

State-sponsored Legal Aid in the Criminal Justice System of Myanmar

Kyu Kyu Aung*

Abstract:

Legal aid is important to safeguard the right to a fair trial, provide equal access to the justice system and promote the rule of law. It is stated in the Global Report on Legal Aid by United Nations Office of Drugs and Crime that as the right to legal aid becomes increasingly recognized in national laws, it is also essential to consider how this right is guaranteed in practice, what legal aid mechanism is needed, and how it will interface with the justice system. Hence, this article explores state-sponsored legal aid in the criminal justice system of Myanmar to investigate these conditions. The study promotes the understanding of the development effort for legal aid in Myanmar, reveals that the right to legal aid is guaranteed under the Legal Aid Law and therefore, the newly enacted legal aid system can interface with the criminal justice system throughout the process from pre-trial to trial stages in criminal cases. However, Myanmar is a country where the implementation of legal aid services is still in its commencing phase. Thus, further actions are needed to ensure the quality of its implementation through enhancing current legal aid mechanisms, updating the existing laws, and establishing a quality assurance mechanism.

Keywords: *Criminal justice system, state-sponsored legal aid, quality implementation, quality assurance mechanism, pre-trial legal aid*

1. Introduction

Legal aid is an essential component of a fair and efficient justice system founded on the rule of law.¹ According to the Black's law dictionary, legal aid is defined as the free or inexpensive advice, assistance or representation concerning the law given to those who cannot afford it based on jurisdictional criteria. From the human rights perspective, one of the fundamental rights of an individual under any legal system is their right to qualified legal assistance as prescribed by law.

* Graduate Student, Graduate School of Policy Science, Ritsumeikan University

Email: psg01087@ed.ritsumei.ac.jp

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¹ *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, Principle 1.

This right is prescribed and guaranteed by Article 14(3)(d) of *United Nations International Covenant on Civil and Political Rights* (ICCPR)² which states that anyone with a criminal charge against them shall be entitled to have legal assistance in any case where the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it. The Constitution of the *Republic of the Union of Myanmar*, 2008 provides every person with equal rights before the law and the right of an accused to be defended under existing laws.

Myanmar enacted "*Legal Aid Law*," in 2016 in accordance with the obligation of nations under *Goal 16 of the United Nations Sustainable Development Goals*³ dedicated to the promotion of peace, justice, and strong institutions. It has become a positive indicator of Myanmar's commitment to the promotion of the rule of law and protection of fundamental human rights. The law aims to establish Myanmar's first state-sponsored legal aid system and expand the right to counsel. Before the enactment of this law, there was no provision for state-sponsored legal aid except in capital cases⁴. The definition clause, Section⁵ 2 (b) of Legal Aid Law, states that legal aid covers the poor, children, women, those in need of special care, the elderly, the disabled, HIV patients and those with other infectious diseases, the stateless, political asylum refugees, foreigners, migrants, migrant laborers, and refugees. Victims of crimes and witnesses asking for legal assistance due to a particular or unusual condition can also be legal aid claimants in this section. Section 31 and 43 of the law mandates the *Union Legal Aid Board*, to assist the poor, children, women, disabled, HIV patients and those with other infectious diseases as the priority.

*United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*⁶ (UNPG) is the first international instrument and it recognizes that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law. It is also a foundation for the enjoyment of other rights including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.⁷ Legal aid for criminal matters has been granted in most jurisdictions in the world, through the Constitution or other national laws. Myanmar's legal system also recognizes the right to defense and the provision of legal aid for those who need legal assistance and cannot afford it. It is guaranteed in the Constitution and the recent legislation of *Legal Aid Law*⁸ in 2016. In 2017, *Legal Aid Rules*⁹ were issued by the *Supreme Court of the Union*. According to these legislations, *Union Legal Aid Board* (ULAB)¹⁰ and its subordinate bodies were instituted at different levels of administration in 2017.

The present Legal Aid Law clearly states that legal aid shall be provided in criminal proceedings.¹¹ It is spotlighted according to the basic principles of the Law prescribed in Chapter 3. Also, that law currently allows the individual providers, law firms and civil society organizations in the country to run and fulfill the necessary legal aid such as in the cases of civil and administrative matters. Moreover, any legal aid including criminal legal aid is not restricted to those civil society organizations nor any individual/organization providing legal aid on their own.¹² In the world, most of the State-sponsored legal aid systems focus on the criminal legal aid towards

² *The International Covenant on Civil and Political Rights* (1976) 999 UNTS 171. Adopted by the General Assembly resolution 2200A(XXI) of December 16, 1966 and entered into force March 23, 1976.

³ The 2030 Agenda for Sustainable Development adopted by all United Nations Member States in 2015.

⁴ Capital case is a prosecution case for a serious crime or crimes punishable with death, if found guilty.

⁵ "Section" in Myanmar legal context is synonymous with "Article". The word "Article" is not used for the statutes in Myanmar.

⁶ *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, Adopted by the General Assembly resolution 67/187 in December 2012.

⁷ *Ibid.*, Principle 1.

⁸ Union Parliament Law No. 10 which was enacted on January 18, 2016 and amended on May 26, 2017.

