

～ 国際研究 ～

日本ミャンマー司法制度比較共同研究 ～連邦最高裁判所長官ほかミャンマー裁判官招へい～

国際協力部教官

國井弘樹

ミャンマーは、2011年3月の民政移管以降、国家丸丸となって、民主化及び国民和解を着実に進めている。我が国政府も、その改革努力を評価し、翌2012年4月の日ミャンマー首脳会談において、「ミャンマーの民主化及び国民和解、持続的発展に向けて、急速に進む同国の幅広い分野における改革努力を後押しするため、引き続き改革努力の進捗を見守りつつ、民主化・国民和解、経済改革の配当を広範な国民が実感できるよう、以下の分野を中心に支援を実施する。」旨表明し、重点支援分野として、①国民の生活向上のための支援（少数民族や貧困層支援、農業開発、地域開発を含む。）、②経済・社会を支える人材の能力向上や制度の整備のための支援（民主化推進のための支援を含む。）、③持続的経済成長のために必要なインフラや制度の整備等の支援を挙げている。さらに、2012年8月には、「ミャンマー官民連携タスクフォース」が創設され、まさに官民を挙げて、同国を積極的に支援していく態勢を整えている。

法整備支援は、上記②の支援に属し、同国において「法の支配」を確立させ、その改革努力を後押しするためには、最も重要な支援分野であるとともに、日本企業を含む外国投資の環境整備の観点からも重要である。

一方、ミャンマーでは、連邦最高裁判所が民法・刑法・民事訴訟法・刑事訴訟法といった基本法を含む52の法律を所管しており、近時の改革に伴い、多くの所管法律について改正の必要性が生じている。

そして、2012年9月の法務大臣による訪緬、同年10月の法務総合研究所長を団長とする調査団による訪緬において、ミャンマー連邦最高裁判所長官から、所管法律の起草支援に加えて、裁判官の人材育成に関して、我が国に対する支援・協力要請を受けた。

そこで、この度、ミャンマーから、三権の長である最高裁判所長官を始めとした専門家を日本に招へいして、日本とミャンマーの司法制度を比較研究することで、同国の司法制度に対する理解を深めると同時に、先方にも、日本の司法制度や法曹養成等についての理解を深めてもらい、今後の両国の協力関係について、具体的かつ建設的な意見交換を行うため、本共同研究を実施するに至ったものである。

なお、本共同研究は、法務総合研究所に加え、法整備支援活動に深い理解をいただいている慶應義塾大学大学院法務研究科（法務大学院）、三田法曹会との共催で実施したものである。

1 本共同研究の日程等

日 程 2012年11月26日（月）から
11月30日（金）まで

招へい者 トウン・トゥン・ウー連邦最高裁判所
長官ほか4名

2 本共同研究の概要等

本原稿は、ミャンマー司法の現状等について、広く関係者と情報を共有することを目的としており、

以下、その観点から、本共同研究で実施した主要なプログラムごとに特筆すべき事項について取り上げる。

(1) 最高裁判所訪問

長官表敬では、初の顔合わせであったが、両長官の人柄もあって、率直な意見交換が行われた。竹崎博允長官は、「司法の分野では、法や制度を整備することに加えて、同時にそれを担っていく人材を育てることが重要である。日本では、軍部や政治部門の力が強かった戦前においても、各裁判官が司法の独立を堅持していた。戦後もその精神は強く残っており、我が国の裁判官に汚職が見られず、国民の信頼が高いのも、そうした各裁判官個人の意識の高さに基づくものである。」旨述べられて、キャパシティビルディングの重要性を強調された。これに対し、トゥン・トゥン・ウー長官は、「新憲法が施行されたことで、ミャンマーでも三権分立が制度的に確立され、現在、私たちは、司法の透明性を確保すべく、改革を押し進めているところである。また、ミャンマーでは、汚職が深刻な問題となっており、司法機関だけでなく、国家全体でその対策に取り組むべきと認識している。裁判官の能力向上についても課題となっており、今後、日本には我が国の司法改革を支援願いたい。」旨述べられて、日本の支援に対する強い期待を示された。

また、最高裁判所事務総局秘書課長・広報課長の中村愼氏から、日本の司法制度概略について説明いただいたが、その際、ミャンマー側からは、日本の裁判官数や事件受理・処理件数、昇給システムなど、実務的な質問が出され、活発な議論が交わされた。

(2) 東京高・地方裁判所訪問

東京高等裁判所長官及び東京地方裁判所長への表敬訪問では、ミャンマー側から、それぞれの裁判所における裁判官数、事件受理・処理件数に加え、事件処理に要する期間について、熱心な質問が出された。トゥン・トゥン・ウー長官によると、現在、ミ

ャンマーでは、司法改革の一環として、裁判官の効率的な配置を検討中であり、また、民事事件に関していえば、第一審での処理期間が平均すると4～5年に及んでおり、事件の早期処理が重要な課題となっているとのことであった。いわゆるケースマネージメントの問題は、ミャンマーのみならず、当部が支援・協力を実施している他の国々でも課題となっているが、ミャンマーでは、弁論準備手続や和解などの制度がないことも、事件処理の長期化を招く要因となっており、今後、訴訟法の改正を含めた抜本的な改革が必要となると思われる。

また、東京地方裁判所では、刑事事件の法廷傍聴も行い、閉廷後には、裁判官・書記官が自ら質疑応答に応じてくださった。そこでは、トゥン・トゥン・ウー長官から、裁判所書記官に対する研修制度を始めとして、裁判官以外の裁判所職員の人材育成等について詳細な質問があった。ミャンマーでは、20年以上のキャリアを有するようなベテラン書記官が存在せず、その育成が課題となっているとのことであった。我が国では、裁判官の研修施設として司法研修所が、裁判所書記官・裁判所事務官等・家庭裁判所調査官の研修施設として裁判所職員総合研修所がそれぞれ存在するわけだが、ミャンマーでは、裁判官のための研修施設はあるものの、教官等が常駐しているわけではなく、裁判官以外の職員に対する研修システムの確立を含め、今後、我が国として積極的に支援・協力していくべき分野となることは確実であろう。

(3) 法務省浦安総合センター視察

同センターは、法務総合研究所研究部が在所しているほか、検察官や検察事務官を始めとした法務省職員の研修施設でもある。事前のニーズ調査において、トゥン・トゥン・ウー長官から、裁判官の人材育成に関する支援・協力要請を受けていたことから、法務省における職員研修の実態について理解いただき、今後のプロジェクト形成に役立てるため、同セ

ンターを視察いただいた。

視察では、日本の検察官・検察事務官に対する研修制度について説明申し上げたほか、センター内の模擬法廷で実施中であった若手検事による模擬証人尋問演習を傍聴いただいた。ミャンマー側からは、実務に即した演習内容に加え、施設面の充実ぶりについても強い関心が示された。

(4) 慶應義塾大学における講演会・パネルディスカッション

招へい中の中日にあたる11月28日には、本招への共催者である慶應義塾大学において、「ミャンマーにおける法改革および司法制度の現状と展望」と題して、講演会とパネルディスカッションが実施された。

同講演会では、トゥン・トゥン・ウー長官から「ミャンマーにおける最近の司法制度の発展」と題する講演をいただいたほか、他の裁判官からも、貴重な講演をいただくことができた。

同講演会の講演録及び講演資料（英語・日本語）やパネルディスカッションの詳細については、慶應義塾大学発行の『慶應法学 26号』¹に掲載予定であり、本稿では、以下のとおり、プログラムや講演資料等（英語版）についてのみ掲載する。

資料1 プログラム

資料2 トゥン・トゥン・ウー長官「ミャンマーにおける最近の司法制度の発展」

資料3-1 セイン・タン事務局長「ミャンマーにおける裁判所の構成と機能」

資料3-2 同資料

資料4-1 トゥー・ジャー・カチン州高等裁判所長官「ミャンマーにおける刑事司法の手続」

資料4-2 同資料

資料5-1 ティン・ティン・ヌエ・ヤンゴン管区高等裁判所裁判官「ミャンマーの裁判所における民事訴訟に関する手続」

資料5-2 同資料

(5) 司法研修所視察

当初の予定では、司法研修所において、施設見学のほか、裁判官の研修制度について説明いただくことになっていたが、東京地方裁判所や法務省浦安総合センター訪問を受け、トゥン・トゥン・ウー長官より、日本における裁判所書記官等の研修についても知りたい旨の要望を受けたことから、急遽、裁判所職員総合研修所から一般研修部部长や家庭裁判所調査官研修部上席教官においていただき、裁判官以外の職員に対する研修制度についても説明いただいた。この場を借りて、最高裁判所等関係者の御配慮に深く感謝申し上げる。

ミャンマー側からは、我が国の裁判官に対する研修カリキュラムについて質問があったほか、書記官等の人数・配置・採用システムに加え、教官の人数・経験年数など、司法行政の観点からの質問もあり、充実した議論が交わされた。

3 所感

現在、法務省では、JICA（国際協力機構）が、2013年度中の開始をめどに計画を進めている法整備支援プロジェクトについて、全面的に協力していく方針でいるところ、同プロジェクトは、連邦最高裁判所及び連邦法務長官府をカウンターパートとして、ミャンマーの社会経済及び国際標準に適合した法の整備及び運用によって、「法の支配」、「民主主義」、「持続可能な経済成長」を促進するため、①ミャンマーが直面する喫緊の立法課題への対応能力の強化（立法起草支援）、②両機関の人材育成の基盤整備を内容とするものとなっている。

¹ 『慶應法学』については、<http://koara.lib.keio.ac.jp/xoonips/> から、自由に関覧・ダウンロード可能。

本共同研究は、間近に迫った法整備支援プロジェクトの本格始動に向けて、日本とミャンマー相互の理解を深め、今後の協力関係について、具体的かつ建設的な意見交換を行うために実施したものであり、各プログラムを通じて、タウン・タウン・ウー長官を始め、各招へい者からは、ミャンマーの民主化に向けた司法改革への情熱が強く感じられ、我々も、今後、同国の法整備支援に協力していく決意を新たにした次第である。

