is to have the witness tell a story in narrative form, the criminal defense attorney should ask questions beginning with words that are intended to elicit information from the witness, such as *who, what, where, when, why, how, describe, explain*. Asking these types of questions requires a witness to do more than simply answer yes or no. Examples:

- When you arrived at the bar, what did you see?
- Can you tell us how the fight began?
- Who did you see at the bar? What were they doing? What happened next?

Closed-ended questions: Closed-ended questions require the witness to answer yes, no or as briefly as possible; therefore, the criminal defense attorney should avoid asking these types of questions during examination in chief and should ask closed-ended questions during cross-examination. Examples:

- Was the bar crowded the night that the fight occurred?
- Who threw the first punch—the victim or the accused?
- Were you still there when the fight ended?

Words Never to Use during Cross-Examination

Criminal defense attorneys should NEVER ask *who, what, where, when, why, how, describe and explain* during cross-examination. These are words requiring explanation that you do not want to elicit during cross-examination. The goal of cross-examination is to target the law officer's case and to advance the accused's defense line without giving the witness an opportunity to explain their answers. You want the witness to agree with your version of events, not to develop their own.

How to Prepare Your Client and Other Witnesses

1. Communicate your defense line to the client or other witnesses. Explain how their testimony advances the defense line and refutes the law officer's version of events.
2. Prepare your client and other witnesses for both examination in chief and cross-examination.
3. Prepare your questions for both examination in chief and cross-examination. Remember to begin with broader, more general questions at first and more specific, detailed questions as the examination proceeds. Be sure to save your strongest/best points for the end of your examination. Do not ask a question for which you do not know the answer.

4. Role-play with your client or other witness. Prepare them for the law officer's tone, questions the law officer will ask, and evidence the law officer will use.
5. Advise your client or other witness to listen carefully to the question that is being asked, regardless of whether you or the law officer is doing the questioning. Make sure the client or other witness understands that they need to concentrate on answering the question that is actually asked and that they should not provide information that they have not been asked to give.
6. If the client or other witness truthfully does not know the answer to a question, he should say, "I don't know" instead of guessing or speculating.
7. Reassure the client or other witness that they will have the opportunity to clarify any matters that need clarification during re-examination in chief.

Conclusion

Developing effective examination in chief and cross-examination skills takes persistence, patience and most of all, practice, practice, practice! By developing a comprehensive defense line and structuring your examination in chief and cross-examination questions in a manner that advances your theory, you will be able to persuasively argue your client's case to the court.

SKILLS: PRESENTING DEFENSE EVIDENCE

Introducing Physical Evidence³⁵

As a result of consultation with a client, and conducting independent investigation, a defense attorney may wish to introduce physical evidence or other exhibits in the accused case in chief. Although the practice in Myanmar is to simply offer the evidence in court, what follows is a systematic procedure you may want to consider about how to introduce your physical evidence. If you follow these steps, you will create a good record for an appellate court if your evidence is refused or if there are issues raised concerning the admissibility of the evidence.

Before the trial:

1. Mark the evidence before the trial. Defense marks Exhibits D-A, D-B, D-C. . . .
2. Give the law officer a copy of all premarked exhibits before the trial begins.
3. We also provide copies for the judges -- placed on the bench before the trial

During the trial:

1. Ask permission to approach the judge to show the judge the premarked evidence (or permission for the bailiff to do so.)
2. Show the evidence to the law officer. (The law officer may at this point make an objection to the offering.)
3. Ask permission to approach the witness. (or to have the bailiff do so)
4. Show the evidence to the witness and ask the witness if he or she can identify it.
5. Lay foundation by asking the witness a series of questions about the exhibit in preparation for asking the crucial question.
6. Ask the crucial question.
7. Request admission of the exhibit.
8. (Opposing counsel may then object.) Be prepared to explain why the evidence should be accepted.

Example:

1. Identify exhibit:

"Your Honor, I would like to refer to this shirt which has been marked as Defense's Exhibit A."

2. Show the Law Officer

3. Ask permission to approach the witness.

4. Show witness:

"Ko Baby Bear, do you recognize this hair which is marked as Defense's Exhibit A?"

5. Lay Foundation:

"You found this hair on your pillow?"

This is the same hair you found on your pillow?"

³⁵ <http://cavemocktrial.blogspot.com/2012/11/introducing-physical-evidence.html>

Was this hair on your pillow when you left the house to go for a walk?
What color is this hair? (This exhibit is black.)
What color is Goldilock's hair?
Would you say this hair is straight or curly? (This exhibit is straight.)
Would you say that Goldilock's hair is straight or curly?
Is this hair long or short? (This exhibit is short.)
Would you say that Goldilocks hair is long or short?

6. Ask the crucial question:

"This hair does not match the hair on Goldilocks' head, does it?"

7. Request admission of the exhibit:

"Your Honor, I offer this hair for admission into evidence as
Defense's Exhibit A and ask the court to so admit it."

Some objects that might be made by opposing counsel include

- lack of foundation (so make sure you ask questions that lay a proper foundation)
- lack of personal knowledge

Using Expert Evidence

An attorney may call an expert for two purposes. First, an expert witness may be used to prove an affirmative defense or undercut ordinary evidence presented by the prosecution. Second, a defense expert can also be used to discount the testimony of a prosecution expert. This can be very important, because a defense expert may be necessary. Such testimony is more powerful than cross-examination by a technical manual, scholarly treatise, or scientific journal article.

Chief Examination of Defense Expert

The attorney conducts the chief examination as with any other witness, with the addition of some questions designed to allow the expert to offer the following information:

- The details of the expert's education, training, or experience that form the basis of his or her expertise.
- The actions taken by the expert in this case that form the basis of the expert's opinion.
- The expert's opinion, that relates to this case.

Example of Expert Chief Examination

1. Education, training or experience

- Biographical Questions
- What is your occupation?
- Can you describe what you mean by that?
- Where do you work?
- What is your position?
- What are your duties and responsibilities?

- Do you conduct tests on [fingerprinting, blood analysis, drug testing, etc]?
 - How many years have you done that?
 - Can you describe what that involves?
 - How many tests have you conducted?
 - What is the purpose of the tests?
 - What is your educational background?
 - Have you written or published any relevant articles
 - Do you belong to any professional associations?
 - Have you previously testified as an expert in court?
 - What courts have accepted your testimony as an expert?
 - What was the nature of the case in which you testified?
2. The actions taken
- What is the thing being discussed (fingerprints, drugs, blood type, DNA)
 - How can it be collected?
 - Are there conditions that impact collection?
 - Can you describe the test (to detect fingerprints, drugs, blood type, DNA)?
 - Do you use this method in your work?
 - What are you looking for in the test?
 - What kind of results can you get?
 - Are there always significant results?
 - Were you hired by the accused to conduct testing in this case?
 - Can you discuss what you analyzed?
 - Please describe what testing you did.
3. The expert's opinion
- Based upon your testing and expertise, were you able to form an opinion on (the fingerprints, drugs, blood type, DNA)?
 - What was that opinion?

Preparing Witness for Cross-Examination

See UNODC, **Criminal Legal Aid Manual for Law Practitioners in Somaliland**, February 2015.

In seeking out an expert and preparing the expert's testimony, a defense attorney needs to anticipate the same objections the defense attorney might have for prosecution expert witnesses. These include the same general areas that would be applicable for any witness:

- bias,
- prejudice,
- fraud,
- mistake,
- lack of opportunity to observe,
- lack of recollection

But an attorney must also anticipate challenges specifically related to the expert opinion:

- Does the expert's education, training, or experience establish a generally accepted scientific basis for the expert opinion.
Example: The expert has a Ph.D. in Philosophy and claims to be able to tell if someone is lying by observing a glowing light surrounding her body, which the expert can see by looking inside his hat.
- Is the expert, based education, training, or experience, truly an expert in the area about which testimony is being offered?
Example: The expert claims to have conducted an autopsy on the victim and determined that the time of death was at 2:30a.m. on Tuesday. However, the expert's medical school diploma is from a school in Cambodia that is not recognized by any government or academic institution and for many years his only work has been with sheep.
- Did the expert use techniques recognized within the field of expertise?
Example: The expert has a degree in medicine from a well-respected university in Europe. He claims that by examining the victim's facial expression after death he can say that the victim died of poisoning.
- Did the expert correctly execute tests and follow accepted procedures?
Example: The expert used a special kit designed and manufactured in the United States to determine that the substance seized from the accused was heroin, however, the instructions on the kit say: "Do not expose to temperatures exceeding 25 C°" and the testing was done during the middle of the day in April in a laboratory in Mandalay that is not air conditioned.

SKILLS: MAKING ARGUMENTS

See USAID Legal Aid Tool Kit Chapter 4B,
See Remand, Bail, Framing of the Charge, Final Argument Sections

Argument Practice in Myanmar

There appears to be no legal requirements for argument, written or oral, in Myanmar. Practice is for attorneys to file written arguments in addition to oral arguments. This is contrary to the recommendations of the Courts Manual.

Argument on Prior to the Framing of the Charge

The Criminal Procedure Code and the Courts Manual lack specific procedures for the defense attorney to be heard prior to the framing of the charge. Nonetheless such arguments are commonly made and are expected. The Prosecution argues first, then accused, with a rebuttal by the prosecution. See Criminal Practice Forms Before the Court by U Myint Lwin, p 67. U Myint Lwin (Advocate), Practical Application in Criminal Proceeding, published in 2003, by Soe Sar Pay

There are also other opportunities throughout the case for the defense attorney to discuss the facts and present the defense defense line. This can happen at a remand hearing, a bail argument, or even an argument about the admissibility of a particular piece of evidence. The argument on the charges should not be overly dramatic or belligerent. It is an opportunity for the defense to organize the significant facts in a logical fashion that makes sense and leads to one conclusion, a defense verdict. These arguments should be delivered in a calm, logical manner that brings the judge to your side.