⁹ Notification No. 1019/2017 by the Supreme Court of the Union of Myanmar dated December 29, 2017.

¹⁰ Union Legal Aid Board was formed under Notification No. 865/2017 by the Supreme Court of the Union of Myanmar dated on November 15, 2017.

¹¹ Legal Aid Law, 2016 ss. 3(b), 4(a)-(e), (g), 6(b).

¹² *Ibid.*, s. 47.

the poorer population which is less strictly outlined than in the cases of civil matters, and the main component of expenditure also goes to criminal legal aid. Many countries in the world are still developing national legal aid systems.

Myanmar, a country which is in the process of introducing legal aid, is trying to ensure the service is available and served effectively at all stages of the criminal justice processes. Regarding the right to legal aid at the national level, *Global Report on Legal Aid, 2016* by *United Nations Office on Drugs and Crime* stated that as the right to legal aid becomes increasingly recognized in national laws, it is also important to consider how this right is guaranteed in practice, what legal aid mechanism is needed, and how it will interface with the justice system. At this point, it is important to identify the legal context in which the legal aid scheme operates in order to carry out quality implementation. Hence, this study aims to fill this important need by exploring the criminal justice system and state-sponsored legal aid in Myanmar and discussing the delivery of legal aid services in the criminal justice process of common law jurisdiction which has not been done before.

2. The Background of the Legal Aid System in Myanmar

Myanmar has been exercising the common law system which was inherited from Great Britain since it was implemented during the colonial period. Myanmar gained independence from Britain on January 4, 1948. After independence, the judicial system was set up according to the 1947 Constitution and *Union Judiciary Act, 1948*. In 1962, after the sovereign power of the country was taken over by the Revolutionary Council, the 1947 Constitution was abolished, and the judicial system was transformed into the socialist system under *the Law Amending the Union Judiciary Act, 1973*. After the new Constitution was enacted in 1974, the structure of the courts was changed in line with the socialist features. Again in 1988, the State Law and Order Restoration Council (SLORC) took over the sovereignty of the State and the formation of the courts at different levels was changed by promulgating *the Judiciary Law, 1988*. It was subsequently repealed by *the Judiciary Law, 2000* because of the SLORC's dissolution and the formation of the State Peace and Development Council (SPDC) in 1997.

The present judicial system was established under the 2008 Constitution and the *Union Judiciary Law, 2010*. Courts in Myanmar have been exercising and adjudicating criminal and civil cases under the provisions of the Criminal Procedure Code, the Civil Procedure Code, the Evidence Act, and other special laws on particular matters. The rights of the defendants in criminal proceedings are found in the Constitution and Criminal Procedure Code. The present Legal Aid Law, 2016 was drafted by members of Myanmar's Parliament who participated in the International Conference on Access to Legal Aid in Criminal Justice Systems in 2014.¹³ After the conference, members of the Parliament, members of the government of Myanmar and members of civil societies drafted the legal aid bill which was adopted as the law on January 18, 2016 and amended on May 26, 2017. Before this Law, there was no comprehensive legal aid law in Myanmar except the mechanism run and funded by the Union Attorney General's Office. Under this mechanism, limited government-provided legal aid is only available to the indigent criminal offenders who are accused of an offense punishable by death according to Rule 79 of the *Union Attorney General Rules, 2001* with the further definition in Section 36(1) of the *Attorney-General of the Union Law, 2010*.

The new legal aid law is dramatically expanding its applicable area more extensively than the old mechanism. It extends the definition of a legal aid claimant and recognizes the role of non-government legal aid providers, including civil society legal aid organizations. After the Legal Aid

¹³ The first International Conference on Access to Legal Aid in Criminal Justice Systems held in Johannesburg, South Africa on June 24-26, 2014.

Law had been enacted, many things needed to be done to facilitate its implementation. To fulfill these requirements, the Union Supreme Court drafted the "*Legal Aid Rules*" which was enacted on December 29, 2017. Full implementation required procedures for making board or committee appointments, asking for legal aid, training legal aid providers, providing budgets, issuing bylaws, setting criteria for the qualification and quality assurance of legal aid providers and other necessary mechanisms. As a requirement of the *Legal Aid Rules*, the *Supreme Court of the Union* has formed the different levels of Legal Aid Committees by selecting suitable and qualified members. As the *Union Legal Aid Board* is an independent entity, it has the power to make the necessary notifications, orders, directives, and procedures for the implementation of the legal aid law.¹⁴ However, in practice, full implementation of the law has not yet been possible since its enactment. For example, prescribing to provide legal aid to all types of cases at the outset is not realistic.

3. Current Judicial System in Myanmar

The criminal justice system operates under the current judicial system of Myanmar. For a better understanding of state-sponsored legal aid in the criminal justice system, it is fundamental to understand the hierarchy, jurisdictional power and Judges' tenure of the current judicial system. In Myanmar, the formation of a *Union Legal Aid Board* (ULAB) was proclaimed on November 15, 2017 by the Notification No.856/2017 of the Supreme Court of the Union. As the ULAB is the autonomous entity that provides legal aid at the different levels of courts, different levels of Legal Aid Boards should also exist in the areas where the courts are located. Subsequently, *State and Regional Legal Aid Boards*, *District level Legal Aid Boards* and *Township level Legal Aid Boards* were formed in the same respective areas as the courts. Hence, these areas can be identified simply with reference to the formation of courts at different levels and thus, legal aid claimants in court cases can have access to the services in a timely manner.