4 おわりに

本共同研究は、ミャンマーから、連邦最高裁判所長官という三権の長を初めて我が国に招へいして実施したものであることに加え、法務省と慶應義塾大学という官民連携で実施したという意味でも、大変に意義深いものであった。最高裁判所や外務省、駐日ミャンマー大使館など、本共同研究の実現に協力いただいた関係各位に対し、御礼申し上げたい。

なお、本共同研究の実現にあたっては、我妻豊²、関谷巖弁護士³に多大なる御尽力をいただいた。お二人の情熱なくしては、本共同研究の実現はあり得なかったものであり、この場を借りて、改めてお二人に感謝申し上げるとともに、本共同研究を契機に、今後、我が国とミャンマーとの友好関係を強固なものとして、両国の司法分野における協力関係を更に押し進めることで、お二人への感謝の言葉に代えた

以上

² 我妻豊（あがつま・ゆたか）氏。内閣府認証特定非営利活動法人「アジアケシ転作支援機構」理事長。10年以上にわたって、西部チン高原、北部カチン、東部シャン高原などで、ケシ栽培から温帯果樹、野菜への転作を支援。タウン・タウン・ウー長官とも旧知の仲。

³ 関谷巖（せきや・いわお）氏。弁護士。写真家。日本人が忘れかけた自然への畏敬と祈りの情景をテーマにミャンマーなどアジア各地の原風景を撮影。2012年11月には、ミャンマーのシュエダゴン・パゴダで2回目となる日本ミャンマー交流写真展を開催。



<講演会・パネル・ディスカッション>

「ミャンマーにおける法改革および司法制度の現状と展望」

日時：2012年11月28日（水）10:00～（9:30受付開始）

場所：慶應義塾大学三田キャンパス・北館ホール
（別添キャンパス・マップ参照）

<http://www.keio.ac.jp/ja/access/mita.html>

主催：慶應義塾大学大学院法務研究科、同大学法学部

共催：三田法曹会、法務省法務総合研究所

後援：外務省

プログラム

午前の部 10:00～12:00（司会：松尾 弘 慶應義塾大学大学院 法務研究科 教授）

開会挨拶

清家 篤 慶應義塾 塾長

片山直也 慶應義塾大学大学院 法務研究科 委員長

酒井邦彦 法務省 法務総合研究所 所長

講演

「ミャンマーにおける最近の司法制度の発展」

トゥン・トゥン・ウー (U Htun Htun Oo) ミャンマー連邦最高裁判所長官

「ミャンマーにおける裁判所の構成と機能」

セイン・タン (U Sein Than) ミャンマー連邦最高裁判所事務局長

昼食 12:00～13:00（会場付近で適宜お取りください。）

午後の部 13:00～17:00（司会：太田達也 慶應義塾大学法学部教授）

歓迎挨拶

鹿内德行 三田法曹会会長・弁護士

キン・マウン・ティン (U Khin Maung Tin) ミャンマー駐日大使

講演

「ミャンマーにおける刑事司法に関する手続」

トゥー・ジャー (U Tu Jar) カン州高等裁判所長官

「ミャンマーの裁判所における民事訴訟に関する手続」

ティン・ティン・ヌエ (Daw Thin Thin Nwe) ヤンゴン管区高等裁判所裁判官

14:30～15:00 コーヒー・ブレイク

15:00～17:00

パネル・ディスカッション

「ミャンマーと日本における法改革および司法制度の現状と課題」

パネリスト：

トゥー・ジャー (U Tu Jar) カン州高等裁判所長官

ティン・ティン・ヌエ (Daw Thin Thin Nwe) ヤンゴン管区高等裁判所裁判官

セイン・タン (U Sein Than) ミャンマー連邦最高裁判所事務局長

堀籠幸男 元最高裁判所裁判官・慶應義塾大学大学院法務研究科客員教授

野口元郎 法務省 法務総合研究所 国際協力部 部長

矢吹公敏 日本弁護士連合会 国際交流委員会 委員長・弁護士

鹿内德行 三田法曹会 会長・弁護士

山本信人 慶應義塾大学 法学部 教授

松尾 弘 慶應義塾大学大学院法務研究科 教授 (司会)

閉会挨拶

大石 裕 慶應義塾大学 法学部長



THE REPUBLIC OF THE UNION OF MYANMAR
SUPREME COURT OF THE UNION

SPEECH BY H.E. U HTUN HTUN OO
CHIEF JUSTICE OF THE UNION

"CURRENT DEVELOPMENTS OF JUDICIAL SYSTEM
IN MYANMAR"

KEIO UNIVERSITY, JAPAN
28 NOVEMBER 2012

Introduction

The topic I have chosen for this address is 'current developments' of our judicial system.

There are some changes brought about by our new Constitution, 2008. It lays down the democratic foundation for the separation of state powers and the doctrine of check and balance. The **legislative power** of the Union is vested in the Pyidaungsu Hluttaw (the Parliament), which consists of Pyithu Hluttaw and Amyothar Hluttaw. The President is the head of the executive and exercises the **executive power**, sharing among the Union (Pyidaungsu), the Regions and the States. **Judicial power** is shared among the Supreme Court of the Union and its subordinate Courts. The three branches of sovereign power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves.

Judicial Principles

I am going to talk on judicial principles briefly as these are the framework for this speech.

Judicial power is mainly vested in the Supreme Court and its subordinate Courts, namely High Courts of the Region or High Courts of the State, Courts of the Self-Administered Division, Courts of the Self-Administered Zone, District Courts, Township Courts and other Courts constituted by law. The Supreme Court is the highest Court of the Union save the powers of the Constitutional Tribunal and the Court Martial.

Justice throughout the Union is administered in Courts in accordance with the judicial principles that can be expressed in the following terms:

"to administer justice independently according to law,
to dispense justice in open Court unless otherwise prohibited by law, and
to guarantee in all cases the right of defence and the right of appeal under law."

Moreover, Courts carry out justice in the light of such principles as follows:

- to support in building of rule of law and regional peace and tranquility by protecting and safeguarding the interests of the people,
- to educate the people to understand and abide by the law and nurture the habit of abiding by the law,
- to settle disputes among the people within the framework of the law, and
- to aim at reforming morals of the criminal in sentencing him.

Some principles of criminal justice can be summarized as follows:

- (a) no criminal law shall be enacted to provide retrospective effect;
- (b) any person who committed a crime, shall be convicted only in accord with the relevant law then in operation. Moreover, he shall not be punished to a penalty greater than that is applicable under that law;

- (c) any person convicted or acquitted by a competent Court for an offence shall not be retried except that a superior Court annuls the judgment and orders a retrial;
- (d) an accused shall have the right of defence in accord with the law;
- (e) no penalty that violates human dignity shall be prescribed.

Structure of the Courts

Now, I would like to introduce the hierarchy of our Courts. Generally speaking, Township Courts and other Courts constituted by law (e.g. Juvenile Courts, Motor Vehicle Courts, or Municipal Courts) are Courts of origin or Courts of first instance. District Courts, Courts of Self-Administered Division, and Courts of Self-Administered Zone are Courts of first appeal. As far as judicial functions are concerned, they are of the same level. High Courts of the Regions and High Courts of the States are Courts of second appeal. The Supreme Court of the Union is the highest Court of the Union and the Court of final Appeal.

The Supreme Court supervises all Courts in the Union. It is entitled to submit the bills relating to the judiciary to the Pyidaungsu Hluttaw (the Parliament). It has to submit judiciary budget to the Union Government.

The Supreme Court appoints judicial officers for subordinate Courts. They are career judges serving at different levels of Courts except the Supreme Court and High Courts in which Chief Justices and Judges are appointed by the President in coordination with the Chief Justice of the Union and with the approval of the Hluttaws (parliaments of the Union, the Regions or States, respectively).

What I would like to do in this address is to give analysis on the **developments and challenges** of judicial system in Myanmar focusing on a number of areas of significance to judicial capacity.

But before turning to these, I must say something about the Supreme Court in terms of judicial independence.

The Supreme Court

The Supreme Court is composed of a minimum of seven Judges and a maximum of 11 Judges, including the Chief Justice of the Union. The President with the approval of the Pyidaungsu Hluttaw (the parliament) appoints the Chief Justice. The President in co-ordination with the Chief Justice nominates and appoints Judges of the Supreme Court with the approval of the Pyidaungsu Hluttaw (the parliament). At present, there are 7 Judges including the Chief Justice in the Supreme Court.

A person is qualified for the appointment as a Chief Justice or Judges of the Supreme Court if he or she:

- (a) has served as a Judge of the High Court for at least five years; or
- (b) has served as Judicial Officer or a Law Officer at least ten years at the Region or State Level; or
- (c) has practiced as an Advocate for at least 20 years; or
- (d) is an eminent jurist in the opinion of the President.

None of the Chief Justice and Judges of the Supreme Court are members of a political party, representatives of the Parliament and civil services personnel. They must also be free from party politics.

The impeachment procedures are clearly provided in the Constitution. The President or one-fourth of the total number of representatives of either Hluttaw can impeach the Chief Justice and Judges of the Supreme Court for high treason, breach of the Constitution, misconduct, disqualification or inefficient discharge of duties assigned by law.

The Constitution guarantees the tenure of the Chief Justice and Judges of the Supreme Court. They can hold the office up to the age of 70 unless he or she resigns the office; or is impeached in accordance with the Constitution and removed from office; or is unable to continue to serve due to permanent disability caused by either physical or mental defeat; or dies in office.

As the Supreme Court is the highest Court of the Union and the Court of final appeal, its judgments are final and conclusive. There is no revision upon the judgment of the Supreme Court outside the appeals process. As far as jurisdictions are concerned, the Supreme Court has appellate, revisional, and original jurisdictions in accord with the law. Moreover, it has the power to issue writs appropriate to the Fundamental Rights guaranteed in the Constitution.

Developments

The new Constitution brings some developments in the judiciary.

New High Courts

In terms of the structure, new High Courts are formed. In the past, there was no High Court but only the Supreme Court which exercised the powers of High Court. At that time, the Supreme Court sat in Nay Pyi Taw, Yangon and Mandalay and tried cases appealed from everywhere of the Union.

Nowadays, 14 High Courts for the respective Regions and States are newly formed under the new Constitution. While the Supreme Court supervises all Courts in the Union, High Courts supervise the judicial matters of subordinate Courts within their respective jurisdictions of the Regions and the States in accord with the guidance of the Supreme Court. In terms of formation of new High Courts, the people can ask for decisions of the High Courts in their areas so that they can reduce the costs of litigation.

