
ILAC / CEELI Institute Report:

Emerging Faces: Lawyers in Myanmar

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**International Legal
Assistance Consortium**

CEELI INSTITUTE
PRAGUE
ADVANCING THE RULE OF LAW



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Emerging Faces

Report after report on the situation in Myanmar calls for the increased enforcement of human rights, protection of minorities, cessation of “land grabs,” safeguards for free speech, and action on a myriad of other abuses that plague the nation. Typically, such observers assume that if sufficient political changes are enacted, Burmese lawyers – like their counterparts in other countries – will act as skilled advocates promoting and protecting the rights of the citizenry.

But who are these lawyers? Though there is commendable focus on reforming the legal education system to enhance the training of future law students, today’s lawyers will be the bulwarks of the system in Myanmar for decades before tomorrow’s students reach positions of leadership. Are current Burmese lawyers ready to operate in a modern legal system based on the rule of law? Beginning in August 2013, the CEELI Institute¹ and the Burma Center Prague,² working in cooperation with the International Legal Assistance Consortium (ILAC),³ provided skills-based training for roughly 200 Burmese lawyers through the Upper and Lower Myanmar Lawyers Networks.

Unlike some other international missions, these programs did not focus on governmental, judicial or organized bar leaders. Instead, this work focused on “street lawyers” involved in the day-to-day representation of ordinary Burmese citizens. Based upon interviews with these lawyers, and a written survey of nearly 100 workshop participants in August 2014,⁴ a more complete picture has emerged of lawyers in Myanmar.

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Summary

As they emerge from decades of repression in Myanmar, lawyers are moving into the spotlight in the evolving new system. Potential reforms in university legal education notwithstanding, today's lawyers will be expected to be the guardians of personal liberty, land tenure, human rights, and freedom of expression in their country for the next several decades.

Tens of thousands of lawyers are licensed in Myanmar, most of whom spend their professional lives dealing with ordinary cases for ordinary citizens. But a legal system that fosters the rule of law is built by handling ordinary cases for ordinary citizens in a just and professional manner. Indeed, given the rudimentary nature of the Burmese legal system, issues of personal liberty, land tenure, human rights, and freedom of expression are addressed in cases involving basic legal concepts and fundamental professional skills. Many Burmese lawyers are eager to tackle these issues. Energy and dedication, however, are not enough. Most of today's lawyers in Myanmar were trained in substandard "distance learning" courses or other programs devoid of meaningful educational content. Their legal skills are minimal; their substantive legal knowledge is woefully deficient. Given the severe poverty plaguing their country, most lack the minimal resources needed to develop and sustain a successful law practice.

The Burmese legal profession also faces twin threats from official repression and judicial corruption. Lawyers representing farmers, minorities or activists often face various forms of retribution. The official bar in Myanmar, controlled by the government and tied to the ruling elites, provides little assistance in solving these problems. At the same time, widespread judicial corruption wreaks havoc with professional values. The significance of legal knowledge and skills is discounted, as the lawyer's role is defined as "fixer" rather than "professional."

Today, while unready to meet the challenges of the emerging democratic society, private lawyers in Myanmar nonetheless are a pivotal component of future reforms. Development of a legal profession with the abilities, resources and integrity to properly protect the rights of every Burmese citizen should be a priority as the reform process continues.

Lawyers In Myanmar

Education

In considering the situation with today’s Burmese lawyers, the starting place is the legacy created by past abuses of legal education system.

Prior to 1962, law was an elite profession. To obtain a law license, a student was required to obtain a Bachelor of Laws, a post-graduate degree offered only at the Rangoon Arts and Science University, with courses taught predominantly in English.⁵

In 1962, Ne Win and other senior military officers staged a coup d’état, declaring a socialist state run by their Revolutionary Council. After assuming power, Ne Win began implementing his vision of a “socialist state,” isolating the country from contact with the rest of the world. In response to student protests, regime security forces dynamited the Students’ Union building. Ne Win revoked the autonomy of the University in Rangoon, putting it under the control of the Directorate of Higher Education.⁶

In 1964, when the Revolutionary Council introduced a new education system giving preference to science subjects, a new five-year “BA (Law), LLB” course was implemented.⁷ If the candidate passed all courses during the first four years, they were awarded the BA (Law) degree. If candidates successfully completed another year and passed the exams, they were awarded the LLB degree.⁸

Consistent with the principles adopted by the Revolutionary Council, all teaching for this new legal curriculum was in Burmese.⁹ Moreover, the course content included a significant Socialist tilt.¹⁰ In the initial years of the program, only about 100 to 150 students per year who obtained the set minimum or cut-off marks in the High School Examination (HSE) were admitted into the first-year program.¹¹ A handful of older lawyers in Myanmar today are graduates of that system.

In 1974 and 1975, anti-government demonstrations by students led to repeated closures of the universities. In 1975, when the universities were reopened, the government introduced what were called “correspondence” or “distance learning” courses in a variety of subjects to prevent students from gathering and protesting on campus.¹² The introduction of these remote courses profoundly affected both legal education and the practice of law in Myanmar.