(1) Formation of Courts at Different Levels

The present judicial system was launched in March 2011 under the *Union Judiciary Law*, 2010 and the *Constitution of the Republic of the Union of Myanmar*, 2008. Under the Constitution, the legislative branch, executive branch, and judicial branch have separate powers as the three main branches of the state, which act as checks and balances to control each other. Judicial independence is one of the crucial requirements at the time when the government is striving towards building a modern, developed, and democratic nation. In the meantime, the rule of law is essential for peace and tranquility all over the country. To uphold the rule of law in the nation, it is crucial that all people shall be equal before the law, and the judiciary shall be independent.

The primary function of the judicial branch is to settle disputes fairly and impartially in accordance with the law. Thus, different levels of courts have been formed according to the *Constitution* and the *Union Judiciary Law*. These courts are *the Supreme Court of the Union*, *High Courts of the Region* and *High Courts of the State*, *District Courts*¹⁵, *Courts of the Self-Administered Division*, *Courts of the Self-Administered Zone*¹⁶, *Township Courts*¹⁷, *Other courts*

¹⁴ Legal Aid Law, 2016, s. 48(b) and Legal Aid Rules, 2017, r. 57.

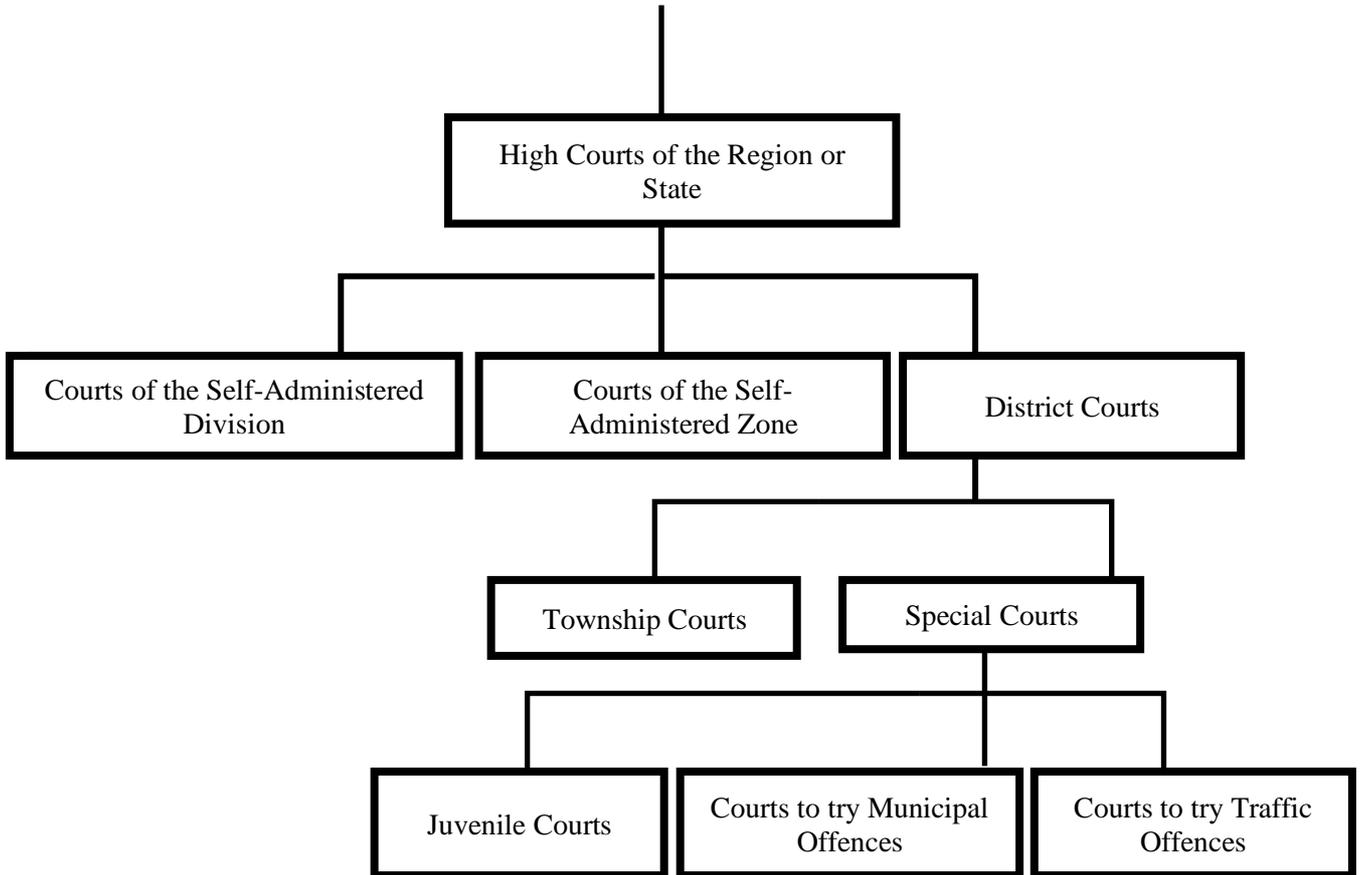
¹⁵ District courts are the lower level of courts after High Courts of the Region or State, and under the supervision of High Courts according to the administrative structure.