Basics

This may be the judge's first contact with the criminal defense attorney. Given the fact that first impressions are hard to change, counsel should be very conscious of dress, grooming and body language. The attorney must attempt to come across as honest, sincere, considerate and credible. See: U Myint Lwin (Advocate), Practical Application in Criminal Proceeding, published in 2003, by Soe Sar Pay

Final Argument

As discussed in Pathway of the Case/Final Argument, Myanmar law allows for a final argument by the defense attorney. By law this should be done orally, although many defense attorneys also submit written argument. A good attorney should do both! Keep in mind the principles familiar to Myanmar judges.

1. As long as guilt is not proved then the accused must be considered an innocent person.
2. The case must be decided in the presence of the accused based on sufficient evidence.
3. Benefit of the doubt must reside on the accused. *Daw Tin Oo and U Aye Phe (3) v Union*, 1966 BLR 129 See also cases cited at pages 24-25, above.

4. The plaintiff has full responsibility to show the accused committed the crime. *Daw Si Si v Union*, 1964 BLR 876. See also *Sein Hla v. the Union of Burma* (1951) BLR 289
5. There must be fair trial and jurisdiction
6. Case summary
7. Motive
8. Irrelevant facts by prosecution
9. False allegations
10. Bias
11. Mental illness
12. Witnesses, loopholes, irregularities in the evidence
13. Are all elements of the elements present beyond a reasonable doubt
14. Argue for mitigation if nothing else

See also: U Myint Lwin (Advocate), *Practical Application in Criminal Proceeding*, published in 2003, by Soe Sar Pay, at page 101.

In terms of sentencing, Myanmar judges refer to common law principles such as deterrence, prevention and reform.

Sample Themes:

One important theme in any closing argument is the prosecution's heavy burden of proof. Some ways of emphasizing that burden are as follows:

- The test is not which side you believe - The prosecution may suggest to you that the test in this case is simply which side you believe. They invariably do this - and it is wrong. That's not the test. The test is this: "Has the prosecution overcome all reasonable doubt whether the accused is guilty of the crime alleged?" Is there at least one reasonable doubt that (name the accused) might be wrongly accused?
- Reasonable doubt as the lack of an abiding conviction of the truth of the allegation.. I suggest to you that reasonable doubt about a person's guilt is when, after considering and comparing and weighing all the evidence, you are not left with an abiding conviction of the truth of the charge that has been leveled at the accused.
- Reasonable doubt as meaning at least "not firmly convinced" of guilt - Whatever you may think about what reasonable doubt means, I submit to you that it means, at least, that you, as a responsible Magistrate, cannot convict a person of a crime until you are firmly convinced, personally, of the accused's guilt.
- Evidence must leave no room for reasonable doubt - By your oath, you cannot convict the accused when after careful consideration of the evidence there still remains one reasonable doubt as to whether the accused is guilty of this charge. It is only when the evidence leaves no room whatsoever for reasonable doubt that you are allowed to find that the accused is blameworthy.
- Guilt of the charge can only be found when the prosecution has presented sufficient, credible and admissible evidence that proves each and every ingredient of the charge.

Dealing with Co-Accused or Informants

Many criminal cases are built on the testimony of either cooperating jointly accused persons or persons who themselves have prior criminal records. This is also an important theme to emphasize. Some samples of arguments discrediting informants and cooperating co-conspirators are as follows:

- Be skeptical from the beginning of the case - I told you in my [bail argument] at the very beginning of this case, that you were going to hear from some biased people, and, without exception, the record reflects either that every one of them had made some kind of deal or that every one of them had a reason to say what he said. I asked you to please be skeptical and to listen not only to what they said, but to the way they said it and how they said it and why they said it. I asked you to keep your mind open to that because you don't have to accept at face value what they said.
- Credibility of prosecution witnesses - The test of believability doesn't rest on anyone but the prosecution. They must prove that what (name the informant or cooperating co-conspirator) told you were true beyond any reasonable doubt. They can't shift the burden of proving the honesty of their witness by saying, "Well, what kind of witness would you expect us to have?"
- Prosecution vouching for credibility and truthfulness of accomplice or coconspirator witness - How can you believe someone like (name the accomplice/co-conspirator)? This is such a topsy-turvy sort of case. I really marvel at it because here we have the government, through its law officer, vouching for the credibility and truthfulness of an admitted criminal.

PART FIVE: APPENDICES

APPENDIX 1: Relevant Protections in the 2008 Constitution

19: “The following are prescribed as judicial principles:
(a) to administer justice independently according to law;
(b) to dispense justice in open court unless otherwise prohibited by law;
(c) to guarantee in all cases the right of defence and the right of appeal under the law.”

21. (a) Every citizen shall enjoy the right of equality, the right of liberty and the right of justice, as prescribed in this Constitution.

b) No citizen shall be placed in custody for more than 24 hours without the permission of a Court.

(c) Every citizen is responsible for public peace and tranquility and prevalence of law and order.

(d) Necessary law shall be enacted to make citizens’ freedoms, rights, benefits, responsibilities and restrictions effective, steadfast and complete.

43. No Penal law shall be enacted to provide retrospective effect.

44. No penalty shall be prescribed that violates human dignity.

46. A Constitutional Tribunal shall be set up to interpret the provisions of the Constitution, to scrutinize whether or not laws enacted by the Pyidaungsu Hluttaw, the Region Hluttaws and the State Hluttaws and functions of executive authorities of Pyidaungsu, Regions, States and Self-Administered Areas are in conformity with the Constitution... [324. The resolution of the Constitutional Tribunal of the Union shall be final and conclusive.]

296. The Supreme Court of the Union :

(a) has the power to issue the following writs :

(i) Writ of Habeas Corpus;

(ii) Writ of Mandamus;

(iii) Writ of Prohibition;

(iv) Writ of Quo Warranto;

(v) Writ of Certiorari.

(b) The applications to issue writs shall be suspended in the areas where the state of emergency is declared.

347. The Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection.

348. The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.

353. Nothing shall, except in accord with existing laws, be detrimental to the life and personal freedom of any person.

354. Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality:

- (a) to express and publish freely their convictions and opinions;
- (b) to assemble peacefully without arms and holding procession;
- (c) to form associations and organizations;
- (d) to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.

357. The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution.

373. Any person who committed a crime, shall be convicted only in accord with the relevant law then in operation. Moreover, he shall not be penalized to a penalty greater than that is applicable under that law.

374. Any person convicted or acquitted by a competent court for an offence shall not be retried unless a superior court annuls the judgment and orders the retrial.

375. An accused shall have the right of defence in accord with the law.

376. No person shall, except matters on precautionary measures taken for the security of the Union or prevalence of law and order, peace and tranquility in accord with the law in the interest of the public, or the matters permitted according to an existing law, be held in custody for more than 24 hours without the remand of a competent magistrate.

377. In order to obtain a right given by this Chapter, application shall be made in accord with the stipulations, to the Supreme Court of the Union.

378. (a) In connection with the filing of application for rights granted under this Chapter, the Supreme Court of the Union shall have the power to issue the following writs as suitable :

- (1) Writ of Habeas Corpus;
- (2) Writ of Mandamus;
- (3) Writ of Prohibition;
- (4) Writ of Quo Warranto;
- (5) Writ of Certiorari.

(b) The right to issue writs by the Supreme Court of the Union shall not affect the power of other courts to issue order that has the nature of writs according to the existing laws.

381. Except in the following situations and time, no citizen shall be denied redress by due process of law for grievances entitled under law ... [series of exceptions]

APPENDIX 2: Confidentiality Agreement For Those Assisting With Vulnerable Clients

Confidentiality Agreement

This agreement is made between _____ (insert name of advocate or high grade pleader) and _____, (insert name of volunteer) a Volunteer assisting with the case of _____ (insert name of the accused). Because the accused may have some mental or emotional issues that causes them difficulties in either communication or establishing trust, the Volunteer will assist in communicating with the accused as part of the defense team. The Volunteer may therefore learn confidential information and/or attorney work product as part of the process. In exchange for allowing the Volunteer an opportunity to help with the case, the Volunteer agrees that such information must be kept confidential and not shared with any other person except others who also sign a confidentiality agreement with IBJ.

To ensure the protection of such information, and to preserve any confidentiality necessary under attorney-client privilege, attorney work product, and other relevant standards, it is agreed that

1. For the purposes of this agreement, Confidential Information includes:
- All client case information, including but not limited to police and court documents, witness statements, results of investigations, client instructions, any statements made by the client, and attorney work product derived from those documents and other sources. It also includes attorney advice, analysis and strategy.
2. The Volunteer shall not share this information in any form with any other person except as provided in this agreement, or as required to do so by law.
3. This Agreement states the entire agreement between the parties concerning the disclosure of Confidential Information. Any addition or modification to this Agreement must be made in writing and signed by the parties.
4. If any of the provisions of this Agreement are found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

The parties acknowledge that they have read and understand this Agreement and voluntarily accept the duties and obligations set forth herein.

