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THE CRIMINAL JUSTICE SYSTEM IN MYANMAR

U Tu Jar

Introduction

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 re-trial.
- (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 Pyidaungsu 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, crimi-

nal 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 or 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 Mag-

istrate 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	1,487	1,153	334
2.	High Courts of the Regions and States	8,212	7,016	2,105
3.	District Courts	14,735	13,965	3,233
4.	Township Courts	418,577	410,139	25,816

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.