¹⁶ If there are Self-administered Areas in the Region or States, Courts of Self-administered Divisions and Courts of Self-administered Zones are established. The Court of the Self-Administered Division, and the Court of the Self-Administered Zone have jurisdiction according to law, on the original criminal cases and original civil cases and the cases prescribed by any law.

¹⁷ Township Courts are the lowest level of the Courts and under the supervision of District Courts.

*constituted by law*¹⁸, *Courts-martial*¹⁹, *Constitutional Tribunals of the Union*²⁰.²¹

The Supreme Court of the Union is the highest court and the final court of appeal that handles claims against judgments rendered by the High Courts of the State and Region. According to Section 305 of the Constitution, the High Court of the Region or State is the second highest level of Courts and there is one in each Region or State of the Union. There are seven High Courts of the Region and seven High Courts of the State. Figure 1 shows the formation of Courts under the Union Judiciary Law, 2010.



Source: Union Judiciary Law, 2010

Fig. 1 Formation of Courts at Different Levels in Myanmar

(2) Powers of the Courts

The Supreme Court of the Union, High Courts and lower courts are vested with the judicial power as established by the Union Judiciary Law, 2010. The Supreme Court of the Union is the

¹⁸ Other Courts constituted by law are the courts established either under special provisions in any law or in respect of those cases which occur irregularly in populous areas. These courts are 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 offenses and traffic offenses.

¹⁹ Courts-martial are constituted according to the Constitution and other laws and adjudicate Defense Service Personnel.

²⁰ Constitutional Tribunal of the Union is the independent tribunal formed with nine members including the Chairperson and hears the disputes arising from any law that contradicts or conforms to the Constitution.

²¹ The Constitution of the Republic of the Union of Myanmar, 2008, s. 293.

highest organ of the State Judiciary in Myanmar without affecting the powers of the Constitutional Tribunal and the Courts-martial.²²

The High Courts have the original jurisdiction to hear both civil and criminal cases and have appellate and revisionary power to hear both civil and criminal cases over the judgments, decrees, and orders passed by the subordinate courts. All cases in High Courts are adjudicated by a single judge or by a bench consisting of more than one judge when necessary. High Courts have the responsibility to administer and supervise all subordinate courts regarding their judicial functions and administrative duties. The High Courts of the Region or State shall have the following jurisdictional power in accord with the law: (a) adjudicating original cases; (b) Adjudicating appeal cases; (c) Adjudicating revisional cases; (d) adjudicating on matters prescribed by any law.

Judges of the District Courts and Township Courts are conferred with judicial powers by the Supreme Court of the Union under the provisions of the Criminal Procedure Code and Civil Procedure Code.²³

(3) Appointment of Judges and Tenure

Under the 2008 Constitution, the Supreme Court of the Union including the Chief Justice of the Union may consist of Judges from a minimum of seven to a maximum of eleven. At present, it is composed of the Chief Justice and eight Judges, who are appointed by the President with the approval of the *Pyidaungsu Hluttaw* (the National Parliament). The tenure of the Supreme Court Judges is until seventy years of age unless anything occurs prescribed in Section 303 of the Constitution. The Supreme Court of the Union sits in *Nay Pyi Taw* ²⁴.

Every High Court of the Region or State has one Chief Judge, and the number of judges varies from a minimum of three to a maximum of seven depending on the respective workload. The President shall appoint a person, in coordination with the Chief Justice of the Union and relevant Chief Minister of the Region or State, who fulfils the qualifications under Section 310 of the Constitution and Section 48 of the Union Judiciary Law as the Chief Justice and Judge of the relevant Region or State, with the approval of the *Region or State Hluttaw* (Regional Parliament). The tenure of the High Court Judges is until sixty-five years of age unless anything occurs prescribed in Section 312 of the Constitution. The judges at the lower courts such as District Courts and Township Courts are recruited through an entrance exam offered for law graduates and appointed by the Supreme Court of the Union. They are assigned to the courts in different places in a rotating system. The age of retirement for civil-service employees is sixty years.

4. Myanmar's Criminal Justice System

The legal system and practices in Myanmar embrace the principles of the common law legal system mixed with Myanmar customary law system. However, customary law is applied in civil cases that resolve private matters while criminal cases are adjudicated based on the common law system. For the sake of fairness and justice, legal aid is now available in Myanmar and state-sponsored legal aid is provided in criminal cases according to the law. Principle 13 of UNPG requires States to ensure the quality of the delivery of legal aid. In order to understand how such quality can be achieved in national jurisdictions, it is essential to look at the specifics of the legal system in which legal aid is delivered.²⁵

²² Ibid., s. 294.

²³ Supreme Court of the Union homepage accessed on June 27, 2019.

²⁴ Nay Pyi Taw is the capital of Myanmar.