Date: _____

Volunteer:

Name (Print or Type): _____

Signature: _____

Advocate or High Grade Pleader

Name (Print or Type): _____

Signature: _____

APPENDIX 3: IBJ Case Management Forms

1. Criminal Defense Checklist
2. Client Intake Survey
3. Case Intake Form
4. Case Tracking Log
5. Ingredients Worksheet
6. Case Review Worksheet
7. Anti-Corruption Agreement
8. Closed Case Form
9. Client Post Representation Survey
10. Case Referral Form

Criminal Defense Checklist

Attorney Name: ရှေ့နေအမည်	Client Name: အမှုသည်အမည်	Case Number: အမှုတွဲနံပါတ်
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At what stage of the case were you appointed? (circle one)

အမှု၏မည်သည့်အဆင့်တွင် ရှေ့နေအဖြစ် အမှုစတင်လိုက်ပါဆောင်ရွက်ခဲ့သနည်း။ (အောက်ပါတို့မှတစ်ခုကိုဝိုင်းပါ)

Police Investigation ရဲမှတ်စစ်စစ်ဆေး သောအဆင့်	Remand Hearing ရမန်ကြားနာ သည့်အဆင့်	Inquiry စစ်မေးသည့်အဆင့်	Framing of Charges ဖွဲ့ချက်တင်သည့်အဆင့်	Trial စစ်ဆေးစီရင်သည့်အဆင့်	Sentencing အမိန့်ချသည့်အဆင့်
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CASE INTAKE အမှုတွဲလက်ခံခြင်း	✓	Date နေ့စွဲ
Initial Client Intake အစောပိုင်း အမှုသည်လက်ခံခြင်း		
a. Client Intake Survey Completed Client Intake Survey ဖြည့်စွက်ပြီးစီးခြင်း		
b. Power of Attorney Signed Power of Attorney ဖြည့်စွက်ပြီးစီးခြင်း		
c. Anti – Corruption Agreement Signed Anti-Corruption Agreement လက်မှတ်ထိုးခြင်းပြီးပြန်ခြင်း		
d. Poverty assessment checked ငွေကြေးချို့တဲ့မှု စစ်ဆေးခြင်းပြီးပြန်ခြင်း		
e. Client Intake Form Completed Client Intake Form ဖြည့်စွက်ပြီးစီးခြင်း		
f. Did you interview the client about what happened? အမှုသည်အားအမှုနှင့်ပတ်သက်ပြီး စစ်ဆေးမေးမြန်းပြီးပါပြီလား		
g. Did you ask the client about his/her goals? အမှုသည်၏ ရည်မှန်းချက်များ ကိုမေးမြန်းပြီးပါပြီလား		
h. Did you Advise the client of his/her rights? သင်၏အမှုသည်အား၎င်း၏အခွင့်အရေးများအကြောင်း ပြောပြပြီးပါပြီလား <input type="checkbox"/> Right Not to be Tortured နှိပ်စက်ညှဉ်းပန်းမှုမခံရရန်အခွင့်အရေး <input type="checkbox"/> Right to Remain Silent တိတ်ဆိတ်စွာနေနိုင်သည့် အခွင့်အရေး <input type="checkbox"/> Right to a Timely Trial အချိန်နှင့်တပြေးညီစစ်ဆေးစီရင်ခြင်းကို ခံထိုက်ပိုင်ခွင့် <input type="checkbox"/> Right to Be Informed of the Charges ၎င်းအားစွဲဆိုထားသောပုဒ်မများကို သိရှိရန်အခွင့်အရေး		

<input type="checkbox"/> Right to Bail အာမခံရရှိရန်အခွင့်အရေး		
i. Did you submit all Intake Forms to your Admin to log into CMS? CMS သို့ဖြည့်သွင်းရန် Admin ထံသို့အောက်ပါတို့ကို ပေးအပ်ပြီးပါပြီလား <input type="checkbox"/> Client Intake Survey <input type="checkbox"/> Client Intake Form		
j. Did you fill out the Case Tracking Log to document all activities on your case? အမှုနှင့်ပတ်သက်သော လှုပ်ရှားမှုများကို Case Tracking Log တွင်ဖြည့်သွင်းပြီးပါပြီလား		
CASE PREPARATION အမှုတွဲ ပြင်ဆင်ခြင်း		
Case Analysis အမှုတွဲ ခွဲခြမ်းစိတ်ဖြာခြင်း		
a. Did you use the Ingredients Worksheet to analyze each of the sections in the case? Ingredients Worksheet အားအသုံးပြုကာ အမှုတွဲတွင်ပါဝင်သော ဗဟိမာများကို လေ့လာသုံးသပ်ပြီးပါပြီလား		
b. Did you use the Case Review Worksheet to: Case Review Worksheet ကိုအသုံးပြုကာ <input type="checkbox"/> Analyze the evidence in the case သက်သေခံပစ္စည်းများကိုလေ့လာပြီးပါပြီလား <input type="checkbox"/> Create a Defense Line ခုခံကာကွယ်ရန်လမ်းကြောင်းကို ချမှတ်ပြီးပါပြီလား <input type="checkbox"/> Identify the prosecution's case theory တရားလို၏ အမှုတွဲသီအိုရီကို လေ့လာဖော်ထုတ်ပြီးပါပြီလား <input type="checkbox"/> Determine your Case Strategies သင်၏အမှုတွဲနည်းဗျူဟာများကို သတ်မှတ်ပြီးပါပြီလား		
Investigation စုံစမ်းစစ်ဆေးခြင်း		
a. Did you ask the client if they had any Defense Witnesses and/or Defense Evidence ? သင်၏အမှုသည်အား ခုခံကာကွယ်ရာတွင်အထောက်အကူပြုမည့်သက်သေများ(တရားခံသက်သေ) ၊ သက်သေခံပစ္စည်းများရှိမရှိ မေးမြန်းပြီးပါပြီလား		
b. Did you interview All Defense Witnesses ? Please list all Defense Witnesses: ခုခံကာကွယ်ရာတွင်အထောက်အကူပြုမည့်သက်သေများ(တရားခံ		

<p>သက်သေ)အားလုံးကို စုံစမ်းမေးမြန်းပြီးပါပြီလား။ ခုခံကာကွယ်ရာတွင်အထောက်အကူပြုမည့်သက်သေများ (တရားခံသက်သေများ)ကို အောက်တွင်ဖော်ပြပါ။</p>		
<p>c. Did you collect All Defense Evidence? <i>Please list all Defense Evidence:</i> ခုခံကာကွယ်ရာတွင်အထောက်အကူပြုမည့် သက်သေခံပစ္စည်းများကို စုဆောင်းပြီးပါပြီလား ခုခံကာကွယ်ရာတွင်အထောက်အကူပြုမည့် သက်သေခံပစ္စည်းများကို အောက်တွင်ဖော်ပြပါ</p>		
<p>d. Did you Visit the Crime Scene? အခင်းဖြစ်ပွားရာနေရာကို လေ့လာကြည့်ရှုပြီးပါပြီလား။</p>		
<p>e. Did you interview at least One Witness Prosecution Witness? <i>Please list the name of prosecution witness interviewed:</i> တရားလိုဖက်မှ အနည်းဆုံးသက်သေတစ်ဦးကို စုံစမ်းမေးမြန်းပြီးပါပြီလား။ သင်စုံစမ်းမေးမြန်းခဲ့သော တရားလိုဖက်မှသက်သေနာမည်ကို ဖော်ပြပါ။</p>		
<p>Motions တရားရုံးတော်တွင် ကြားဖြတ်လျှောက်ထားတင်ပြခြင်း</p>		
<p>a. Bail Motion အာမခံလျှောက်ထားခြင်း <input type="checkbox"/> Granted အာမခံရသည် <input type="checkbox"/> Denied အာမခံမရပါ <input type="checkbox"/> Non-Bailable Case အာမခံလျှောက်ခွင့်မရှိသော ပြစ်မှု၊</p>		
<p>b. Did you request all case documents from the court? တရားရုံးမှအမှုတွဲနှင့်သက်ဆိုင်သော စာရွက်စာတမ်းများ တောင်းယူပြီးပါပြီလား။ <input type="checkbox"/> Police Report ရဲမှတ်စု <input type="checkbox"/> Witness Statements သက်သေထွက်ချက် <input type="checkbox"/> Test Results သက်သေခံပစ္စည်းစမ်းသပ်တွေ့ရှိချက် <input type="checkbox"/> Medical Reports ဆေးစစ်ချက် <input type="checkbox"/> Search Warrants ရှာဖွေခွင့်ဝရမ်း</p>		