As our country is constituted by the Union System, state powers are shared among the Union, Regions and States. The extension of Court structure is done to meet this end.

Awareness of the Rule of Law

Our country is a place where multi-national races collectively reside. The new Constitution guarantees every citizen to enjoy the right of equality, the right of liberty and the right of justice as prescribed in it. Only when the eternal principles of justice, liberty and equality are enhanced will the perpetuation of peace and prosperity of the national people achieve. These values can only be secured by an application of the rule of law. The rule of law is essential for materializing the democratic system effectively, and it is the bedrock of a democratic society as well.

We are of course aware that the rule of law is a pre-necessary condition for the national development. Therefore the principle of the rule of law is guaranteed by the new Constitution as fundamental rights of citizens. Article 347 of the Constitution provides that -

"the Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection."

Article 353 reads "nothing shall, except in accord with existing laws, be detrimental to the life and personal freedom of any person."

The rule of law is the only basis upon which everybody including public bodies and the executive can order their lives and activities. The functions of Union Government, Hluttaws (Parliament) and Courts are subject to the Constitution and the law so that the rule of law will improve. Article 219 of the Constitution provides that 'the Union Government preserves stability of the Union, community peace and tranquility and prevalence of law and order'.

From the point of the judiciary, only the independent judiciary makes sure to uphold the rule of law. All judges implement their judicial functions independently and subject only to the Constitution and the law. Justice must be administered in accord with law. No person shall be convicted of crime except for violation of a law in force at the time of the commission of the act charged as an offence. An accused have the right of defence and the right to independent and fair trial in accord with the law. The judgments or decisions of all levels of Courts have final character and other bodies of State cannot review and amend those judgments or decisions except filing them to superior Courts for appeal. An independent, impartial, honest and competent judiciary is integral to upholding the rule of law.

Guarantee of Fundamental Rights

Even though there is no Human Rights Law in Myanmar; it is a primary duty of Courts for populace to enjoy their fundamental rights in accord with the Constitution. In order to obtain a fundamental right, any person can apply to the Supreme Court. The Supreme Court has the power to issue such writs as suitable as Writ of Habeas Corpus, Writ of Mandamus, Writ of Prohibition, Writ of Quo Warranto and Writ of Certiorari. The Supreme Court entertains the application of writs under Writs Procedures and safeguards the fundamental rights of the citizens.

Challenges

Under new political system, we now face challenges which mainly include harmonization of the judiciary with democratic culture, absence of corruption in every courtroom and reinforcement of the judicial system.

Harmonization with Democracy

Long time ago, disputes have been settled by traditional judicial system in Myanmar, but during the late 19th century, common law legal system was introduced by British colonialist. The essence of Myanmar traditional judiciary was settlement of disputes through negotiation between the two parties. In contrary, the judicial function of English common law system rested on the decision of win and loss rather than fairness and harmony in the society.

After independence in 1948, different political systems have been dramatically changed, but in the judicial branch the traditional strict appliance of 'law and order' approach has been preferred. Judicial functions were conducted by Courts of law under the influence of the executive authority.

A theme that is popular with some of the media in Myanmar is that the judiciary does not change together with the democratic movement. The judiciary should exercise the 'rule of law' centered approach preferentially in doing its functions to be in line with the democratic values.

We accept that it is the most important duty of the judiciary to protect people's rights through a fair and equitable trial within the limits of domestic legal framework. There must be clear laws under which people can ask protection of their rights and remedies for their grievances before the Court. If the Court carries out a quick, effective and fair response to protect

their rights and to redress their grievance proportionally, the judiciary could maintain the public confidence.

Absent of Corruption

To prevent corruption is a big challenge for all institutions including the judiciary. Absent of corruption is necessary for sustainable development and for maintenance of the rule of law. While the clean government and good governance are carried out by the executive, actions against corruption are being taken strictly by the Supreme Court. All judges should administer justice "without fear or favour, affection or ill-will". The presence of bias, favour, or corruption in a Court System denies justice and undermines the rule of law.

However, actions against bribery and corruption must be coincident with the actual causes. In Myanmar society, people have the conception that taking bribe is a sin. Therefore, the increase of remuneration and general welfare programs are supposed to be advisable solutions. Salary of judges is as same as salary of other ordinary civil services personnel and they get low income.

Reinforcement of the Judiciary

Another challenge is reinforcement of the judiciary to bring about the upright judiciary and to achieve public trust and reliance on it. If the judicial pillar is upright, it can foster public confidence in the fairness and objectivity of the judicial system.

In this address, I would like to highlight **four aspects** of judicial performance, namely judicial **independence, accountability, efficiency** and **well-functioning** of the judiciary. These areas need to be reinforced to become an independent, impartial, honest and competent judiciary which is fundamental to upholding the rule of law, engendering public confidence and dispensing justice.

Judicial Independence

Judicial independence is a State Principle and a judicial principle as well. It is essential that there should be an independent judiciary to uphold the rule of law.

The Constitution provides exact procedures for appointment and removal of Chief Justices and Judges of the Supreme Court and High Courts. All judges of the Supreme Court and High Courts shall have a guaranteed tenure until a mandatory retirement age, except on such limited grounds as I mentioned before. While the term of office for the President and Hluttaw is five years, the Chief Justice and Judges of the Supreme Court can hold office up to the age of 70 years and of High Courts up to 65 years.

As Myanmar is a Union State, the judicial power is shared among the Supreme Court, High Courts, and different levels of other Courts; justice throughout the Union is governed and supervised by the Supreme Court.

There is no ministry of justice formulated in Myanmar. The Chief Justice of the Union is Head of the Judiciary. The judiciary has its own structure of governance to ensure the proper governance of the system.

Judiciary budget is proposed by the Supreme Court, to the Union Government in order to include and present in the Annual Budget Bill in accordance with the Constitution. In practice, High Courts of Regions and High Courts of States have to propose the budget of them and their subordinate Courts to the relevant Region or State Budget Programs.

Appointment of judges in subordinate Courts is based on a career and promotion track. As far as appointment of junior judges is concerned, the Supreme Court is of very high accountability, as appointments are made on merit with appropriate independent process. We are confident that there is no misconduct relating to appointment, posting, transfer, promotion and removal of junior judges in subordinate Courts. The Supreme Court disciplines judicial officers and judges for their misconduct, with no influence of the executive.

In fact, there is structural independence in judiciary but operational independence will result only if the executive and legislature refrain from any interference in judicial functions. Judicial independence depends upon the government respecting the principle of judicial independence. If the judiciary achieves the confidence and respect of the populace, they help dispel the risk of significant inroads to judicial independence.

On the other hand, safeguard provisions for judges should be firmly provided by law. There are some safeguard provisions under common law practice. Judges are bound by professional secrecy and enjoy personal immunity from civil and criminal liability in judicial matters.

Accountability

Judicial independence should be coupled with accountability. Each judge is accountable for the decisions he makes; the decisions are made in public and so they are open to public scrutiny and they can be reviewed on appeal. The judiciary is the branch of the State responsible for providing the fair and impartial resolution of disputes between citizens and between citizens and the state or state entities in accordance with the prevailing rules of statute and case law.

Judges are responsible for judicial corruption and miscarriage of justice. Moreover, they should be accountable for their honesty and capacity in doing judicial functions. The Supreme Court makes efforts to ensure honesty and capacity of judges using disciplinary action and due process of supervision.

The Supreme Court conducts the appointment of judges on merit-based examination and assures the transparency of appointing process. It also carries out random assignment of cases, full publication and dissemination of judicial decisions, and peer evaluation on judicial, administrative and disciplined activities of judges. The Supreme Court Administration Committee including the Chief Justice of the Union and all judges of the Supreme Court supervises promotion of judges, judicial complaints and disciplinary actions if necessary.

Efficiency

The third aspect to promote confidence of the citizens is efficiency. The ability to adjudicate disputes in an efficient and timely manner helps achieve public confidence on the judiciary. It has always been the responsibility of the judiciary to ensure that the cases that come before the courts are dealt with as quickly and cheaply as possible, consistent with the

maintenance of high standards of judicial determination. The judiciary must earn and maintain the public trust in its ability to deliver justice on a daily, case by case basis.

From 30th March 2011 on that day the new Constitution came into operation to 30th September 2012, 84791 civil cases are accepted, 60753 cases decided and 24038 cases pending. At the same period, 464501 criminal cases are accepted, 433013 cases decided and 31488 cases pending in the Supreme Court and all other Courts. The clearance rate of civil adjudication is 71.65 percent compared with 93.22 percent in criminal adjudication.

If we are to have a judiciary that has the confidence of the citizens, it is essential to improve judicial efficiency; trying cases speedily and correctly, removing unreasonable delays and backlogs, and enforcing the decisions of Courts effectively. Moreover, the backlog and speed with which Courts can dispose of such a dispute as commercial cases, company cases and torts directly affect investor's trust in our judicial system and market economy system.

Here I would like to make two comments on judicial efficiency: judicial training and enough resources.

We need to build up capacity of judges urgently. The Supreme Court launches different training programs to extend the horizon of our judges; especially in these areas: current developments of the Constitution and laws; changing legal and judicial concepts; information technology and language skill to study them.

Furthermore, the judiciary must have the required financial, logistical and human resources to perform its functions adequately. Sufficient resources are required to maintain court buildings and office facilities, attract and retain well trained and capable staff. To improve judicial efficiency correlates sufficient and adequate allocation of budget and public expenditure to the Courts.

Well-Function

The last aspect of reinforced judiciary is well-functioning of it. Judicial function cannot be performed only by the Courts. Relevant institutions, and prosecutors, lawyers, parties and witnesses must go hand-in-hand to ensure well-functioning of the judiciary. The whole judicial process which involve giving information or reporting of a crime, investigation, litigation, examination of witnesses, interrogation of document or evidence, deciding the case based on the merits of it, and enforcement of Courts' decisions will be functioning if relevant institutions and persons cooperate dutifully and with good intention. If the judiciary functions well it does not impose burden and difficulties upon the parties so that it will regain the public trust and reliance.