²⁵ UNODC *Handbook on Ensuring Quality of Legal Aid Service in Criminal Justice Processes* (2019), p. 14.

(1) Adversarial and Inquisitorial in Court Settings

It is known that there are many differences in Common law and Civil law systems in terms of substantive law and procedural law. Thus, Common law procedure is usually called "adversarial" while Civil law procedure is usually called "inquisitorial" as the terminology of legal proceedings in these two jurisdictions. UNODC's Handbook on Ensuring Quality of Legal Aid Service in Criminal Justice Processes (2019) describes these two procedural systems as:

The adversarial system assumed that the best way to get to the truth of a matter is through a competitive process to determine the facts and application of the law accurately.²⁶ Moreover, Judges have no investigative role and make their decision based on evidence produced by the prosecution. The accused may provide evidence until the sentencing stage, which is a separate stage from the trial stage but does not have to do so because the trial is focused on protecting the accused's interest.²⁷ Whereas:

The inquisitorial process can be described as an official inquiry to ascertain the truth and grants more power to the judge who oversees the process, ...²⁸, and ... the person suspected or accused is expected to cooperate within this inquiry. Courts make their decision based on all relevant material collected during the investigation, and the primary function of the trial is to ensure that this material was lawfully and appropriately obtained. There is no clear distinction between the trial and sentencing phases and information relevant only to sentence is nevertheless available to the tribunal even before guilt has been established.²⁹

According to those descriptions above, the adversarial process of the judicial system in Myanmar itself, as a country of common law tradition, cares for the interest of the accused to prevent easy accusation by others. On the other hand, the inquisitorial process of Civil law jurisdiction attaches greater importance to the inquiry or pre-trial stage as it has a significant effect on the later stages of the proceedings until sentencing. In this regard, the performance of defense lawyers or legal aid lawyers at the pre-trial stage becomes essential in Civil law jurisdiction. However, it is a crucial stage for the defense side in common law jurisdiction as well, and it is elaborated in the next session.

(2) Legal Aid Delivery in the Pre-trial and Trial Stage of Criminal Cases

As discussed in the previous sub-section (1), Myanmar exercises an adversarial system in the criminal justice setting. Thus, evidence is produced by the prosecution side. The necessary legal principle in conducting criminal cases is that the burden of proof always lies with the prosecution.³⁰ The accused must be deemed to be innocent until and unless the prosecution can prove the guilt of the accused. If there is reasonable doubt about the guilt of an accused person, the accused is entitled to the benefit of that doubt and cannot be convicted. For the trial of criminal cases, the *Code of Criminal Procedure*, 1898 and the *Evidence Act*, 1872 are the laws applied and judges at all levels are to comply with the provisions of those existing laws strictly. All criminal courts in the *Republic of the Union of Myanmar* must adhere strictly to the established procedures

²⁶ UNODC, Education for Justice (E4J) initiative University Module Series: *Organized Crime Module 9: Prosecution Strategies* at <https://www.unodc.org/e4j/en/organized-crime/module-9/key-issues/adversarial-vs-inquisitorial-legal-systems.html>. As cited in *Ibid.*

²⁷ Cape, Ed (2018), '*Defense Rights, Duties, Norms, and Practices in Common Law and Civil Law Jurisdictions*,' in Brown, D., Turner, J. and Weisser, B., *Oxford Handbook of Criminal Process* (Oxford: Oxford University Press, forthcoming). Quoted in the *Module on Access to Legal Aid in Criminal Proceedings*, UNODC, E4J initiative University Module Series at <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-3/index.html>. as cited in *Ibid.*, p.14.