<p>c. Did you <u>receive</u> all case documents from the court? <i>Please indicate date you received and the stage of the case:</i></p> <p>တရားရုံးမှ အမှုတွဲနှင့်သက်ဆိုင်သော စာရွက်စာတမ်းများကိုလက်ခံရရှိပြီးပါပြီလား။ သင်လက်ခံရရှိသောနေ့စွဲနှင့် အမှု၏ရောက်ရှိနေသောအဆင့်ကိုဖော်ပြပါ။</p> <p><i>If not, you must make a Motion to the court to try to obtain these documents as soon as possible.</i></p> <p>မရရှိပါက ထိုစာရွက်စာတမ်းများကိုရယူခွင့်ပြုရန် တရားရုံးတွင်လျှောက်ထားတင်ပြသင့်သည်။</p>		
<p>d. Motion to Obtain All Witnesses Statements and Case Documents</p> <p>သက်သေများ၏ထွက်ဆိုချက်များနှင့် အမှုတွဲစာရွက်စာတမ်းများရရှိရန် လျှောက်ထားတင်ပြခြင်း</p> <p><i>Please list all motions made to court to obtain Witness Statements and Case Documents: (include dates)</i></p> <p>သက်သေများ၏ထွက်ဆိုချက်များနှင့် အမှုတွဲစာရွက်စာတမ်းများရရှိရန် တရားရုံးတွင် လျှောက်ထားတင်ပြမှုအားလုံးကိုနေ့စွဲနှင့်တကွ အောက်တွင်ဖော်ပြပါ။</p>		
<p>e. Motion to Challenge Search Warrants</p> <p>ရှာဖွေခွင့်ဝရမ်းကို စိန်ခေါ်ရန် တရားရုံးတော်တွင်လျှောက်ထားတင်ပြခြင်း။</p>		
<p>f. Writs and Revisions</p> <p>ပြန်လည်ပြင်ဆင်ခြင်း နှင့် စာချွန်တော်အမိန့်.</p> <p><i>Please List:</i></p> <p>အောက်တွင်ဖော်ပြပါ။</p>		
<p>Objections</p> <p>ကန့်ကွက်ခြင်း</p>		
<p>a. Evidence Act Section 60: Testimony must be from a direct source. <i>Please list objections made, and dates:</i></p> <p>သက်သေခံဥပဒေပုဒ်မ၆၀-နုတ်သက်သေခံချက်သည် တိုက်ရိုက်သိဖြစ်ရမည်။</p> <p>တရားရုံးတော်တွင်ကန့်ကွက်ခြင်းများပြုလုပ်ပါက နေ့စွဲနှင့်ဖော်ပြပါ။</p>		
<p>b. Undue Delay for Hearings (Court Manual para. 559, 560, 462, 466) Please list objections made, and dates:</p> <p>မလိုလားအပ်သောတရားခွင့်ကြန့်ကြာခြင်းများ(တရားရုံးများလက်စွဲ အပိုဒ် ၅၅၉၊၅၆၀၊၄၆၂၊၄၆၆)</p> <p>တရားရုံးတော်တွင်ကန့်ကွက်ခြင်းများပြုလုပ်ပါက နေ့စွဲနှင့်ဖော်ပြပါ။</p>		
<p>c. Objections when the Judge is not present during the hearing (CM 609)</p> <p>ကြားနာစစ်ဆေးနေစဉ်အတွင်း</p> <p>တရားသူကြီးမရှိပါက ကန့်ကွက်ခြင်း(တရားရုံးများလက်စွဲ အပိုဒ် ၆၀၉)</p> <p>တရားရုံးတော်တွင်ကန့်ကွက်ခြင်းများပြုလုပ်ပါက နေ့စွဲနှင့်ဖော်ပြပါ။</p>		

INQUIRY & TRIAL စစ်မေးခြင်းနှင့်စစ်ဆေးစီရင်ခြင်း			
a. Did you cross examine any of the prosecution witnesses? တရားလိုသက်သေများအား ပြန်လှန်စစ်မေးခဲ့ပါသလား။ How many witnesses: _____ သက်သေမည်မျှနည်း: _____			
b. Did you present any defense witnesses ? ခုခံကာကွယ်မည့်သက်သေများ(တရားခံသက်သေ)အသုံးပြုခဲ့ပါသလား။ How many witnesses: _____ သက်သေမည်မျှနည်း: _____			
c. Did you present any defense evidence ? ခုခံကာကွယ်ရာတွင်အသုံးပြုမည့်သက်သေခံပစ္စည်းများ အသုံးပြုခဲ့ပါသလား။ What evidence: သက်သေခံပစ္စည်းများကိုဖော်ပြပါ			
Verdict and Sentence တရားသူကြီး၏အဆုံးအဖြတ်နှင့် ပြစ်ဒဏ်			
a. Did the judge issue a verdict? တရားသူကြီးမှအမိန့်ချပြီးပါပြီလား။ Sentence: ပြစ်ဒဏ်			
Appeal အယူခံတင်ခြင်း			
a. If the client was found guilty, did you file an appeal ? အမှုသည်သည်အပြစ်ရှိကြောင်းတွေ့ရှိပါက အယူခံတင်သွင်းပါသလား။			
b. If you decided not to, why not? <i>Please explain.</i> အယူခံမတင်ပါက အဘယ်ကြောင့်နည်း။ရှင်းပြပါ။			
CLOSING THE CASE အမှုပိတ်သိမ်းခြင်း			
a. Did the client fill out the Client Post Survey ? အမှုသည်သည် Client Post Survey ဖြည့်ပြီးပါပြီလား။			
b. Did you fill out the Closed Case Form and submit it to your Admin? Closed Case Form အားဖြည့်သွင်းကာ Adminထံပေးပြီးပါပြီလား။			
c. Did you complete this Criminal Defense Checklist and submit it to the Admin at the end of the case? အမှုအားပိတ်သိမ်းလိုက်ပါက Criminal Defense Checklist အားဖြည့်စုံစာဖြည့်သွင်းကာ Admin ထံပေးပြီးပါပြီလား။			

Upon completion of this form please sign and turn into your Admin.

ယခု *Criminal Defense Checklist* အားဖြည့်သွင်းပြီးပါက လက်မှတ်ထိုးကာ Adminထံပေးအပ်ပါ။

I certify that the above information is complete and accurate.

အထက်ပါအချက်အလက်များသည် ပြည့်စုံမှန်ကန်ကြောင်း အာမခံပါသည်။

ATTORNEY SIGNATURE

ရှေ့နေ၏လက်မှတ်

DATE OF COMPLETION

ဖြည့်သွင်းပြီးစီးသောနေ့စွဲ

IBJ Justice Centre Client Intake and Eligibility Survey

Can the client read and write? Y / N အမှတ်သည့်ရေးနိုင်စွမ်းရှိပါသလား။ If not, please indicate the name of the person who completed the form with the client: မရေးနိုင်ပါက အမှတ်သည့်အတူယခုစာစာအုပ်ဖြည့်သည့် ပုဂ္ဂိုလ်နာမည်ကိုဖော်ပြပါ။
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PERSONAL INFORMATION ကိုယ်ရေးအချက်အလက်		
Name: အမည်	Age: အသက် Gender: M / F ကျား/မ	Date: နေ့စွဲ
Address: နေရပ်လိပ်စာ Township: မြို့နယ်	Phone Number: ဖုန်းနံပါတ် Language: ဘာသာစကား	Religion: ကိုးကွယ်သည့်ဘာသာ Ethnicity: လူမျိုး
Occupation: အလုပ်အကိုင်	Monthly Income: လစဉ်ဝင်ငွေ	Can you afford to hire an attorney? Y / N ရှေ့နေငှားရမ်းရန်တက်နိုင်ပါသလား။
How has or will this criminal case affect you financially? ဤအမှုအခင်းသည် ငွေကြေးအရသင့်အား မည်သို့အကျိုးသက်ရောက်မှုရှိပါသနည်း။		Total Number of Dependents: စီမံသူဦးရေစုစုပေါင်း Additional Income from other members of household: အိမ်ထောင်စုအတွင်းရှိအခြားအိမ်သားများ၏ဝင်ငွေ
CASE INFORMATION အမှုအကြောင်းအရာ		
How did you hear about IBJ's Justice Centre? IBJ၏တရားမျှတမှုစင်တာအကြောင်းကို သင်မည်သို့ကြားသိခဲ့သနည်း။ <input type="checkbox"/> Newspaper သတင်းစာ <input type="checkbox"/> Television ရုပ်မြင်သံကြား <input type="checkbox"/> Friend သူငယ်ချင်း <input type="checkbox"/> Court တရားရုံး <input type="checkbox"/> Police ပို့ <input type="checkbox"/> Other: အခြား _____		What do you need help with today? <input type="checkbox"/> Civil Case (money related) တရားမမှု (ငွေကြေးနှင့်ဆိုင်သော) <input type="checkbox"/> Criminal Case (someone is facing jail time) ရာဇဝတ်မှု (အကျဉ်းကျခံရန်အလားအလာရှိသော) <input type="checkbox"/> Other အခြား _____
Have you sought help from other places prior to coming to IBJ? IBJထိသို့လာရောက်ခင် အခြားမည်သည့်နေရာများထံသွားရောက် အကူအညီတောင်းခံခဲ့သနည်း။ <input type="checkbox"/> Ward/ Village Tract Administrator ရပ်ကွက်၊ ကျေးရွာအုပ်ချုပ်ရေးမှူး <input type="checkbox"/> Community Leaders အဖွဲ့အစည်းခေါင်းဆောင် <input type="checkbox"/> Police/ Law Officers ပို့၊ ဥပဒေအရာရှိ <input type="checkbox"/> The Court တရားရုံး <input type="checkbox"/> Other: အခြား _____		
What kind of help do you hope to receive for your case through the Justice Centre? သင်၏အမှုနှင့်ပတ်သက်ပြီး တရားမျှတမှုစင်တာထံမှ မည်သို့သောအကူအညီကိုရရှိရန်မျှော်လင့်ပါသနည်း။		

IBJ Justice Centre Client Intake and Eligibility Survey

I certify that the above information is complete and accurate to the best of my knowledge.