The management of Courts must be efficient. Effective case flow management and proper structuring of the jurisdiction of Courts are a means to a well-run Court System that functions according to judicial standards and norms, protecting the rights of the accused, as well as victims and witnesses. A Court must treat each of litigants, witnesses, victims or defendants with dignity and provide accurate information in a helpful, timely, and open manner.

Now we are seriously considering making judicial reform efforts focusing on some critical areas such as:

- (a) enhancing access to justice;
- (b) improving timeliness and quality of justice delivery;
- (c) strengthening integrity, independence, and impartiality of the Courts;
- (d) facilitating coordination across the criminal justice system; and
- (e) increasing public trust in the justice system.

We need to enhance access to justice for prisoners waiting for trial and being in remand. Adjournments are to be reduced. We also need to improve the quality of recordkeeping. We need to set up clear mechanism in order to reduce vulnerability of the system to corruption. We need to encourage people to use alternative dispute resolution ADR and informal justice instead of litigation. Improvements in these areas will result in increased public trust in our judiciary.

In conclusion, I would like to say few remarks on the topic of current developments of our judicial system. The core responsibility of the judiciary is to provide the fair and impartial resolution of disputes between citizens and between citizens and the state or state entities in accordance with the laws. Nowadays, under the changing constitutional landscape, the primary duties of the judiciary become to maintain social order peaceful and tranquil, to have all people to secure justice, liberty and equality and to uphold the rule of law. Doing this task, the judiciary collaborates with the executive and the legislature, rationally and within the framework of constitutional structure. Let me end by saying that constructive and balanced relationships between the three branches of the State are essential to the effective maintenance of the Constitution and the rule of law.

Structure and Functions of Courts in Myanmar

*Sein Than**

The present judicial system was adopted on 28th October 2010 by enacting the Union Judiciary Law in order to implement the judicial works smoothly in accord with the Constitution of the Republic of the Union of Myanmar 2008.

Accordingly, Courts in Myanmar are established in accordance with the Constitution 2008 and the Union Judiciary Law 2010. They are:

- Supreme Court of the Union
- High Courts of the Region and the State
- Courts of the Self Administered Division and Self-Administered Zone
- District Courts
- Township Courts
- Other Courts constituted by law
- Courts-martial
- Constitutional Tribunal of the Union

All the Courts in Myanmar now exist as an independent legal entity alongside the legislative and executive branches.

Supreme Court of the Union

The Supreme Court of the Union is formed in accord with the provisions of the Constitution, 2008 and the Union Judiciary Law, 2010. It is

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The author is now serving as the Director General in the Supreme Court of the Union in Myanmar

the highest Court of the Union without affecting the powers of the Constitutional Tribunal and the Court-Martial. It sits in Nay Pyi Taw, the capital of Myanmar. The Head of the Supreme Court of the Union is called the Chief Justice of the Union. Under the Constitution, Judges of the Supreme Court of the Union including the Chief Justice of the Union may be appointed in the Supreme Court from a minimum of seven and a maximum of 11 in number. Currently, the Supreme Court of the Union has 7 judges including the Chief Justice of the Union and 6 Judges of the Supreme Court of the Union.

The Supreme Court of the Union is the highest court of appeal. It exercises both appellate and revisional powers. It also has original jurisdiction which enables it to hear cases as the court of first instance. Only the Supreme Court of the Union has original jurisdiction in the following matters:

- (a) matters arising out of bilateral treaties concluded by the Union;
- (b) other disputes between the Union Government and the Region or State Government except the Constitutional problems;
- (c) other disputes among the Regions, among the States, between the Region and the State and between the Union Territory and the Region or the State except the Constitutional problems;
- (d) piracy, offences committed at international water or airspace, offences committed at ground or international water or airspace by violating the international law;
- (e) cases prescribed by any law.

The Supreme Court of the Union has the jurisdiction on confirming death sentence and appeal against death sentence. It also has the jurisdiction on a case transferred to it by its own decision and for the transfer of a case

from a Court to any other Court. Unlike the jurisdiction exercised by the former Supreme Court, the Supreme Court of the Union has the power to issue following writs;

- (i) Writ of Habeas Corpus;
- (ii) Writ of Mandamus;
- (iii) Writ of Prohibition;
- (iv) Writ of Quo Warranto;
- (v) Writ of Certiorari.

A case finally and conclusively adjudicated by the Supreme Court of the Union exercising its original jurisdiction, or a case finally and conclusively adjudicated by the Supreme Court of the Union on the final and conclusive decision of any court may, on being admitted for special appeal by the Special Bench, comprising of two Judges of the Supreme Court of the Union, in accordance with the procedures, be heard and adjudicated again by the Special Appellate Bench, formerly it was known as the Full Bench. The Special Appellate Bench will consist of a total of 3 Justices including the Chief Justice of the Union and two Judges of the Supreme Court of the Union. Special appeals are rarely entertained by the Supreme Court of the Union. Only when substantial questions are arisen will the Supreme Court of the Union interfere by way of appeal by special leave in criminal and civil matters. The decision of the Special Appellate Bench is final and conclusive.

The Supreme Court of the Union has the power to prescribe the jurisdiction of the Courts of Self-Administered Division or Self-Administered Zone, District Courts, Township Courts and other Courts established by law to adjudicate criminal and civil cases. It may issue rules, regulations, notifications, orders, directives, procedures and manuals as may be necessary.

Moreover, it has supervisory powers over all courts in the Union and its decisions are binding upon all courts. It may direct to adjudicate the important cases of the High Court of the Region or State, Courts of Self-Administered Division or Self-Administered Zone and District Courts by a bench consisting of more than one judge.

It is entitled to submit the bills relating to the judiciary to the *Pyidaungsu Hluttaw*, or the Union Parliament, in accord with the stipulated manners.

High Courts of the Region and the State

The High Courts of the Region or State are established in the respective Region and State under the provisions of the Constitution, 2008 and the Union Judiciary Law, 2010. There are 14 High Courts of the Region or State in the whole country. Under the Constitution, in every High Court of the Region or State, from a minimum of 3 to a maximum of 7 judges of the High Court including the Chief Justice of the High Court of the Region or State may be appointed. At present, the Chief Justice and Judges of the High Courts are appointed by the President in the number depending on the volume of work of these Regions or States. Currently, there are 52 Judges sitting in these High Courts including 36 male judges and 16 female judges.

As courts of original jurisdiction, the Chief Justice and Judges of the High Courts in the Region or State may hear and determine any kind of criminal cases and civil cases in which the amount in dispute or value of the subject matters is unlimited. However, they do not normally take cognizance of any criminal offences as courts of first instance except where some special circumstances require them to do so.

As courts of appellate jurisdiction, they hear and determine appeals from any sentences or orders passed by the Courts of the Self-Administered Division or Zone, and the District Courts which are subordinate to them.

The Judges of the High Courts of the Region or State adjudicate on appeal cases and revision cases against the judgment, order and decision passed by the Courts of the Self-Administered Division or Self-Administered Zone, the District Courts and the township courts. They also adjudicate on the transfer of cases from one court to another within the region or state concerned.

The Judges of the High Courts of the Region or State supervise the judicial matters upon the all courts within its jurisdiction of the Region or the State in accord with the guidance of the Supreme Court of the Union.

Courts of the Self-Administered Division and the Self-Administered Zone

The Courts of Self-Administered Division or Self-Administered Zone are established under the Constitution and Union Judiciary Law. Same as the jurisdictions of District Judges, the judges of the Courts of Self-Administered Division or Self-Administered Zone are conferred with original criminal jurisdictional powers, criminal appellate and revisional jurisdictional powers according to the Criminal Procedure Code. They also invested with original civil jurisdictional powers, civil appellate and revisional jurisdictional powers according to the Civil Procedure Code. The Judges of the Courts of Self-Administered Division or Courts of Self-Administered Zone supervise the judicial matters of all Township Courts within its relevant jurisdiction in accordance with the guidance of the Supreme Court of the Union, High Court of the Region or State.

District Courts

The District Courts are established under the Constitution and the Union Judiciary Law. There are altogether 67 District Courts in the whole country. In every district court, a district judge is appointed by the Supreme Court of the Union. An additional district judge and deputy district judges are also appointed depending on the volume of work. Currently, there are 146 judges sitting in these district courts including 70 male judges and 76 female judges.

The district judges are conferred with judicial powers by the Supreme Court of the Union in accordance with the provisions of the Criminal Procedure Code and Civil Procedure Code. They are conferred with original criminal jurisdictional powers and criminal appellate and revisional jurisdictional powers according to the Criminal Procedure Code. They are also invested with original civil jurisdictional powers, civil appellate and revisional jurisdictional powers according to the Civil Procedure Code. As Courts of original jurisdiction they hear and determine serious criminal cases which can pass the sentence of death or transportation for life and civil cases in which the amount in dispute or value of the subject matters is not exceeding 500 million kyats. The district courts supervise the judicial matters of all Township Courts within its relevant jurisdiction in accordance with the guidance of the Supreme Court of the Union, High Court of the Region or State.

Township Courts

The township courts are established under the Constitution and the Union Judiciary Law. There are altogether 324 township courts in the whole

country. In every township court, a township judge is appointed by the Supreme Court of the Union. Additional township judges or deputy township judges are also appointed by the Supreme Court of the Union depending on the volume of work. Currently, there are 738 judges sitting in these township courts including 446 male judges and 292 female judges.

The judges at township level are conferred with judicial powers by the Supreme Court of the Union in accordance with the provisions of the Criminal Procedure Code and Civil Procedure Code.

A township judge is the officer in charge of court administration matters. He or she also has the power to distribute all cases received in the township court to other judges of township courts. But every judge has independent jurisdiction over cases assigned to him or her.

Township courts are mainly courts of original jurisdiction. Township judges by virtue of their posts are specially empowered as Magistrates who can pass sentences of up to 7 years imprisonment whereas an additional township judge, if he or she is especially empowered with such special magisterial powers, may award sentences not exceeding 7 years. The remaining deputy township judges can impose sentences according to their magisterial powers, such as Courts of First Class Magistrates, Courts of Second Class Magistrates and Court of Third Class Magistrates.

