

Title	Structure and functions of courts in Myanmar
Sub Title	
Author	U Sein □Than
Publisher	慶應義塾大学大学院法務研究科
Publication year	2013
Jtitle	慶應法学 (Keio law journal). No.27 (2013. 10) ,p.39- 46
JaLC DOI	
Abstract	
Notes	特集：ミャンマーにおける法・司法制度改革の現状と展望
Genre	Departmental Bulletin Paper
URL	https://koara.lib.keio.ac.jp/xoonips/modules/xoonips/detail.php?koara_id=AA1203413X-20131025-0039

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STRUCTURE AND FUNCTIONS OF COURTS IN MYANMAR

U 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.

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

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 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 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 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 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 within 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.