အထက်ပါအကြောင်းအရာများအား ကျွန်ုပ်တို့အားလုံးသည် အတိုင်း ဖြည့်စွက်ထားပြီး မှန်ကန်ပြည့်စုံမှုရှိကြောင်း အာမခံပါသည်။

DATE

နေ့စွဲ

Signature

လက်မှတ်

Witness

အသိသက်သေ

Attorney Name:

ရှေ့နေအမည်

- ☐ Power of Attorney Signed
☐ Anti-Corruption Agreement Signed

Case Intake Form

CLIENT INFORMATION

အမှုသည်ကိုယ်ရေးအချက်အလက်

Client Name အမှုသည်အမည်	Case Number အမှုတွဲနံပါတ်	Date Received လက်ခံရရှိသောနေ့စွဲ
Address: နေရပ်လိပ်စာ	Phone Number: ဖုန်းနံပါတ်	Religion: ဘာသာ
Township: မြို့နယ်	Father's Name: ဖခင်အမည်	Ethnicity: လူမျိုး
Sections/ Charges: ပုဒ်မခွဲချက်	Minimum/ Maximum Penalty: အနိမ့်ဆုံးနှင့်အမြင့်ဆုံးပြစ်ဒဏ်	
Does your client have a Criminal Record? <input type="checkbox"/> No <input type="checkbox"/> Yes (please list) သင်၏အမှုသည်တွင် ပြစ်မှုနောက်ကြောင်းရာဇဝင်ရှိပါသလား။(ရှိပါကဖော်ပြပါ။)		Age: အသက်
		Gender: M / F ကျား/မ
		Monthly Income: လစင်ဝင်ငွေ

CASE INFORMATION

အမှုတွဲအချက်အလက်

Stage of Case Appointment: အမှုကိုလက်ခံရရှိသော အချိန်တွင်ရောက်ရှိနေ သောအဆင့်	<input type="checkbox"/> Police Investigation ရဲစုံစမ်းစစ်ဆေးသည့်ကာလ <input type="checkbox"/> Remand ရမန်ကာလ <input type="checkbox"/> Inquiry စစ်မေးသည့်အဆင့်	<input type="checkbox"/> Trial စစ်ဆေးစီရင်သည့်အဆင့် <input type="checkbox"/> Sentencing ပြစ်ဒဏ်ချမှတ်သည့်အဆင့် <input type="checkbox"/> Appeal အယူခံတင်သည့်အဆင့်
Type of Case: အမှုတွဲအမျိုးအစား	<input type="checkbox"/> Cognizable ရဲအရေးပိုင်သောအမှု <input type="checkbox"/> Summons သမ္မန်အမှု <input type="checkbox"/> Death Penalty သေဒဏ်ကျခံနိုင်သောအမှု	<input type="checkbox"/> Non-Cognizable ရဲအရေးမပိုင်သောအမှု <input type="checkbox"/> Warrant ဝရမ်းအမှု <input type="checkbox"/> Juvenile ငယ်နှစ်အောက်လူငယ်အမှု
Incident Date: အခင်းဖြစ် သည့်နေ့စွဲ	Arrest Date: ဖမ်းဆီး သည့် နေ့စွဲ	Date JC Appointed: JCမှလက်ခံရရှိသောနေ့
Custody Status: အချုပ်ကျခံနေမှု အခြေအနေ <input type="checkbox"/> In Custody အချုပ်ထဲတွင် <input type="checkbox"/> Out of		Bail Status: အာမခံလျှောက်ထားသည့်အခြေအနေ <input type="checkbox"/> Bail Motion Made အာမခံလျှောက်ထားသည်။ <input type="checkbox"/> Non-Bailable Case

			Custody အချုပ်ပြင်ပ	အာမခံလျှောက်ခွင့်မရှိသော အမှု
Court: တရားရုံး		Next Court Date: အနီးစပ်ဆုံး ရုံးချိန်းရက်	How Client Heard about JC: အမှုသည်မှ JC အကြောင်းကိုမည်သို့ ကြားသိခဲ့သနည်း	
Township: မြို့နယ်				
CLIENT INTERVIEW အမှုသည်အားစုံစမ်းမေးမြန်းခြင်း				
Date:		Location: နေရပ်လိပ်စာ		
<p><i>Please interview the client and take notes, making sure to follow this checklist:</i> <i>အမှုသည်အားစုံစမ်းမေးမြန်းကာမှတ်စုရေးသားပြီး အောက်ပါ အဆင့်ဆင့်စစ်ဆေးရမည့်စာရင်းကို လိုက်နာဆောင်ရွက်ပါ။</i></p> <p>Client's Version of the Facts: အမှုသည်ပြောပြသည့်အမှုနှင့်ပတ်သက်သောအကြောင်းအရာများ</p> <p><input type="checkbox"/> Ask the client about their version of the facts. What happened? <i>အမှုသည်အား အမှုနှင့်ပတ်သက်သောအကြောင်းအရာများကိုမေးမြန်းပါ။ မည်သို့ဖြစ်ပွားခဲ့သနည်း။</i></p> <p><input type="checkbox"/> What are the clients' goals? <i>အမှုသည်၏ရည်မှန်းချက်များမှာ အဘယ်နည်း။</i></p> <p>Torture and Confession: နှိပ်စက်ညှဉ်းပန်းခြင်းနှင့်ဝန်ခံစေခြင်း</p> <p><input type="checkbox"/> Was the client tortured? Y/N ... if yes, please record what happened. <i>အမှုသည်မှာနှိပ်စက်ညှဉ်းပန်းခြင်းခံခဲ့ရပါသလား။ နှိပ်စက်ညှဉ်းပန်းခံရပါက မည်သို့မည်ပုံဖြစ်ခဲ့သည်ကိုရေးမှတ်ပါ။</i></p> <p><input type="checkbox"/> Did the client make a confession to the police? What happened? <i>အမှုသည်သည် ရဲထံတွင် ဝန်ခံခဲ့ပါသလား။မည်သို့နည်း။</i></p> <p>Defense Witnesses and Evidence: ခုခံကာကွယ်ရာတွင်အထောက်အကူပြုသည့် သက်သေများနှင့်သက်သေခံချက်များ(တရားခံသက်သေ)</p> <p><input type="checkbox"/> Does the client have any witnesses that could help in their defense? <i>Collect witness information so that you can interview these witnesses.</i> <i>အမှုသည်တွင် ခုခံကာကွယ်ရာ၌၎င်းတို့ဖက်မှအထောက်အကူပေးနိုင်သောသက်သေများရှိပါသလား။ ထိုသက်သေများကိုစုံစမ်းမေးမြန်းရန် ၎င်းတို့နှင့်ပတ်သက်သောအချက်အလက်များကိုစုဆောင်းပါ။</i></p> <p><input type="checkbox"/> Does the client have any evidence that you could collect that could help with their defense? <i>Collect specific information so that you can collect this data.</i> <i>အမှုသည်တွင် ခုခံကာကွယ်ရာ၌၎င်းတို့ဖက်မှအထောက်အကူပေးနိုင်သောသက်သေခံချက်များ (သက်သေခံပစ္စည်း၊ သက်သေထွက်ချက်) ရှိပါသလား။ ထိုသက်သေခံချက်များအားစုဆောင်းရန်</i></p>				

၎င်းတို့နှင့်ပတ်သက်သောအချက်အလက်များကိုစုဆောင်းမှတ်သားပါ။

Advise the Client of their Rights and the Sections/Charges against them:

အမှုသည်ကို ၎င်းတို့ရပိုင်ခွင့်ရှိသော အခွင့်အရေးများ၊ ၎င်းတို့အားစွဲချက်တင်ထားသော ပုဒ်မများအကြောင်းသိရှိစေရန်ပြောပြပါ။

- ☐ Advise client about the trial process and the sections/charges against them
တရားရုံးတွင်စစ်ဆေးစီရင်သည့်လုပ်ငန်းအဆင့်ဆင့်နှင့်၎င်းတို့အားစွဲချက်တင်ထားသောပုဒ်မများအကြောင်းပြောပြရန်
- ☐ Advise client of their Right Not to be Tortured
နှိပ်စက်ညှဉ်းပန်းခြင်းမခံရစေရန်အခွင့်အရေးအားပြောပြရန်
- ☐ Advise client of their Right to Remain Silent
နုတ်ဆိတ်စွာနေပိုင်ခွင့်အခွင့်အရေးအားပြောပြရန်
- ☐ Advise client of their Right to a Timely Trial
အချိန်နှင့်တပြေးညီ တရားရုံးစစ်ဆေးစီရင်မှုကိုခံထိုက်ပိုင်ခွင့်အားပြောပြရန်
- ☐ Advise client of their Right to Bail
အာမခံလျှောက်ထားပိုင်ခွင့်ကိုပြောပြရန်

Case Tracking Log

<div> Client Name: အမှုသည်အမည် </div> <div> Case Number: အမှုတွဲနံပါတ် </div>	
Date/Attorney/ Activity နေ့စွဲ၊ရှေ့နေအမည်၊လုပ်ဆောင်ချက်	Notes မှတ်စုများ
Attorney Name: ရှေ့နေအမည် <input type="checkbox"/> Client Meeting အမှုသည်နှင့်တွေ့ဆုံခြင်း <input type="checkbox"/> Court တရားရုံး(ရုံးချိန်း) <input type="checkbox"/> Investigation စုံစမ်းစစ်ဆေးခြင်း <input type="checkbox"/> Case Preparation အမှုတွဲပြင်ဆင်ခြင်း Date: နေ့စွဲ	
Attorney Name: ရှေ့နေအမည် <input type="checkbox"/> Client Meeting အမှုသည်နှင့်တွေ့ဆုံခြင်း <input type="checkbox"/> Court တရားရုံး(ရုံးချိန်း) <input type="checkbox"/> Investigation စုံစမ်းစစ်ဆေးခြင်း <input type="checkbox"/> Case Preparation အမှုတွဲပြင်ဆင်ခြင်း Date: နေ့စွဲ	
Attorney Name: ရှေ့နေအမည် <input type="checkbox"/> Client Meeting အမှုသည်နှင့်တွေ့ဆုံခြင်း <input type="checkbox"/> Court တရားရုံး(ရုံးချိန်း) <input type="checkbox"/> Investigation စုံစမ်းစစ်ဆေးခြင်း <input type="checkbox"/> Case Preparation အမှုတွဲပြင်ဆင်ခြင်း Date: နေ့စွဲ	
Attorney Name: ရှေ့နေအမည် <input type="checkbox"/> Client Meeting အမှုသည်နှင့်တွေ့ဆုံခြင်း <input type="checkbox"/> Court တရားရုံး(ရုံးချိန်း) <input type="checkbox"/> Investigation စုံစမ်းစစ်ဆေးခြင်း <input type="checkbox"/> Case Preparation အမှုတွဲပြင်ဆင်ခြင်း Date: နေ့စွဲ	
Attorney Name: ရှေ့နေအမည် <input type="checkbox"/> Client Meeting အမှုသည်နှင့်တွေ့ဆုံခြင်း <input type="checkbox"/> Court တရားရုံး(ရုံးချိန်း) <input type="checkbox"/> Investigation စုံစမ်းစစ်ဆေးခြင်း <input type="checkbox"/> Case Preparation အမှုတွဲပြင်ဆင်ခြင်း Date: နေ့စွဲ	