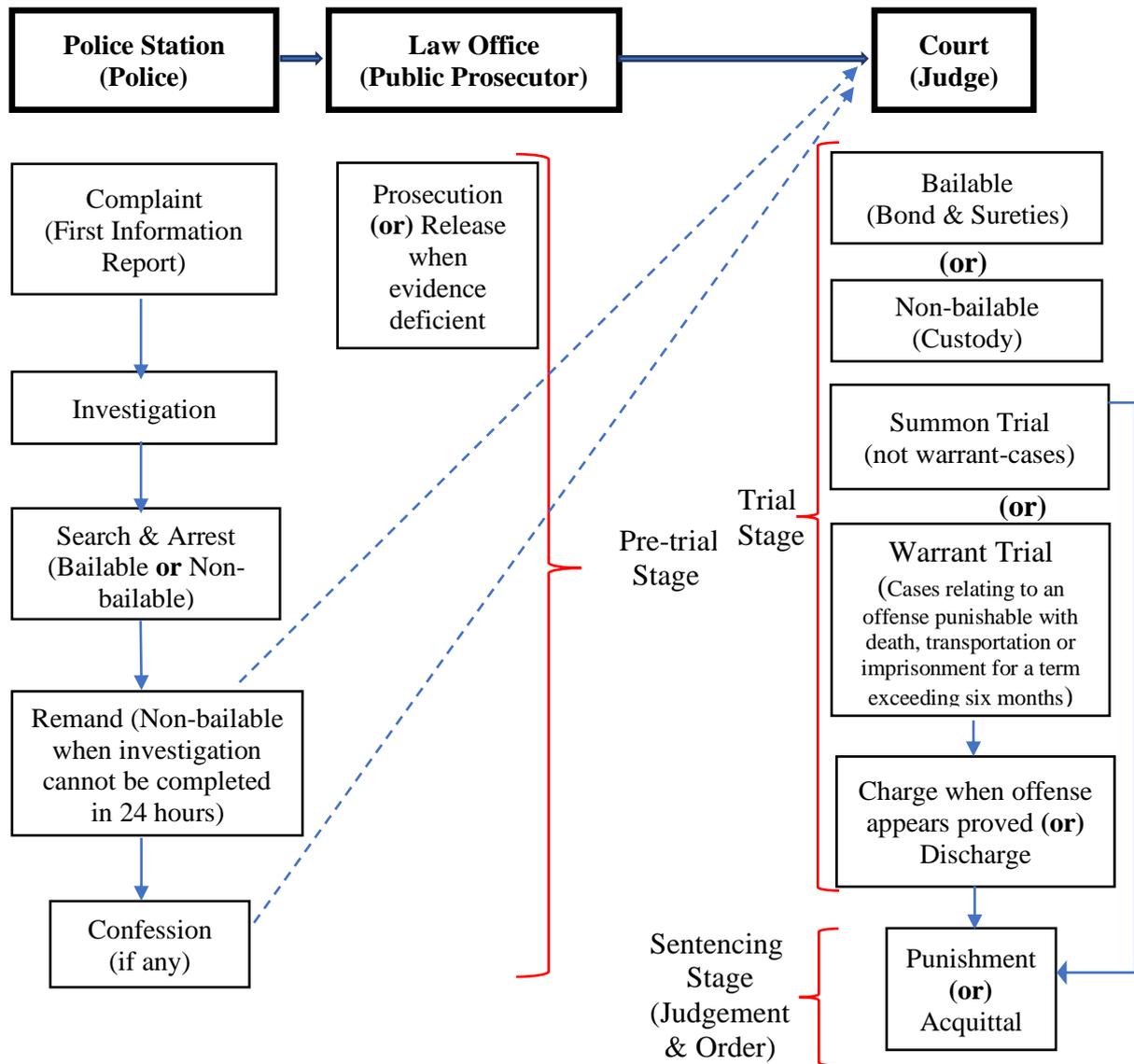
²⁸ UNODC, E4J University Module Series: *Organized Crime Module 9: Prosecution Strategies* at <https://www.unodc.org/e4j/en/organized-crime/module-9/key-issues/adversarial-vs-inquisitorial-legal-systems.html>, referring to Dammer and Albanese, 2014; Reichel, 2017. As cited in *Ibid.*, p.15.

²⁹ Cape, Ed (2018) *supra notes* as cited in *Ibid.*, p. 15

³⁰ *The Evidence Act*, 1872, s. 101.

and practices of admitting documentary and material evidence and examining witnesses, complainants and the accused.

The *Code of Criminal Procedure* provides the primary source of procedural rules regarding the whole process of criminal proceedings and trials. According to this Code, every police officer can arrest the person who is going to commit any cognizable offense if it appears to such an officer that the commission of the offense cannot be otherwise prevented. A police officer arresting a person without a warrant shall take or send him/her before the officer in charge of the police station without unnecessary delay.³¹ In the absence of a special order of a magistrate or remand under Section 167, the detention period shall not exceed 24 hours, exclusive of the time necessary for the journey from the place of arrest to the police station and from there to the magistrate's court.³²



Source: Code of Criminal Procedure, 1898

Fig. 2 Criminal Justice System in Myanmar

³¹ Code of Criminal Procedure, 1898, s. 60.

³² Ibid., s. 61.

The detention or remand on custody shall not exceed in the whole 30 days when a person is accused of an offense punishable with imprisonment for a term of not less than seven years, and 15 days if the person is accused of an offense punishable with imprisonment for a term of less than seven years.³³

In case of a statement or confession, a magistrate shall explain to the person making it that he is not bound to make a confession and that if he does so, it may be used as evidence against him and the magistrate shall record it only when he has reason to believe that it was made voluntarily upon his questioning.³⁴ Bails, bonds, and sureties are envisaged in the *Code of Criminal Procedure*.³⁵ In this pre-trial stage, it is essential to have a consultation with a lawyer for detainees to avoid unnecessary detention. Section 25 (a), (b) and (c) of *Legal Aid Law*, 2016 provides the vital defense services to the pre-trial detainees. As Section 25(d) of *Legal Aid Law* mandates that legal aid shall be offered during the trial before the court, and representation by a legal aid lawyer for the accused is mandatory.

In addition, the Legal Aid Law provides legal assistance not only to the accused but also to the witnesses and victims in criminal cases. This can be clearly seen in Section 29 which mandates legal assistance to the witness in a criminal case who requests help due to unusual conditions. Moreover, Section 32 ensures the right to legal aid for the accused, witnesses and victims in criminal cases both in pre-trial and trial stages at the court of original jurisdiction and at the different levels of higher courts as well. Therefore, pre-trial legal aid services are considered as mandatory services since it is important for the whole criminal justice process. When the proper legal assistance is provided at an early stage of the criminal proceedings, it can decrease the possibility of excessive situations in the later stages of the case such as the unnecessary detention, suspension of the case-flow management, lengthening the case and accordingly, contributing to the reducing the burden on the accused, the victims, the witnesses and even the work-loads of civil service personnel.