Some of the civil cases in which the amount in dispute or value of the subject matters is not exceeding 10 million kyats are adjudicated by the Township Judges and Additional Township Judges; and in which the amount is not exceeding 3 million kyats are adjudicated by the Deputy Township Judges in township courts. The Township Judges by virtue of their post also exercise juvenile jurisdiction specially conferred under 1993 Child Law.

Other Courts constituted by Law

Separate courts are established either under special provisions in any law or in respect of those cases which occur irregularly in populous areas. Separate courts specially constituted by the Supreme Court of the Union to achieve speedy and effective trial under some special laws include juvenile courts, courts to try municipal offences and courts to try traffic offences. There are altogether 23 judges sitting and performing their judicial functions in these separate courts.

- **Juvenile Courts**

The former State Law and Order Restoration Council enacted the Child Law, 1993. The Child Law, 1993 was adopted to implement the rights of the child envisaged in the United Nations Convention on the Rights of the Child. In the administration of justice in the Republic of the Union of Myanmar a juvenile offender is usually tried summarily by a competent court irrespective of the severity of the offence. 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 moral. To achieve that spirit, juvenile offenders cannot be sentenced to death, transportation for life or imprisonment for a term exceeding 7 years.

In accord with the Child Law, township courts are conferred with powers to try juvenile offences. A separate juvenile court (Yangon) has been constituted to try juvenile cases occurring at 20 townships in Yangon City Development Area. A separate juvenile court (Mandalay) has been constituted to try juvenile cases occurring at 5 townships in Mandalay City

Development Area. Apart from that, juvenile court has been established separately in every township with in the court house and the cases are adjudicated only by the township judge.

- **Courts to try Municipal Offences**

Seven separate courts have been opened in Yangon after consultation with the Yangon City Development Committee to try municipal offences. Such offences include; violating provisions of the City of Yangon Municipal Act, rules, by-laws, orders and directives still in force and those under the Yangon City Development Law enacted by the former State Law and Order Restoration Council. Four separate courts have also been established in Mandalay after consultation with the Mandalay City Development Committee, to try municipal offences. Similarly, one separate court has been established in Nay Pyi Taw territory to try such offences.

- **Courts to try Traffic Offences**

In order to try offenders violating vehicle rules and road discipline, one separate court in Nay Pyi Taw, 7 separate courts in Yangon City Development Area and 2 separate courts in Mandalay City Development Area exclusively for that purpose have been constituted in consultation with the Traffic Rules Enforcement Supervision Committee.

In conclusion, the courts at different level in Myanmar have been carrying out the administration of justice and other related judicial functions in accord with judicial principles laid down by the Union Judiciary Law. Moreover, the following judicial mottos are always kept in mind of all the judges:

- Adjudicate as to the law
- Adjudicate fairly and speedily
- Act as to the procedure
- Keep from corruption and bribery
- Maintain the integrity and reputation of the court.

Structure and Functions of Courts in Myanmar

Supreme Court of the Union
Republic of the Union of Myanmar

Present Judicial System

- Adopted on 28th October 2010 by promulgating the Union Judiciary Law
- Courts were formed under section 293 of the Constitution of the Republic of the Union of Myanmar and the Union Judiciary Law

Formation of Courts

- Supreme Court of the Union
- High Courts of the Region and the State
- Courts of the Self-Administered Division & Courts of the Self-Administered Zone
- District Courts
- Township Courts
- Other Courts constituted by law

Supreme Court of the Union

- Highest judicial organ in the Union without affecting the powers of the Constitutional Tribunal and the Courts-martial
- Highest court of appeal
- Matters exercised only by the Supreme Court
- Jurisdiction on confirming death sentence and appeal against death sentence
- Power to issue Writs

High Courts of the Region and the State

- Established under the Union Judiciary Law
- Form in the respective Region and the State
- 14 High Courts in the whole country
- 36 male judges and 16 female judges sitting
- In original jurisdiction, try any kind of criminal offence and civil suits which value of subject matter is unlimited
- Appellate jurisdiction upon the Courts of Self-administered Division and Self-Administered Zone, District Courts and Township Courts

Courts of Self-Administered Division and Self-Administered Zone

- Established under the Union Judiciary Law
- Original Criminal and Civil Jurisdiction like the District Courts
- Appellate jurisdiction upon the Township Courts within its local limits

District Courts

- Established under the Union Judiciary Law
- 67 District Courts in the whole country
- 70 male judges and 76 female judges sitting
- In original jurisdiction, try serious criminal cases punishable with death sentence and transportation for life; and civil suits which value of subject matter is not exceeding 500 million kyats
- Appellate jurisdiction upon the Township Courts within its local limits

Township Courts

- Established under the Union Judiciary Law
- Lowest courts and 324 Township Courts in the whole country
- 446 male judges and 292 female judges sitting
- In original jurisdiction, try criminal cases punishable with sentence of 7 years imprisonment ; and civil suits which value of subject matter is not exceeding 10 million kyats

Other Courts constituted by law

- **Juvenile Courts**
2 separate courts in Yangon and Mandalay
- **Courts to try Municipal Offences**
12 separate courts in Nay Pyi Taw, Yangon and Mandalay
- **Courts to try Traffic Offences**
10 separate courts in Nay Pyi Taw, Yangon and Mandalay
- Total 23 judges are sitting in these courts

Judicial Mottos

- Adjudicate as to the law
- Adjudicate fairly and speedily
- Act as to the procedure
- Keep away from corruption and bribery
- Maintain the integrity and reputation of the Court

Thank you

The Procedure deal with Criminal Justice System in Myanmar

Introduction

1. My presentation is composed of the following 7 Parts;
 1. Norms and Standard applied in the Criminal Justice System
 2. Applicable Laws
 3. Formation of the different levels of Criminal Courts
 4. Confer the power to try Criminal Cases
 5. Components of Criminal Justice
 6. Number of cases conducting in Courts
 7. Legal Reform and future perspective

Norms and Standard applied in the Criminal Justice System

Myanmar Judiciary follows the norms which international institutions organized as the basic principles. The Constitution of the Republic of the Union of Myanmar and the Union Judiciary Law grants the core elements to taking action upon criminal cases.

These norms are embodied in the Constitution and Union Judiciary Law as follows;

- (a) No criminal law should be done the retroactive action; any accused person shall be convicted only in accord with the relevant law then in operation. He shall not be penalized to a penalty greater than that is applicable under that law.
- (b) 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.
- (c) An accused shall have the right of defence in accord with the law.

- (d) No person shall be held in custody for more than 24 hours without the remand of a competent magistrate.
- (e) Punishment should be aimed to reform the moral character of offender.

Applicable Laws

The Penal Code, the Criminal Procedure Code, Evidence Act and special Laws are enacted in order to examine the criminal cases. When Myanmar was colony of British Empire, some laws from India were brought into Myanmar and exercised since then. Such laws were codified in Burma Code volume 1 to 13. Among them, 214 Laws are currently applied in the field of criminal and civil cases. There were 171 Laws promulgated in the period of Parliament. During the Revolutionary Council period, Socialist period, State and Order Restoration and State Peace and Development period and up to the 2011, totally 840 laws were enacted. Currently, the Pyidaung su Hluttaw, passed the 26 Laws. When Myanmar acceded the International Conventions, the enactment of Domestic Laws follow in timely.

Formation of the different levels of Criminal Courts

In order to try the cases, Courts of the Union are formed in accordance with the Constitution as follows:

- * Supreme Court of the Union;
- * High Courts of the Region and the State;
- * Courts of the Self-Administered Division;
- * Courts of the Self-Administered Zone;
- * District Courts;
- * Township Courts;
- * Other Courts constituted by law;

At present, the Supreme Court of the Union has 7 judges including the Chief Justice of the Union and 6 Judges of the Supreme Court of the Union. The High

Courts of the Region or State are established in the respective Region and State under the provisions of the Constitution, 2008 and the Union Judiciary Law, 2010 and there are 14 High Courts of the Region or State. There are also 67 District Courts and 346 Township Courts and courts constituted by other laws including Juvenile Courts, Municipal Courts and Traffic Courts.

Confer the power to try Criminal Cases

The Supreme Court of the Union is the highest organ of the State Judiciary of the Republic of the Union in Myanmar without affecting the powers of the Constitutional Tribunal and the Courts-martial. It is the apex of the court system in Myanmar and exists as an independent entity alongside the legislative and executive branches.

The Supreme Court of the Union is the highest court of appeal. It exercises both appellate and revisional powers. It also has original jurisdiction which enables it to hear cases as the court of first instance.

The Supreme Court of the Union has the jurisdiction on confirming death sentence and appeal against death sentence. It also has the jurisdiction on a case transferred to it by its own decision and for the transfer of a case from a Court to any other Court.

As courts of original jurisdiction, the Chief Justice and Judges of the High Courts in the Region or State may hear and determine any kind of criminal cases and civil cases in which the amount in dispute or value of the subject matters is unlimited.

The High Courts of the Region or State adjudicate on appeal cases and revision cases against the judgment, order and decision passed by the Courts of the Self-Administered Division or Zone, the District Courts and the township courts. They also adjudicate on the transfer of cases from one court to another within the region or state concerned.

The district judges are conferred with original criminal jurisdictional powers, criminal appellate and revisional jurisdictional powers according to the Criminal Procedure Code.

As Courts of original jurisdiction they hear and determine serious criminal cases which can pass the sentence of death or transportation for life.

Township courts are mainly courts of original jurisdiction.. Township judges by virtue of their posts are specially empowered as Magistrates who can pass sentences of up to 7 years imprisonment where as an additional township judge, if he or she is especially empowered with such special magisterial powers, may award sentences not exceeding 7 years. The Township Judges are also empowered to trail the Juvenile Cases . The remaining deputy township judges can impose sentences according to their magisterial powers. For example, the first class magistrate can pass imprisonment for a term not exceeding two years and fine not exceeding 1000 kyats. The second class magistrate can impose not exceeding 6 months imprisonment, fine not exceeding 200 kyats. The third class magistrate can impose imprisonment not exceeding 1 month imprisonment, fine not exceeding 50 kyats.

Components of Criminal Justice

The criminal law of the land splits itself up into two broad divisions, one for prevention of crimes, and the other for punishment of criminals. The prevailing law on crime prevention and punishment is embodied in two principal statutes: the Penal Code and the Code of Criminal Procedure.