Ingredients Worksheet

Attorney Name: ရှေ့နေအမည်	Client Name: အမှုသည်အမည်	Case Number: အမှုတွဲနံပါတ်
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Section ပုဒ်မ	Title ခေါင်းစဉ်

- Actor- လုပ်ဆောင်သူ
- Action- လုပ်ဆောင်မှု
- Intent- ရည်ရွယ်ချက်
- Object/victim- ပစ္စည်း၊ ကျူးလွန်ခံရသူ
- Special conditions/enhancements- ထူးခြားသော အခြေအနေများ၊ ထပ်တိုးပစ္စည်းများ

# နံပါတ်	Ingredient/Element ပါဝင်သောအကြောင်းအရာ၊ အင်္ဂါရပ်	Relevant Evidence in the Case အမှုတွဲနှင့်သင့်လျော်တိုက်ဆိုင်သောသက်သေခံချက်များ	Evaluation အကဲဖြတ်ခြင်း
			<input type="checkbox"/> Met ပြည့်စုံသည် <input type="checkbox"/> Not Met မပြည့်စုံပါ
			<input type="checkbox"/> Met ပြည့်စုံသည် <input type="checkbox"/> Not Met မပြည့်စုံပါ
			<input type="checkbox"/> Met ပြည့်စုံသည် <input type="checkbox"/> Not Met မပြည့်စုံပါ
			<input type="checkbox"/> Met ပြည့်စုံသည် <input type="checkbox"/> Not Met မပြည့်စုံပါ
			<input type="checkbox"/> Met ပြည့်စုံသည် <input type="checkbox"/> Not Met မပြည့်စုံပါ

Penalty Section ပြစ်ဒဏ်ပုဒ်မ	Max/Min အမြင့်ဆုံး၊ အနိမ့်ဆုံး

Definitions and Additional Relevant Sections အခြားသင့်လျော်သော ထပ်တိုးပုဒ်မများနှင့် အဓိပ္ပာယ်သတ်မှတ်ချက်များ	

Case Review Worksheet

Attorney Name: ရှေ့နေအမည်	Client Name: အမှုသည်အမည်	Case Number: အမှုတွဲနံပါတ်
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Sections/ Charges ပုဒ်မဖွဲ့ချက်

Evidence သက်သေ

Prosecution Evidence (-) တရားလိုသက်သေ(-)	Defense Evidence (+) မှန်ကန်ကွယ်ရာတွင်အထောက်အကူပြုသောသက်သေ (တရားခံသက်သေ)(+)

Case Theories အမှုတွဲသီအိုရီ

Prosecution Case Theory တရားလို၏အမှုတွဲသီအိုရီ	Defense Line (Case Theory) တရားခံ၏အမှုတွဲသီအိုရီ

Tasks

လုပ်ဆောင်ရန်

Investigation စုံစမ်းစစ်ဆေးခြင်း	Motions တရားရုံးတော်တွင်ကြာဖြတ် လျှောက်ထားတင်ပြခြင်း	Objections ကန့်ကွက်ခြင်း

Anti-Corruption Agreement

လာဘ်ပေးလာဘ်ယူမှု ဆန့်ကျင်ရေး မူဝါဒနှင့် သဘောတူညီချက်

အမှတ်သည်အမည် _____ အမှတ်တွဲနံပါတ် _____

တရားမျှတမှုစင်တာ လာဘ်ပေးလာဘ်ယူမှုဆန့်ကျင်ရေး မူဝါဒ

တရားမျှတမှုစင်တာသည် တင်းကြပ်သော လာဘ်ပေးလာဘ်ယူမှုဆန့်ကျင်ရေး မူဝါဒကို ကျင့်သုံးပါသည်။ ကျွန်ုပ်တို့အနေဖြင့် တရားစီရင်ရေးကဏ္ဍတွင် အကျင့်ပျက်ခြစားခြင်းကို ဆန့်ကျင်သည့် ခိုင်မာသော ရပ်တည်ချက်ကိုလက်ကိုင်ထားပါသည်။ ကျွန်ုပ်တို့သည် စာရွက်စာတမ်း၊ လက်မှတ်ရရှိရန် သို့မဟုတ် လုပ်ငန်းလုပ်ဆောင်မှုမြန်ဆန်စေရန် အစရှိသည်တို့အတွက် မည်သို့သော လာဘ်ပေးလာဘ်ယူမှုမဆို **ချင်းချက်မရှိ** ပူးပေါင်းလုပ်ဆောင်မည်မဟုတ်ပါ။

တရားမျှတမှုစင်တာနှင့် ၎င်း၏ဝန်ထမ်းများအနေနှင့် ပေးအပ်မည့်ငွေကြေးမှာ ဥပဒေအရပေးသွင်းရန်ပြဌာန်းထားသော **တရားဝင်ငွေကြေးပမာဏ** သာဖြစ်ပါသည်။ ကျွန်ုပ်တို့မှ လာဘ်ငွေပစ္စည်း၊ အသေးသုံးငွေကြေး သို့မဟုတ် လက်ဖက်ရည်ဖိုး စသည်တို့ကို အရာရှိ သို့မဟုတ် အမှုတွဲတွင်ပါဝင်ပက်သက်သည့် လူပုဂ္ဂိုလ်တို့ထံ ပေးအပ်ခြင်းကို တားမြစ်ပါသည်။ ကျွန်ုပ်တို့၏ အမှတ်သည်နှင့် ၎င်းတို့၏ ကိုယ်စားလှယ်ပုဂ္ဂိုလ်များသည်လည်း ကျွန်ုပ်တို့၏ လုပ်ငန်းလုပ်ဆောင်ပေးမှုကိုလက်ခံရာတွင် လာဘ်ပေးလာဘ်ယူမှုကို ဆန့်ကျင်ပါမည့်အကြောင်း လက်ခံသဘောတူရမည်။

တရားမျှတမှုစင်တာ၏ အမှတ်သည်နှင့် ရှေ့နေများသည် အထက်ဖော်ပြပါ လာဘ်ပေးလာဘ်ယူမှုဆန့်ကျင်ရေး မူဝါဒကို နားလည်သဘောပေါက်လက်ခံပါမည့်အကြောင်း ပုံစံစာရွက်ပေါ်တွင် လက်မှတ်ရေးထိုးရမည်။

တရားမျှတမှုစင်တာ၏ လာဘ်ပေးလာဘ်ယူမှု ဆန့်ကျင်ရေး မူဝါဒကို အမှတ်သည်မှ လက်ခံသဘောတူညီချက်

ကျွန်ုပ် _____ သည် အမှတ်ရင်ဆိုင်စဉ်ကာလတစ်လျှောက် ကျွန်ုပ်တို့ကိုယ်တိုင်သော်လည်းကောင်း ကျွန်ုပ်၏ မိသားစု/မိတ်ဆွေသူငယ်ချင်း သို့မဟုတ် ကျွန်ုပ်တို့ကိုယ်စားလှယ်ဆောင်မည့် ကိုယ်စားလှယ် တို့မှသော်လည်းကောင်း အမှတ်ရင်ဆိုင်စဉ်ကာလတစ်လျှောက် မည်သည့်အခြေအနေတွင်မဆို လာဘ်ငွေပစ္စည်း၊ အသေးသုံးငွေကြေး သို့မဟုတ် လက်ဖက်ရည်ဖိုး စသည်တို့ကို ပေးအပ်ခြင်းမပြုပါမည့်အကြောင်း လက်ခံသဘောတူပါသည်။ ကျွန်ုပ်သည် တရားမျှတမှုစင်တာ၏ အထက်ဖော်ပြပါ လာဘ်ပေးလာဘ်ယူမှုဆန့်ကျင်ရေး မူဝါဒကို ဖတ်ရှုပြီး နားလည်သဘောတူပါသည်။ ထိုသဘောတူညီချက်များကို ဖောက်ဖျက်ပါက လက်ရှိ ကျွန်ုပ်တရားရင်ဆိုင်နေသော ရာဇဝတ်မှုတွင် တရားမျှတမှုစင်တာ၏ တရားရေးဆိုင်ရာ ဝန်ဆောင်မှုများအား လက်ခံရယူခွင့် ရုပ်သိမ်းခံရမည်ကို နားလည်သဘောပေါက်လက်ခံပါသည်။

နေ့စွဲ _____ လက်မှတ် _____

တရားမျှတမှုစင်တာ၏ လာဘ်ပေးလာဘ်ယူမှု ဆန့်ကျင်ရေး မူဝါဒကို ရှေ့နေမှ လက်ခံသဘောတူညီချက်