5. The Need of International Assistance for Legal Aid

Since before the Legal Aid Law was enacted in 2016, international organizations such as the United Nations Development Program (UNDP), European Union (EU), USAID (United States Agency for International Development) and other non-profit or non-governmental organizations have been working in the sector of legal assistance services by means of cooperating and supporting the local civil service organizations (CSOs) in Myanmar.

At present, individuals who are in need of legal aid in criminal cases can apply for legal aid services from the state-sponsored Legal Aid Boards. There are other ways to get legal services free or at a reduced fee through *pro bono*³⁶ services and legal aid services offered by international donor funded law firms or CSOs. Those non-state-sponsored legal aid services are provided to the indigent persons for the purpose of social development. The CSOs in Myanmar are providing not only legal assistance but also legal awareness to the public with the cooperation and support of international organizations, INPOs and INGOs. The Judicial Sector in the country is also committing efforts to promote the rule of law with the implementation of the goal “to promote the rule of law and to foster regional peace and tranquility” of the Judiciary Strategic Plan (2018-2022) associated with one of the judiciary’s main five strategic areas, 'facilitating and expanding public access to court services'.

³³ Ibid., s. 167.

³⁴ Ibid., s. 164.

³⁵ Ibid., ss. 496-502.

³⁶ Pro bono lawyers provide legal aid free or at a reduced fee usually at their own expense.

Nonetheless, a report measuring global adherence to the rule of law, *The World Justice Project (WJP) 2018-2019 Rule of Law Index*, shows institutions and the legal profession in the justice system of Myanmar deficient in ensuring access to criminal justice including due process of law and the rights of the accused, freedom from discrimination, an effective correctional system, and the eradication of improper government. Myanmar's overall rank is 110th out of 126 nations. Aside from that, the global ranking of the criminal justice factor shows Myanmar at 116th and, in the regional ranking, 14th out of 15 countries in the East Asia and Pacific region, that is almost bottom. It shows that legal aid in the criminal justice system needs to be implemented with the strong commitment of *Union Legal Aid Board (ULAB)* in cooperation with other stakeholder institutions including the police, the General Administration Department, Judges, Law Officers, independent legal aid professionals, law firms, civil services organizations and correctional departments.

On the other hand, the ULAB is a new institution and has only a few years of experience in the implementation of legal assistance services and is in need of technical assistance and dedicated support from other more experienced countries and international organizations. In Myanmar, JICA's Project of Capacity Development of legal, judicial and relevant sectors in Myanmar is currently operating the projects with the Supreme Court of the Union and the Union Attorney General's Office with the objectives of improving the capacity to draft and examine bills, and enhancing the capability of human resources in the legal field.³⁷ However, JICA has not yet extended its capacity development assistance project in the field of legal aid in Myanmar. In this regard, Japan's experience in the rule of law and access to justice promotion could also be advantageous for Myanmar's legal aid development process.

6. Prospects, Challenges and Tasks

In the field of state-sponsored legal aid, there may be a question why the criminal legal aid is essential and prioritized. In principle, criminal legal aid is a primary responsibility of the State fulfilling the right to defense and access to a fair trial for indigent offenders and the vulnerable who qualify for this service without any discrimination. Moreover, criminal legal aid promotes equality before the law in the criminal justice system. Although all forms of legal aid for indigents and the vulnerable are available with the cooperation of all stakeholders, criminal matters are normally prioritized in the state-sponsored legal aid systems, as an immediate response is usually required when facing them. The main reason for this is that the criminal justice system is an adversarial one. The defendant's side needs to respond by contradicting or claiming the insufficiency of the evidence and the judges in an adversarial system do not investigate the weights of such evidence during the trial when it is presented to the court by the prosecution's side.

When a person is engaged in criminal matters as a suspect, their first concern is an immediate worry about getting detained and a need for consultation about their defense. A fair trial is complimented by the adequate advice and representation for those in need of legal aid. In a criminal trial, there is always a public prosecutor for the prosecution's side but the representation for the defendant's side is sometimes lacking when they cannot afford a private lawyer. Also, some victims and witnesses who are in need of legal knowledge and assistance should be provided with legal aid so that they can receive justice, equity and fairness. Fairness is sometimes silenced, as for example, in the case of a confession obtained by torturing the suspects or detainees, or when defendants have no knowledge of how to make a cross-examination to the prosecution witnesses, or when they have difficulty in bringing defense witnesses before the court when necessary and so

³⁷ *Rule of Law for Sustainable Development and Access to Justice for All*, JICA's World, The Magazine of the Japan International Cooperation Agency, Vol.9, No.1, January 2017, Pg.8.

on which may lead the possibility of an injustice such as wrongful detention or conviction. In a country with a common law tradition such as Myanmar, the criminal justice system is adversarial and the defendant's side, from the pre-trial stage to trial stage, should be represented adequately to provide defense promptly at all stages.