Prevention of Offences

Besides trial of actual offenders, Magistrates have another function. They are the custodians of public peace and tranquility . It often happens that in a certain locality there are persons, who by their general conduct and past behaviour, threaten to jeopardize the safety of the people. Law provides that this class of men should be made to realize their mistakes and shortcomings, and be on

probation of guaranteed good behavior. The procedures deal with security for keeping the peace and for good behavior are laid down in the Criminal Procedure Code.

The Mode of Taking Cognizance of Offences

Magistrates may take cognizance of any offence -

- * upon a report in writing of such facts made by any police-officer;
- * upon information received from any person other than a police officer, or upon his own knowledge or suspicion that such offence has been committed.

Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. However, when a citizen of the Union of Myanmar commits an offence at any place without and beyond the limits of the Republic of the Union of Myanmar, he may be dealt with in respect of such offence as if it had been committed at any place within the Union of Myanmar at which he may be found. Likewise, when a foreign citizen or an alien of other countries commits an offence within the territory of Myanmar, which is punishable by any law for the time being in force in Myanmar, he or she shall be liable to punishment under section 2 of the Penal Code.

Enquiry and Trial

When the complaint is put up before the Magistrate, empowered to take cognizance of the case, the complainant is called and examined on oath. The Magistrate records the complainant's statement and orders issue of process on the accused, unless he is of opinion that the complainant's story is untrue or has some inherent improbability about it. If the Magistrate refuses to issue process, he either dismisses the case under Section 203 of Criminal Procedure Code, or directs an enquiry by the police or by such other person as he thinks fit. In a

case where enquiry is directed, the magistrate has to wait for the report of the enquiry for disposal of the complaint.

Appearance of the Accused

When on complaint of a party the magistrate issues process, the lawyer should direct his client to file requisites, e. g., process fee and address of the accused. Careless supply of address of the accused or delay in filing the prescribed fee for issue of process often means unnecessary delay, disappointment and expense to the complainant. Ordinarily, the accused on receipt of the summons or warrant appears in court on the date fixed for such appearance.

Bail

In bailable cases, as soon as the accused signifies his assent to take a trial, the court grants him bail and fixes a date on which the trial proper is to begin.

Where the offence with which the accused is charged is non-bailable, applications are put in, by the accused stating there in the grounds on which he seeks to be admitted to bail. If the court on a consideration of the petition is of opinion that the accused deserves to be on bail during the trial, an order is passed to that effect fixing the amount of security and number of sureties to be furnished. The accused then secures a surety or sureties who along with him execute a bond. This bond is put up before the magistrate for acceptance.

In non-bailable cases, an accused person may, for reason to be recorded in writing, be released on bail but he shall not be so released on bail, if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life. Provided that any person under the age of 16, any woman or any sick or infirm person may be released on bail in any case.

Commencement of Record of Evidence of Trial

A Magistrate can try a case according to law in one of these ways: (a) summons trial (b) warrant trial (c) summary trial.

Summary trial and summons trial require the complainant to appear in court with his witnesses on the date fixed for that purpose. The accused also has to bring his witnesses on that day unless he is spared the necessity of so bringing his witnesses by the court having regard to the nature of its file on that date and the number of witnesses proposed to be examined by the complainant. The court opens the trial by asking the accused if he is guilty or not. If the answer is in the negative, the court asks the complainant to put his witnesses in the box for examination. In summons trial and summary trial, the Magistrate need not record the evidence in *extenso*; he may simply make a memorandum of important and salient points. The defence lawyer must keep ready for cross-examination and take up the witness as soon as the complainant has finished his examination-in-chief. When the complainant has exhausted the list of his witnesses, the defence puts in evidence if so desired.

In summons trial and summary trial the magistrate need not frame any charge. He has to examine the accused under Section 342 of the Criminal Procedure Code.

In warrant trial, prosecution goes on examining witnesses till the list is exhausted or till the magistrate considers that sufficient evidence has been led to enable him to frame a charge against the accused. The defence lawyer has the right to cross-examine the prosecution witness twice, once before charge and again after it. The accused in a warrant case may get an adjournment for cross-examination of witnesses examined by the prosecution up to the point of framing of the charge. If the lawyer gets sufficient materials from the cross-examination of the prosecution witnesses, it is hardly necessary or advisable to adduce any evidence in defence.

Judgment

Judgment must be pronounced in open court, in the presence of the accused, or, if his personal attendance during the trial has been dispensed with and he is acquitted or the sentence is one of fine only, in the presence of his pleader.

Appeal and Revision

An appeal shall lie to the respective appellate court in accordance with the Union Judiciary Law, 2010 and the Criminal Procedure Code.

The superior courts empowered with revisional power, may call for and examine the record of any proceeding before any inferior criminal court for the purpose of satisfying itself as to the correctness, legality and propriety of finding, sentence or order, passed by inferior court.

Number of cases conducting in Courts

From 30th March 2011 to 30th September 2012, the following numbers of cases that handling by the respective courts are as follows;

Sr.	Courts	Received	Decided	Pending
1.	Supreme Court of the Union	1487	1153	334
2.	High Courts of the Regions and States	8212	7016	2105
3.	District Courts	14735	13965	3233
4.	Township Courts	418577	410139	25816

Legal Reform and future perspective

Now, the Supreme Court of the Union is drafting the new laws to be in line with the current situation. The Supreme Court has already submitted 6 Draft Bills to the Pyidaungsu Hluttaw and they are on the process. These Drafts are Law Amending the Penal Code ; Law Amending the Code of Criminal Procedure;

Law Amending the Limitation Act; Law Amending the Code of Civil Procedure; Draft Law on Contempt of Court and Law Amending the Transfer of Property Act.

The Procedure deal with Criminal Justice System in Myanmar

Presented by
Mr. Tu Jar
Chief Justice
High Court of Kachin State

1

Introduction

- Norms and Standard applied in the Criminal Justice System
- Applicable Laws
- Formation of the different levels of Criminal Courts
- Confer the power to trial Criminal Cases
- Components of Criminal Justice
- Number of cases conducting in Courts
- Legal Reform and future perspective

2

Norms and Standard applied in the Criminal Justice System

- Convicted only in accord with the relevant law then in operation
- 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.
- Accused shall have the right of defence in accord with the law.
- No person shall be held in custody for more than 24 hours without the remand of a competent magistrate.
- Punishment should be aimed to reform the moral character of offender.

3

Applicable Laws

- The Penal Code, the Criminal Procedure Code, Evidence Act and special Laws
- Burma Code volume 1 to 13 – 214
- Parliament period – 171
- Revolutionary Council period, Socialist period, State and Order Restoration and State Peace and Development period up to 2011 – totally 840
- Pyidaungsu Hluttaw - 26

4

Formation of the different levels of Criminal Courts

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graph TD
    A[Supreme Court of the Union] --- B[High Courts of the Regions/ States - 14]
    B --- C[District Courts - 67]
    C --- D[Township Courts / other courts constituted by laws 346]
    
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5

Confer the power to try Criminal Cases

Sr.	Courts	Empower
1.	Supreme Court	original jurisdiction, appellate and revisional powers, confirming death sentence and appeal against death sentence, transfer of a case from a Court to any other Court
2.	High Courts of Region/ States	hear and determine any kind of criminal cases, adjudicate on appeal cases and revision cases, transfer of a case from a Court to any other Court within the region or state concerned
3.	District Courts	hear and determine serious criminal cases which can pass the sentence of death or transportation for life, appellate and revisional jurisdictional powers
4.	Township Courts	Township judges / Add Tsp Judge -7 years imprisonment 1 st Class Magistrate-2 years imprisonment/ 1000K 2 nd Class Magistrate-6 months imprisonment / 200 K 3 rd Class Magistrate-1 month imprisonment/ 50 K

6

Components of Criminal Justice

- Prevention of crimes
- Punishment of criminals
- Two principal statutes
 - ❖ Penal Code
 - ❖ Code of Criminal Procedure

7

Prevention of Offences

- To maintain public peace and tranquility
- Security for keeping the peace and for good behavior are laid down in the Criminal Procedure Code.

8

Taking Cognizance of Offences

- upon a report in writing of such facts made by any police-officer;
- upon information received from any person other than a police officer, or upon his own knowledge or suspicion that such offence has been committed

9

Enquiry and Trial

- complainant is called and examined on oath
- complainant's story is true - orders issue of process on the accused
- If the Magistrate refuses to issue process, he either dismisses the case under Section 203 of Criminal Procedure or directs an enquiry by the police or by such other person as he thinks fit

10

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- complaint of a party the magistrate issues process, the lawyer should direct his client to file requisites, e.g., process fee and address of the accused
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- bailable cases, as soon as the accused signifies his assent to take a trial, the court grants him bail and fixes a date on which the trial proper is to begin
- non-bailable - accused secures a surety or sureties who along with him execute a bond
- if there appear reasonable grounds for believing that accused has been guilty of an offence punishable with death or transportation for life - shall not be so released on bail
- any person under the age of 16, any woman or any sick or infirm person may be released on bail in any case.

12

Commencement of Record of Evidence of Trial

- A Magistrate can try a case according to law in one of these ways:
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13

Judgment

- pronounced in open court, in the presence of the accused, or, if his personal attendance during the trial has been dispensed with and he is acquitted or the sentence is one of fine only, in the presence of his pleader.

14

Appeal and Revision

- An appeal shall lie to the respective appellate court in accordance with the Union Judiciary Law, 2010 and the Criminal Procedure Code.
- superior courts empowered with revisional power, may call for and examine the record of any proceeding before any inferior criminal court for the purpose of satisfying itself as to the correctness, legality and propriety of finding, sentence or order, passed by inferior court.

15

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Legal Reform and future perspective

- Supreme Court of the Union is drafting the new laws to be in line with the current situation
 - Law Amending the Penal Code;
 - Law Amending the Code of Criminal Procedure;
 - Law Amending the Limitation Act;
 - Law Amending the Code of Civil Procedure;
 - Draft Law on Contempt of Court;
 - Law Amending the Transfer of Property Act.

17

Thank you

18

PROCEDURE DEALS WITH CIVIL SUITS IN MYANMAR JUDICIARY

1. Introduction

In Myanmar judicial system, Courts are conferred with powers to try criminal cases and civil suits in both. Courts are following the Code of Criminal Procedure for criminal cases and the Code of Civil Procedure for civil suits.