ကျွန်ုပ် _____ သည် အမှတ်ရင်ဆိုင်စဉ်ကာလတစ်လျှောက် မည်သည့်အခြေအနေတွင်မဆို လာဘ်ငွေပစ္စည်း၊ အသေးသုံးငွေကြေး သို့မဟုတ် လက်ဖက်ရည်ဖိုး စသည်တို့ကို ပေးအပ်ခြင်းမပြုပါမည့်အကြောင်း နှင့် တစ်စုံတစ်ယောက်မှ ပေးအပ်ခြင်းကို သိရှိပါကလည်း လက်ခံခွင့်ပြုမည်မဟုတ်ကြောင်း သဘောတူလက်ခံပါသည်။ ကျွန်ုပ်သည် မည်သည့်အခြေအနေတွင်မဆို လာဘ်ငွေပစ္စည်း၊ အသေးသုံးငွေကြေး သို့မဟုတ် လက်ဖက်ရည်ဖိုး စသည်တို့ကို လက်ခံရယူခြင်းမပြုပါမည့်အကြောင်းလည်း သဘောတူလက်ခံပါသည်။ ကျွန်ုပ်သည် တရားမျှတမှုစင်တာ၏ အထက်ဖော်ပြပါ လာဘ်ပေးလာဘ်ယူမှုဆန့်ကျင်ရေး မူဝါဒကို ဖတ်ရှုပြီး နားလည်သဘောပေါက်လက်ခံပါသည်။

နေ့စွဲ _____ လက်မှတ် _____

Closed Case Form

At what stage of the case were you appointed? (circle one)

အမှု၏မည်သည့်အဆင့်တွင် ရှေ့နေအဖြစ် အမှုစတင်လိုက်ပါဆောင်ရွက်ခဲ့သနည်း (အောက်ပါတို့မှတစ်ခုကိုဝိုင်းပါ)

Police Investigation ရဲမှတ်စမ်းစစ်ဆေးသောအဆင့်	Remand Hearing ရမန်ကြားနာသည့်အဆင့်	Inquiry စစ်မေးသည့်အဆင့်	Framing of Charges ဗွဲ့ချက်တင်သည့်အဆင့်	Trial စစ်ဆေးစီရင်သည့်အဆင့်	Sentencing အမိန့်ချသည့်အဆင့်
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CASE INFORMATION

Client Name: အမှုသည်အမည်	Case Number: အမှုတွဲနံပါတ်	Attorney: ရှေ့နေအမည်	Age: အသက်
Gender: လိင် ကျား/မ	M / F	Type of Case: အမှုတွဲအမျိုးအစား <input type="checkbox"/> Cognizable <input type="checkbox"/> Non-Cognizable <input type="checkbox"/> Summons <input type="checkbox"/> Warrant <input type="checkbox"/> Death Penalty <input type="checkbox"/> Juvenile <input type="checkbox"/> Other	<input type="checkbox"/> Non-Cognizable <input type="checkbox"/> Warrant <input type="checkbox"/> Juvenile <input type="checkbox"/> Other
Religion: ဘာသာ			
Ethnicity: တိုင်းရင်းသားလူမျိုးစု			
Custody Status of Client: အချုပ်ကျခံနေမှုအခြေအနေ <input type="checkbox"/> In Custody <input type="checkbox"/> Out of Custody	Was a Bail Motion Made? Y/N အာမခံလျှောက်ထားပါသလား။ Date Bail Granted: အာမခံရရှိသောနေ့.	Total time client spent in custody: (arrest to closing the case) အမှုသည်မှအချုပ်ထဲတွင်နေရသည့် အချိန်စုစုပေါင်း (ဖမ်းဆီးသည်မှ အမှုပိတ်သိမ်းသည်အထိ)	Date Appeal Filed: အယူခံတင်သွင်းသည့်ရက် If no Appeal, please explain. အယူခံမတင်သွင်းပါကအဘယ်ကြောင့်နည်း

CHARGES

Original Charges Against Client: အမှုသည်အားစွဲဆိုထားသောပုဒ်မများ	Max/Min Exposure: (please list max/min penalties) အနိမ့်ဆုံးအမြင့်ဆုံးကျခံနိုင်သောပြစ်ဒဏ်
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RESULT OF THE CASE AND FINAL DISPOSITION (please describe what happened in the case, including the verdict, final sentence, ultimate result of the closed case here)

အမှုတွဲရလဒ်နှင့်အပြီးသတ်ဆုံးဖြတ်ချက် (အမိန့်၊ အပြီးသတ်ပြစ်ဒဏ်၊ ပိတ်သိမ်းလိုက်သောအမှု၏နောက်ဆုံးရလဒ်အပါအဝင် အမှုတွဲတွင်မည်သို့ဖြစ်ပျက်ခဲ့သည်ကိုဖော်ပြပါ။)

CLOSED CASE REVIEW (please review your case notes, log, and Criminal Defense Checklist to answer the following questions):

ပိတ်သိမ်းလိုက်သောအမှုအားလေ့လာသုံးသပ်ခြင်း (သင်၏အမှုတွဲမှတ်စုများ၊ စာရင်းများနှင့် Criminal Defense Checklistကိုလေ့လာကာ အောက်ပါမေးခွန်းများကိုဖြေဆိုပါ။)

<p>Investigations Conducted: ပြုလုပ်ခဲ့သောစုံစမ်းစစ်ဆေးခြင်းများ</p> <p><input type="checkbox"/> Interviewed all Defense Witnesses စုံကာကွယ်ရာတွင်အထောက်အကူပြုမည့် သက်သေများ(တရားခံသက်သေများ)ကိုစုံစမ်း မေးမြန်းခြင်း</p> <p><input type="checkbox"/> Collected all Defense Evidence စုံကာကွယ်ရာတွင်အထောက်အကူပြုမည့် သက်သေများ(တရားခံသက်သေများ)ကိုစုစည်းခြင်း</p> <p><input type="checkbox"/> Visited the Crime Scene အခင်းဖြစ်ပွားရာနေရာကိုသွားရောက်ကြည့်ရှုခြင်း</p> <p><input type="checkbox"/> Interviewed One Prosecution Witness တရားလိုသက်သေတစ်ဦးကိုစုံစမ်းမေးမြန်းခြင်း</p>	<p>Motions/Objections Made: တရားရုံးတော်တွင်ကြားဖြတ်လျှောက်လဲခြင်းနှင့်ကန့်ကွက်ခြင်းများ</p> <p><input type="checkbox"/> Bail Motion အာမခံလျှောက်ထားခြင်း</p> <p><input type="checkbox"/> Motion Requesting Case Documents and Witness Statements အမှုတွဲစာရွက်စာတမ်းများသက်သေထွက်ချက်များရရှိရန်တရားရုံးတွင်လျှောက်လဲခြင်း</p> <p><input type="checkbox"/> Motion Challenging Search Warrants ရှာဖွေခွင့်ဝရမ်းများကိုစိန်ခေါ်သည့်လျှောက်လဲခြင်း</p> <p><input type="checkbox"/> Revisions and Writs ပြန်လည်ပြင်ဆင်ခြင်းနှင့်စာရွက်တော်အမိန့်</p> <p><input type="checkbox"/> Objections to Undue Delays for Hearings မလိုလားအပ်သောတရားခွင့်ကြန့်ကြာခြင်းများကို ကန့်ကွက်လျှောက်လဲခြင်း</p> <p><input type="checkbox"/> Objections under Ev. 60 for Prosecution Witnesses တရားလိုသက်သေများကို သက်သေခံဥပဒေပုဒ်မ၆၀အရ ကန့်ကွက်လျှောက်လဲခြင်း</p> <p><input type="checkbox"/> Objection when Judge is not Present During Hearing (CM 609) ကြားနာစစ်ဆေးနေစဉ်အတွင်း တရားသူကြီးမရှိပါက ကန့်ကွက်လျှောက်လဲခြင်း(တရားရုံးများလက်ခံ အပိုဒ် ၆၀၉)</p>
<p>Did you have any problems with the police accessing your client at the jails or in court? သင်၏အမှုသည်အား ရဲအချင်း၊တရားရုံးအချင်းတွင် တွေ့ဆုံခွင့်ရရှိကြီးပမ်းရာတွင် ရဲများမှအခက်အခဲတစ်စုံတစ်ရာပေးခဲ့ပါသလား။ Y / N If YES, how many times? _____ ပေးခဲ့ပါကအကြိမ်မည်မျှနည်း။</p>	<p>Were you or your client asked to pay bribes in this case? အမှုသည်မှာ ယခုအမှုအတွင်း လာဘ်ငွေတောင်းခံခဲ့ရပါသလား။ Y/N If YES, how many times? _____ တောင်းခံခဲ့ရပါက အကြိမ်မည်မျှနည်း။</p>
<p>What were the client's goals for the case? ဤအမှုတွင် အမှုသည်၏ရည်မှန်းချက်များမှာအဘယ်နည်း။</p>	<p>Do you feel like the client's goals were met? Please explain: အမှုသည်၏ရည်မှန်းချက်များပြည့်ဝခဲ့သည်ဟုထင်ပါသလား။ရှင်းပြပါ။</p>
<p>Please indicate your case strategy on this case. Were you objectives accomplished? If so, what contributed to your success? If not, what were your barriers? ဤအမှုတွင်သင်အသုံးပြုခဲ့သော နည်းဗျူဟာမှာအဘယ်နည်း။ သင်၏ရည်ရွယ်ချက်များအောင်မြင်မှုရရှိခဲ့ပါသလား။ အောင်မြင်မှုရရှိရန် မည်သို့သောအရာများမှ အထောက်အကူပေးခဲ့ပါသနည်း။ အောင်မြင်မှုမရပါကအခက်အခဲများမှာအဘယ်နည်း။</p>	

IBJ Justice Centre Post-Survey

Can the client read and write? Y / N

အမှုသည်သည်ရေးတတ်ဖတ်တတ်ပါသလား။

If not, please write the name of the person who completed the form with the client:

မရေးတတ်ပါက အမှုသည်အားကူညီဖြည့်စွက်ပေးသူ၏နာမည်ကိုဖော်ပြပါ။

(NOTE: It CANNOT be the attorney who represented on the case)

(မှတ်ချက် : ဖြည့်စွက်သူမှာ ရှေ့နံပါတ်တိုင်မဖြစ်ရပါ)

PERSONAL INFORMATION

ကိုယ်ရေးအချက်အလက်

Name: အမည်	Case Number: အမှုတွဲနံပါတ်	Date: နေ့စွဲ
Name of your Attorney: ရှေ့နံအမည်	Case Outcome: အမှုတွဲရလဒ်	

Why did you seek the help of the IBJ Justice Centre?