Countries all over the world have adopted various models for the administration and implementation of legal aid. The adopted guidelines that regulate every step of the implementation should be clear, transparent and suitable for the country's socioeconomic conditions. Myanmar, as a country still in the developing stage of its economy, has many challenges in providing legal aid to the public. At the same time, there are some favorable conditions where legal assistance services could be affordable and effective. To ensure an effective legal aid system, the foundations of justice system should be strengthened. In fact, there are various tasks that need to be done to fulfill this requirement as the foundations of the justice system include implementing actors from various perspectives such as the courts, legal officers, police, private lawyers, law firms, law students, paralegals, civil society organizations, etc.

The State alone cannot accomplish the legal aid service delivery without the support of all these actors. Different countries employ different styles of legal aid. Some countries focus on criminal cases, some on civil and administrative cases and some provide all kinds of assistance. Some countries have endeavored to elicit the cooperation of all actors for the effectiveness of implementation. As mentioned in Section 1 of this article, Myanmar's Legal Aid provision, specifically in Section 47 of Legal Aid Law, does not deter the individual providers, law firms and civil society organizations in the country from running and fulfilling the necessary legal aid arrangements themselves. This creates an openness to the best possible conditions for all legal aid claimants and the prospect of the development of legal aid in the long term.

Myanmar has introduced the state-sponsored legal aid system in the recent years and there are many challenges similar to what other countries have encountered in the commencing stage of implementation in the areas of establishing the funding mechanism, an affordable, accessible and effective implementation mechanism, ensuring the quality and so on. It also needs a lot of efforts and cooperation by means of working with other professionals such as social services, support for the vulnerable and health care agencies because Myanmar intends to provide not only the detainees, arrestees, accused, punished and imprisoned due to criminal offenses, and victims and witnesses to crimes, but also the poor, children, women, those in need of special care, the elderly, the disabled, etc. as defined in the Section 2(b) of the Legal Aid Law.

Moreover, Myanmar as a member of United Nations has made UNPG, the international instrument on legal aid, obligatory. It recognizes the notion that legal assistance services should be expanded to all those involved in the legal cases and makes it the responsibility of the Member States to ensure the quality of the services. The fact that the quality of the legal aid services should always be ensured and not be wasted by merely existing without effective implementation is also internationally recognized. Accordingly, we suggest that the tasks to be done by Myanmar include implementing the following works which can cope with the legal assistance to the intended recipients:

- (a) Ensuring information and consultation at the very basic stage of legal assistance work to be available at any legal aid center;
- (b) Disseminating information on how to obtain the legal aid to the public;
- (c) Making the procedures simplified for anyone who is unfamiliar with legal matters;
- (d) Supervising and monitoring all stages of the process of assisting legal aid claimants in their preparation and submission of the applications;
- (e) Creating the incentives for lawyers throughout the country to take part in the legal aid services;
- (f) Providing training to the legal aid providers including lawyers and paralegals for their service competency;

(g) Cooperating and coordinating among all the stakeholder institutions.

7. Conclusion

This article explores the criminal justice system and state-sponsored legal aid in Myanmar. The objective is to investigate the conditions which are stated in the Global Report on Legal Aid by United Nations Office of Drugs and Crime with regard to how the right to legal aid is guaranteed in practice, what legal aid mechanism is needed, and how it will interface with Myanmar's justice system. Legal Aid Law, 2016 plays a crucial role in providing legal aid, especially in the criminal justice system of Myanmar. The law defines the duties and rights of legal aid providers and service recipients. It is indispensable to safeguard the equality of access to the justice system, to enhance the legal aid mechanism and to ensure the quality implementation for a successful implementation of legal aid in every country. However, a quality assurance mechanism for legal aid implementation is still lacking in Myanmar's legal framework, and that should be the next step to be accomplished for safeguarding the effective implementation initiatives.

There are many challenges to the quality implementation of legal aid such as a lack of sufficient legal education, a lack of proper funding arrangements for its implementation, insufficient professional training for lawyers, the poor quality of representation, and a shortage of lawyers. As funding is also one of the big challenges and is crucial to any implementation work, making arrangements for the funding of legal assistance services is vitally important. The adoption of the legislation on legal aid has ensured the sustainability of legal assistance programs. Most of the time, the allocation of a proportion of the national budget to support legal aid services is limited while the demand for legal aid services are high. Under these conditions, it may be necessary to create a funding arrangement through the framework of mutual commitments agreed between the government and its local or international partners, individuals or organizations as enacted in Section 34 of the Legal Aid Law. The essence of legal aid is not only to meet the challenges of legal aid works, but also to promote the rule of law and safeguard the free and equal access of all to Justice. In this sense, a lot of efforts and works are needed to ensure the quality implementation of legal aid.

All in all, this study of the criminal justice system and legal aid practices in Myanmar promotes the understanding of the development effort of Myanmar and reveals that the right to legal aid is guaranteed under the Legal Aid Law and therefore, the newly enacted legal aid system can interface with the criminal justice system throughout the process from pre-trial to trial stages in criminal cases. Myanmar is a country where the implementation of legal aid services is still in its commencing phase. Thus, further actions are needed to ensure its quality implementation through enhancing current legal aid mechanisms, updating the existing laws, and establishing the quality assurance mechanism.

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