The Code of Civil Procedure (CPC) is the procedural law which consists of the provisions from institution to execution of original civil suits, appeals from original decrees, reference and review etc. The original Code of Civil procedure is an India Act which had been enacted in 1895. The Code had been amended in 1877, 1882, 1909 and the present Civil Procedure Code is the Code which was adopted in 1909. The Code is divided into two parts: sections and orders. The sections laid down the general principles and the rules furnished machinery for applying those sections. In this presentation, the procedure deals with original civil suit will be mentioned and explained.

2. General Principles

Suits in general are detailed by the Civil Procedure Code. The Courts shall have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. For example, a suit in which the right to property or to an offence is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies. (CPC, Sec.9)

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in a previously instituted suit. But these suits must be between the same parties or parties under whom they or any of them claim, litigating under the same title, and where such suit is pending in the same Court or any other Court having jurisdiction. (CPC, Sec.10)

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly in issue in a former suit between the same parties, litigating same title in the Court such issue has been heard and finally decided. (CPC, Sec.11)

Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit for such cause of action. (CPC, Sec.12)

3. Civil Jurisdiction

The jurisdiction of Courts is its authority to decide matters that are litigated before it. Generally, Myanmar Courts have jurisdiction to try all civil suits against all persons (whether local or foreign) within Myanmar, other than foreign sovereign. The appropriate Court in which commence proceedings in Myanmar is dependent upon the type and value of the claims and, perhaps, the location of the parties or the place the business is or act in question was carried on. Therefore, the Court firstly scrutinizes the place of suing whether it can be commenced under the jurisdiction of the Court or not.

Every suit shall be instituted in the Court of the lowest grade competent to try it and where subject matter situates. (CPC, Sec. 15)

Subject to the pecuniary or other limitations prescribed by any law, suits for immovable property shall be instituted where subject matter situated. (CPC, Sec.16) In case of immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate (CPC, Sec. 17).

However, where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property (CPC, Sec. 18).

Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court, and the defendant resides, or carries on business, or personally works for gain within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff on either or the said Courts. (CPC, Sec.19)

Other suits shall be instituted in a Court where defendants reside or cause of action arises (CPC, Sec.20).

The Supreme Court of the Union confers the pecuniary jurisdiction to subordinate Courts from time to time by Directives. To solve the over-loading civil suits in High Courts and District Courts, the Supreme Court amended the pecuniary jurisdiction of the Courts in 2011. At present, the Township Courts are conferred jurisdiction to try the original civil suits of the value of not more than Ten million Kyats (Myanmar currency). Courts of Self-Administered Division or Zone and District Courts are conferred jurisdiction to try the original civil suits of the value of not more than five hundred million Kyats. However, the pecuniary jurisdiction of High Courts of Region or State is not limited and High Courts can try any original civil suits of the value more than five hundred million Kyats.

According to Union Judiciary Law, the Supreme Court has also original civil jurisdiction in matters arising out of bilateral treaties concluded by the Union, other disputes between the Union of Government and the Region or State Government, among the States, between the Region and the State and between the Union Territory and the Region or the State except the Constitutional problems, other disputes among the regions and cases prescribed by any law.

4. When Aliens or Foreign States may sue

Under the Civil Procedure Code, alien enemies residing in the Union of Myanmar within the permission of the President of the Union of Myanmar, and alien friends, may sue on the Courts of the Union of Myanmar, as if they were citizens of the Union. And, no alien enemy residing in the Union of Myanmar without such permission, or residing in a foreign country, shall sue in any of such Courts (CPC, Sec. 83).

A foreign State may sue in any Court of the Union of Myanmar if such State has been recognized by the President of the Union (CPC, Sec. 84).

5. Court Procedure for Original Civil Suits

5.1. Filing a original civil suit

Civil suits are filed in Courts having proper jurisdiction, that is to say, territorial or local, pecuniary, subject matter and personal jurisdiction. A civil suit is instituted by filing plaint in the Court of the lowest grade competent to try it.

The plaint must comply with the requirements set out under Order 6 and 7 of the Civil Procedure Code. Every plaint shall contain the name of Court, description and place of residence of the plaintiff and the defendant, the statement of where the plaintiff or defendant is a minor or a person of unsound mind, cause of action, jurisdiction, the relief claimed by plaintiff, (if any) set-off or relinquished amount, value of the subject-matter of the suit (CPC, Or.7, R.1).

In money suit, the plaint shall state the precise amount claimed (CPC, Or.7, R.2). Where the subject-matter of the suit is immovable property, a description of the property sufficient to identify shall be contained in the plaint (CPC, Or.7, R.3). Moreover, the plaint shall show interest of the plaintiff and defendant, grounds of exemption from limitation law, alternative relief, separate and distinct grounds for claims (if any) (CPC, Or.7, R.4, 5, 6, 7 and 8).

The Court shall return to be presented to the Court in which the suit should have been instituted (CPC, Or.7, R.10). The Court shall reject the plaint where it does not disclose a cause of action, the relief claimed is undervalued, insufficiently stamped plaint, statement to be barred by any law (CPC, Or.7, R.11).

Civil suits are instituted in the competent Court for the right of the one party which is denied by the other. Therefore, the Court has to decide the relief of the plaintiff in accordance with the laws related to the claimant.

5.1.1. Court-fees

For institution of original civil suit, pay of sufficient Court-fees and litigation within the time of limitation are also essential. Subject-matter of the suit must be valued for Court-fees and sufficiently stamped. The Court-Fees Act provides fixed court-fees and Court-fee payable in suit value. All fees referred or chargeable under the Act shall be collected by stamps (The Court-Fees Act, Sec.25).

5.1.2. Limitation of actions

Prescriptive period of limitation for various actions and application is governed by the Limitation Act. For different types of suits and application, the period of limitation and time from which period begins to run are prescribed in the Act. Every suit instituted after the period of limitation prescribed in the Act shall be dismissed, although limitation has not been set up as a defence (The Limitation Act, Sec.3).

5.2. Filing written statement by defendants

When received the summons, the defendant shall come to the Court and file his written statement if he wants to deny the allegation made in the plaint or admit them.

The defendant may present a written statement of his defence at or before the first hearing or within such time as the Court permits (CPC, Or.8, R.1). The defendant must raise all matters which show the suit not to be maintainable and all grounds of defence (CPC, Or.8, R.2). Denial in written statement must be specific for each allegation of fact which he does not admit (CPC, Or.8, R.3).

Every allegation of fact in the plaint shall be taken to be admitted if the defendant does not deny specifically in the written statement (CPC, Or.8, R.5). In a suit for the recovery of money the defendant may claim to set-off against the plaintiff's demand any ascertained sum of money (CPC, Or.8, R.6).

When party fail to present written statement within the time fixed by the Court, the Court may pronounce judgment against him or make an order as it think fit (CPC, Or.8, R.10).

5.3. Settlement of issues

At the first hearing of the suit, the Court shall, after reading the plaint and the written statement and shall thereupon proceed to frame and record the issues on which the right decisions of the case appear to depend.

Issues are to be framed only in respect of those material propositions of fact or law is affirmed by the one party and denied by the other party (Or.14, R.3). In the same suit, issues both of law and fact may arise. The court is of opinion that the case or any part thereof may be disposed of on the issues of law only; it shall try those issues first and may postpone the settlement of the issues of fact until after the issues of law have been determined (Or.14, R.2). However when the issue of law is compound with the facts, the court may settle the issues both of law and fact after hearing the suit and examination of witnesses.

The Court may amend the issues or frame additional issues or strike out any issues as it think fit, at any time before passing a decree (Or.14, R.5).

The date of framing issues is the first hearing of a suit. Therefore non-appearance of the parties and non-production of documents at that date shall be effect to the suit. At first hearing, all documentary evidence in possession of the parties shall

be produced and no documentary evidence shall be received at any subsequent stage of the proceeding unless good cause is shown to the satisfaction of the Court (Or.13, R.1 and 2). Where at the first hearing of a suit it appears that parties are not at issue on any question of law or fact, the court may at once pronounce judgment (Or.15, R.1).

5.4. Hearing of the suit

For settlement of issues of the fact, the Court shall proceed to hearing of the suit and examination of witnesses.

For attendance of witness, the parties may obtain, on application to the Court, summonses to persons whose attendance is required either to give evidence or to produce documents at any time after the suit is instituted (Or.16, R.1). The expenses of witness shall be paid into the Court by the party applying for summons (Or.16, R.2). If witness fails to appear the Court may impose fine and may order his property to be attached and sold, having regard to his condition in life and all circumstances of the case (Or.16, R.12).

5.4.1. Production of evidence

The party on whom the burden of proof lies should begin the examination. Generally the plaintiff has the right to begin (Or.18, R.1). On the day fixed for the hearing of the suit on any other adjourned day, the party shall state his case and produce his evidence, documentary as well as oral in support of the issues which he is bound to prove. The other party shall then state his case and produce his evidence (if any) in the manner aforesaid (Or.18, R.2).

5.4.2. Examination of witnesses

The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the judge (Or.18, R.4). The evidence of witnesses shall be taken down in writing in the language of the Court or in English (Or.18, R.5). After Myanmar language is stated as official language, the language used in Court became Myanmar language.

5.4.3. Order of Examination

The order in which witnesses are produced and examined shall be regulated by the Evidence Act and Civil Procedure (Evidence Act Sec.135). Admissibility of evidence shall be decided by judge in accordance with the Evidence Act (Evidence Act Sec.136). As the order of examination, witnesses shall be first examined-in-chief by the party who calls him. Then witnesses shall be cross-examined if the adverse party so desires and re-examined if the party calling him so desires (Evidence Act Sec.137). The examination-in-chief and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief (Evidence Act Sec.138).

5.5. Judgment and Decree

After hearing the suit and final argument by both of parties or their pleaders (if any), the Court shall pronounce judgment in open Court either at once or some future day of which due notice shall be given to the parties or the pleaders. On such judgment a decree shall follow (CPC, Sec.33 and Or.20, R.1).

Decrees may differ according to the nature of the suits. There are also different judgments passed under different conditions like: judgment on admission by party, judgment by consent, declaratory judgment and judgment by default.