IBJတရားမျှတမှုစင်တာ၏ ဝန်ဆောင်မှုကိုအဘယ်ကြောင့်တောင်းခံခဲ့သနည်း။

On a scale of 1 – 5, please rate the following:

အောက်ပါကိုးအား စကေး ၁မှ၅အတွင်းသတ်မှတ်ပါ။

Unsatisfactory
စိတ်ကျေနပ်မှုမရှိ

Great

အလွန်ကောင်းမွန်သည်။

1 2 3 4 5

My attorney listened to my needs and understood the issues in my case. ကျွန်ုပ်၏ရှေ့နံသည် ကျွန်ုပ်၏လိုအပ်ချက်များကိုနားထောင်ပေးပြီး အမှုနှင့်ပတ်သက်သောအကြောင်းအရာအများကိုနားလည်သည်။					
My attorney explained to me my legal rights. ကျွန်ုပ်၏ရှေ့နံမှ ဥပဒေဆိုင်ရာအခွင့်အရေးများကို ရှင်းပြပေးသည်။					
I understood my legal rights. ကျွန်ုပ်သည် ဥပဒေဆိုင်ရာအခွင့်အရေးများကို နားလည်သိရှိသည်။					
My attorney explained to me the legal process and helped me through each of the decisions that I had to make along the way. ကျွန်ုပ်၏ရှေ့နံသည် ဥပဒေကြောင်းအရလုပ်ဆောင်ရန်တို့ကို ရှင်းပြပေးပြီး လုပ်ငန်းစဉ်တစ်လျှောက် ဆုံးဖြတ်ချက်ချမှတ်ရာတွင် အကူအညီပေးသည်။					
My attorney met with me on a regular basis and kept an open line of communication with me. ကျွန်ုပ်၏ရှေ့နံသည် ကျွန်ုပ်နှင့်ပုံမှန်တွေ့ဆုံပြီး ပွင့်လင်းလွတ်လပ်စွာဆွေးနွေးတိုင်ပင်ခွင့်ပေးသည်။					
My attorney advocated on my behalf in court. ကျွန်ုပ်၏ရှေ့နံသည် တရားရုံးတော်တွင်ကျွန်ုပ်ကိုယ်စား ရပ်တည်ဆောင်ရွက်ပေးသည်။					
My attorney understood my goals in the case and worked hard to try to reach them. ကျွန်ုပ်၏ရှေ့နံသည် အမှုတွဲနှင့်ပတ်သက်ပြီးကျွန်ုပ်၏ရည်မှန်းချက် များကိုနားလည်ပြီး ၎င်းတို့အားရရှိစေရန် ကြိုးစားစွမ်းဆောင်သည်။					
I felt that my attorney was organized and prepared. ကျွန်ုပ်၏ရှေ့နံသည် စေ့စပ်သေချာပြီး ကြိုတင်ပြင်ဆင်မှုအားကောင်းသည်။					
I understood the outcome of my case. အမှုတွဲ၏ရလဒ်ကိုနားလည်လက်ခံပါသည်။					
I was satisfied with the outcome of my case. အမှုတွဲ၏ရလဒ်ကို စိတ်ကျေနပ်မှုရှိသည်။					
I would refer the Justice Centre to others in the future. တရားမျှတမှုစင်တာသို့လူရောက်ရန် အခြားသူများကိုညွှန်းပေးမည်။					

Are you satisfied or dissatisfied with the services you received? Please explain:

သင်လက်ခံရရှိသော ဝန်ဆောင်မှုများကို စိတ်ကျေနပ်မှု ရှိ/မရှိ ရှင်းပြပါ။

Do you have suggestions for IBJ on how we can improve our representation?

ကျွန်ုပ်တို့၏ ဥပဒေအကျိုးဆောင်မှု၊ ပိုမိုကောင်းမွန်လာစေရန် မည်သည့်အကြံဉာဏ်များပေးလိုပါသနည်း

Case Referral Form

INTAKE INFORMATION		
အဝင်လက်ခံသောအချက်အလက်		
Name နာမည်	Phone Number: ဖုန်းနံပါတ်	Date of Intake အဝင်လက်ခံသောနေ့
Address: လိပ်စာ	Monthly Income: လစဉ်ဝင်ငွေ	Religion: ဘာသာ
		Ethnicity: တိုင်းရင်းသား
Previous Help Sought: ယခင်ကယူခဲ့သောအကူအညီ		Type of Non-Criminal Case: ပြစ်မှုမဟုတ်သောအမှုအမျိုးအစား
<input type="checkbox"/> Informal Resolution တရားလမ်းကြောင်းအရမဟုတ်ဘဲဖြေရှင်းခြင်း <input type="checkbox"/> Tribal or Community Adjudication မျိုးနွယ်စုသို့မဟုတ်ရပ်ကွက်လူထုအတွင်းဖြေရှင်းခြင်း <input type="checkbox"/> Formal Legal System ဥပဒေကြောင်းအရဖြေရှင်းခြင်း <input type="checkbox"/> Other: အခြား		<input type="checkbox"/> Property Dispute ပိုင်ဆိုင်မှုအငြင်းပွားခြင်း <input type="checkbox"/> Contract Issue စာချုပ်စာတမ်းကိစ္စ <input type="checkbox"/> Personal Injury ထိခိုက်ဒဏ်ရာရရှိခြင်း <input type="checkbox"/> Employment Issue အလုပ်ခန့်အပ်ခြင်းကိစ္စ <input type="checkbox"/> Other: အခြား
How did they hear about the Justice Centre? တရားဗဟိုတရားရုံးကြောင်းမည်သို့ကြားသိခဲ့သနည်း		
CASE INFORMATION		
အမှုတွဲအချက်အလက်		
Please summarize the legal issues: အမှုသွားအမှုလာကိုအကျဉ်းချုပ်ဖော်ပြပါ။		
Why does this case not qualify for Justice Centre Services? တရားဗဟိုတရားရုံးဝန်ဆောင်မှုကိုအဘယ်ကြောင့်ရယူခွင့်မရှိသနည်း။		
<input type="checkbox"/> Not a Criminal Case (civil or other) ပြစ်မှုမဟုတ်သောအမှု(တရားမမှုသို့မဟုတ်အခြား) <input type="checkbox"/> Person does not financially qualify for JC services (can afford to hire an attorney) ငွေကြေးအရ JC အမှုသည်အနေနှင့်အကျိုးမဝင်(ရှေ့နေငှားရမ်းရန်တက်နိုင်သည်) <input type="checkbox"/> Person is a co-defendant on a case we already represent ကျွန်ုပ်တို့အကျိုးဆောင်ပေးနေသောအမှုမှ ပူးတွဲတရားခံဖြစ်နေခြင်း <input type="checkbox"/> There is a different type of conflict of interest အကျိုးစီးပွားအငြင်းပွားစေနိုင်သော အခြားသောအမှုအမျိုးအစား <input type="checkbox"/> Other: အခြား		

REFERRAL/ ASSISTANCE PROVIDED	
လွှဲပြောင်းပေးခြင်း၊ အကူအညီပေးခြင်း Please summarize assistance provided and list any referrals given: ပေးခဲ့သောအကူအညီနှင့် ပြင်ပသို့လွှဲပြောင်းပေးလိုက်ပါက ဖော်ပြပါ။	
Referred to: လွှဲပြောင်းခြင်းခံရသူ	
<input type="checkbox"/> CSO အရပ်ဖက်လူ့အဖွဲ့အစည်း <input type="checkbox"/> Private Attorney ပြင်ပရှေ့နေ <input type="checkbox"/> Pro-Bono Attorney ဥပဒေဆိုင်ရာအခမဲ့အကျိုးဆောင်ပေးသောရှေ့နေ	<input type="checkbox"/> Other: အခြား

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This is intended for English and Myanmar speakers to coordinate their use of the English and Myanmar versions of the manual.

ဤမာတိကာဇယားသည် အင်္ဂလိပ်ဘာသာစကားအသုံးပြုသူများနှင့် မြန်မာဘာသာစကားအသုံးပြုသူများအတွက် လက်စွဲစာအုပ်ကို အသုံးပြုကြရာတွင် အင်္ဂလိပ်-မြန်မာ နှစ်ဘာသာလုံးဖြင့် တိုက်ဆိုင်အသုံးပြုလိုသူများအတွက် ရည်ရွယ်ထားပါသည်။

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