Judgment is the statement given by the judge of the grounds of a decree or order (CPC, Sec. 2(9)). Decree means formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question arising between the parties. But any adjudication from which an appeal lies as an appeal from an order and any order of dismissal for default (CPC, Sec. 2(2)).

Therefore judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision (CPC, Or.20, R.4(2)).

The decree shall agree with the judgment and shall contain the number of suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit. It shall also state the amount of costs incurred in the suit, and by whom or out of what property and in

what portions such costs are to be paid. The court may direct that the costs payable to one party by the other shall be set off any sum which is admitted or found to be due from the former to the latter (CPC, Or.20, R.6).

6. Temporary Injunctions and Interlocutory orders

6.1. Temporary injunctions

According to the Civil Procedure, temporary injunction may be granted during the process of the suit. For temporary injunction the party who applies, is necessary to prove by affidavit or otherwise that any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, or the defendant threatens, or intends to remove or dispose of his property with a view to defraud his creditors. The court may grant a temporary injunction to restrain such act until the disposal of the suit or until further orders for the purpose of prevention (CPC, Or.39, R.1).

6.2. Interlocutory orders

Before judgment the Court has power to order interim sale on application of any party to a suit. The Court may order the sale of any moveable property which is subject-matter of the suit and which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once (CPC, Or.39, R.6).

7. Withdrawal and Adjustment of Suits

7.1. Withdrawal of the suit

At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim. Where the Court is satisfied that a suit must be failed by reason of some formal defect, or that there are other sufficient grounds, it may grant the plaintiff permission to withdraw. Where the plaintiff withdraws or abandonment without the permission of the Court, he shall be precluded from instituting any fresh suit in respect of such subject-matter or claim (CPC, Or.23, R.1).

7.2. Compromise of suits

Where the suit has been adjusted wholly or in any part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff, the Court

shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith. Otherwise, the Court may order to stay the proceedings upon the terms of the agreement, compromise or satisfaction with liberty to the parties to apply for the purpose of carrying the same into effect (CPC, Or.23, R.3).

Withdrawal and compromise of suits under the Civil Procedure shall not apply to any proceedings in execution of a decree or order (CPC, Or.23, R.4).

8. Procedure in Execution

Any person in whose favour a decree has been passed or an order capable of execution has been made, can make application to the Court which passed the decree for enforcement of the decree or order. Execution may be effected either against the person or property or both, of the judgment debtor. The Court having jurisdiction is that situated at the place where the person resides or where the property situates. The only exception is when a Court issues a precept to another court having jurisdiction over the property to be attached.

The court may order execution of the decree by delivery of any property specially decreed; by attachment and sale or sale without attachment of any property; by arrest and detention in prison; by appointing a receiver; or in such other manner as the nature of the relief granted may require (CPC, Sec.51).

In execution of decree, judgment-debtor shall be detained, where the decree is for the payment of money, for a period of six months. He shall be released from such detention before the expiration of period on the decree against him being fully satisfaction. A judgment-debtor release from detention shall not merely by reason of his release be discharge from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in civil prison (CPC, Sec.58).

Before issuing a warrant of arrest, the Court shall issue a notice calling upon judgment-debtor to appear before the Court and show cause why he should not be committed to the civil prison. However, such notice shall not necessary if the Court is satisfied that he is likely to abscond or leave the local limits of the jurisdiction of the Court with the object or effect of delaying the execution of the decree (CPC, Or.21, R.37).

Ordinarily, the Civil Procedure Code had been prohibited the arrest or detention in a civil prison of a woman in execution of a decree for the payment of

money. But this provision was deleted by the Law Amending the Code of Civil Procedure in 2000. The procedure in arrest and detention can be now applicable to every judgment-debtor.

9. Types of Civil Suits and Laws relating to Civil Suits

9.1. Types of Civil Suits

In Myanmar, some types of civil suit are usually instituted. They are suit for money (including suit for remedies), divorce, suit for possession of movable property or immovable property, suit for partition of property or separate possession of a share therein, administration suit (including suit for dissolution of partnership and suit for administration of the property of deceased person), declaratory suit, suit for specific performance of contract, suit for recovery of possession etc.

9.2. Laws relating to Civil Suits

There is no comprehensive Civil Code which covers all types of civil suits in Myanmar. Myanmar Codes (Volume-1 to 13) codified the laws like Contract Act, Transfer of Property Act, Specific Relief Act, Succession Act, Guardian and Wards Act, Company Act, promulgated before 1954.

Under the Myanmar Laws Act, 1898, questions regarding succession, inheritance, marriage, caste, or any religious usage or institution are to be decided to Myanmar Customary Law where parties are Myanmar Buddhists; according to Mohammedan Law in case of Mohammedans and by the Hindu Law in case of Hindus.

Thus, people living in Myanmar are governed by different customary laws. A man carries his customary or personal law wherever he goes. From the time of Myanmar King personal matters of Myanmar Buddhist people are decided by age-old Myanmar Customary Law formally known as Burmese Buddhist Law. It is composed of Myanmar Dhammasats essentially based on Myanmar customs, enacted laws and judicial precedents or rulings of the highest Courts in Myanmar.

Where there is no statute regulating a particular matter, the Courts are to apply Myanmar's general law, which is based on English common law as adopted by Myanmar case law and which embodies the rules of equity, justice and good conscience.

10. Conclusion

The Civil Procedure Code is a form of law code which aims to achieve the ends of justice and to prevent it from being defeated. Therefore, the Code continued to be in force even after Myanmar gained independence and remained in operation although some provisions were amended in 2000 and 2008. Now the Supreme Court of the Union is going to review the Code to be consistent with the current situation of civil litigation in Myanmar.

End of document

**PROCEDURE
DEALS WITH CIVIL SUITS
IN MYANMAR JUDICIARY**

**Daw Thin Thin Nwe
High Court Judge
High Court of Yangon Region
Myanmar**

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Introduction

- Powers to try criminal cases and civil suits
- The Code of Criminal Procedure for criminal cases
- The Code of Civil Procedure for civil suits

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The Code of Civil Procedure

- The procedural law which consists of the provisions from institution to execution of original civil suits, appeals from original decrees, reference and review etc.
- Adopted in 1909
- Including Two parts: sections and orders

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General Principles

- Courts to try all civil suits unless barred
- Stay of suits
- *Res judicata*
- Bar to further suit

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Civil Jurisdiction

- Place of suing
- Pecuniary jurisdiction of different levels of Court
- Original civil jurisdiction of the Supreme Court of the Union

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Place of Suing

- Court in which suits to be instituted
- Suits to be instituted where subject-matter situate
- Suits for immovable property
- Suits where local limits of jurisdiction are uncertain
- Suits for compensation
- Other suits

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Pecuniary jurisdiction

- Township Courts: suit value not more than Ten million Kyats
- Courts of Self-Administered Division or Zone and District Courts: suit value more than Ten million Kyats but not more than five hundred million Kyats
- High Courts of Region or State: suit value more than five hundred million Kyats.

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Original civil jurisdiction of the Supreme Court of the Union

- Matters arising out of bilateral treaties concluded by the Union
- Other disputes between the Union of Government and the Region or State Government, among the States, between the Region and the State and between the Union Territory and the Region or the State except the Constitutional problems
- Other disputes among the regions and cases prescribed by any law.

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When Aliens or Foreign States may sue

- Alien enemies residing in the Union of Myanmar within the permission of the President of the Union of Myanmar, and alien friends, may sue on the Courts of the Union of Myanmar, as if they were citizens of the Union
- No alien enemy residing in the Union of Myanmar without such permission, or residing in a foreign country, shall sue in any of such Courts

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Court Procedure for Original Civil Suits

- Filing a original civil suit
- Filing written statement by defendants
- Settlement of issues
- Hearing of the suit
- Judgment and decree

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Filing a original civil suit

- Instituting by filing plaint
 - Particulars to be contained in plaint
 - Return of plaint
 - Reject of plaint
- Court-fees: The Court-Fees Act
- Limitation of actions: The Limitation Act

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Filing written statement by defendants

- Presenting written statement
- Particulars in written statement
 - All grounds of defence
 - Specific denial
 - Particulars of set-off
- Effect of failing to present written statement

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Settlement of issues

- Framing of issues
- Issues of law and of fact
- Power to amend and strike out issues
- Production of documents at the date of framing issues: first hearing and effect of non-production

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Hearing of the suit

- Summons for attendance of witness
- Production of evidence
- Examination of witnesses
- Order of examination

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Judgment and Decree

- Pronounce of judgment followed by decree
- Decrees on the nature of the suits
- Differences between Judgment and Decree
- Contents of judgment
- Contents of decree

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Temporary Injunctions and Interlocutory orders

- Power to grant a temporary injunction during the process of the suit
- Power to order interim sale before judgment

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Withdrawal and Adjustment of suits

- Withdrawal of the suit
 - Withdrawal of suit or abandonment of part of claim by plaintiff
 - Effect of withdrawal or abandonment without permission of the Court
- Compromise of suits
 - Adjustment of the suit wholly or partly by lawful agreement or compromise

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Procedure in Execution

- Powers of court to enforce execution
 - Execution by delivery of specific property
 - Execution by attachment and sale
 - Execution by arrest and detention in prison
 - Execution by appointing a receiver
 - Execution by other manner as the nature of the granted relief

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Execution by arrest and detention in prison

- Period of detention
- Procedure for arrest and detention
- arrest and detention of women in execution of money decree

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Types of Civil Suits and Laws relating to Civil Suits

- Types of Civil Suits
- Laws relating to Civil Suits

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Types of Civil Suits

- Suit for money
- Divorce
- Suit for possession of movable/ immovable property
- Suit for partition of property
- Administration suit
- Declaratory suit
- Suit for specific performance of contract
- Suit for recovery of possession etc.

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Laws relating to Civil Suits

- Codification of laws in Myanmar Codes
- Myanmar Laws Act
- Customary law
- Application on rules of equity, justice and good conscience

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Conclusion

- ❑ Aims: to achieve the ends of justice and to prevent it from being defeated.
- ❑ Continuance in enforce after independence of Myanmar
- ❑ Still in operation as existing law
- ❑ On going process of review to be consistence with current situation of civil litigation in Myanmar

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THANK YOU

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