Under this new program, so long as high school students passed the HSE, they could be admitted to the first year law curriculum by correspondence.¹³ Because law was considered to be one of the least prestigious majors, it attracted students with lower academic qualifications.¹⁴ According to one source, entrance scores for these distance learning courses were consistently the lowest among all professional schools.¹⁵ In any event, in 1975, approximately 6500 first-year law students were admitted into the new correspondence program, roughly twenty times the number annually admitted to the BA (Law) LLB course at the University.¹⁶ These and subsequent correspondence students became the majority of today's Burmese legal profession.

By the late 1980s, various factors led to the relaxation of controls and an increase in foreign investment. Students – a few of whom are senior members of the current profession – took advantage of internationally-sponsored academic programs to study in British, Australian and other Western universities.¹⁷ However, widespread protests led the military in 1988 to declare martial law under the State Law and Order Restoration Council (SLORC). Burmese universities were again closed for three years from June 1988 to 1991.¹⁸ Also in the early 1990s, the government decreed that all teaching should be in English, and many course materials delivered to the distance education students were in English.

Ultimately, the campus of Rangoon University¹⁹ (the center of the uprising) was shuttered in 1996 for all but a handful of graduate students.²⁰ During the same time period, the regime developed law departments at “remote and newly built universities” further from the center of Yangon, such as Dagon University, the University of East Yangon and University of West Yangon.²¹ Similarly, Yadanabon University was opened with a law department in suburban Mandalay, and other law departments were eventually opened in outlying universities such as Taungoo and Kyaukse. As reflected in the CEELI / ILAC survey, graduates from these new law departments join graduates of distance learning programs to form the vast majority of the current Burmese legal profession.

Given this crackdown, international academic programs were suspended by the sponsoring governments. Only Japan continued academic ties with the Burmese government, forcing those who went abroad for post-graduate studies in law after 1988 to go primarily to Japan. This situation, in turn, meant that the majority the academic staff in the Law Departments of Burma's universities have post-graduate degrees in law either from Japanese universities or Rangoon University.²²



According to one source, as of February 2005 there were sixteen Law Departments at various Burmese universities. Only four – with an estimated 3000 students – taught undergraduate students in person: East Yangon University, Dagon University, West Yangon University, and Yadanabon University in Mandalay.²³ At the same time, 25,607 students were enrolled through thirteen Distance Education Centers in Lower Burma, with an estimated 21,000 more enrolled in the Upper Burma Distance Education Centers. If correct, this meant that 54,000 law students were enrolled on campus and distance education programs in the academic year 2005.²⁴

The evidence suggests that this situation has not significantly changed in the last decade. Though official data is unavailable, it is generally accepted that there are now 18 law departments (including correspondence programs) at universities in Myanmar. Distance learning remains the most popular method of obtaining a law degree, with two Universities of Distance Education (UDE) in Yangon and Mandalay.²⁵ Even with the recent relaxation of control by the military regime, the Law Department at Yangon University did not reopen to “face-to-face” teaching for undergraduate students until December 2013, and then for only 15 students.²⁶

Critics of legal education in Myanmar point to low enrollment qualifications, unqualified professors, a narrow and outdated curriculum, and the lack of connections with law schools in other countries.²⁷ In interviews with recent graduates, several complained that law department classes seldom dealt with topics or problems that Burmese lawyers face in their day-to-day practices.

Moreover, though the official language for instruction and examination is English, few law students are proficient, limiting their comprehension of the lectures and materials. It is apparent from the CEELI / ILAC work in Myanmar that few lawyers have significant English skills. In fact, it appears that legal education uses a mixture of Burmese and English, with Burmese probably predominating.²⁸ Given the lack of English skills, students describe preparing for examinations through pre-test “intensive courses” where the English language exam questions and answers are provided for rote memorization.²⁹

In part, this situation is symptomatic of the dismal state of education throughout Myanmar. For example, Myanmar reported that educational expenditures in 2011 comprised 0.79% of GDP, among the lowest in the world.³⁰ Education has not been a priority, and recent law graduates reiterate that that traditional teaching methods and content remain unchanged. Most professors are academics who have never practiced law, trained either at Rangoon University or, in some cases, in Japan. Even where “face-to-face” learning is possible, professors follow the traditional lecture format. Interactive teaching, or clinical or skills-based programs are unknown.



Legal Education

While some international assistance programs are underway to address problems in the legal education system,³¹ past abuses plague the Burmese legal profession today. This legacy is manifested in several ways:

- Myanmar has tens of thousands of law graduates, virtually all of whom obtained their legal training since the Socialist Revolution fathered by Ne Win swept out the historic legal education system.
- Various age groups within the legal profession received significantly different legal training, depending on the political winds blowing when they reached university age.
- A substantial majority of the current members of the legal profession were trained under the “distance learning” model, with scant exposure to classroom instruction and no exposure to practical or skills-based training.
- Law professors during these past few decades – to the extent that they actually taught students in a meaningful way – had little exposure to outside scholars or thought.

For decades, legal education in Myanmar was a charade. Burmese universities likely remain additional decades away from producing law graduates trained in quality programs. Even when such training is the norm and graduates enter the legal work force, it will be at least twenty additional years before they assume leadership of the profession.

Practicing Lawyers

Since colonial times, private lawyers in Myanmar have been licensed as either “advocates” or “pleaders.” The former have full rights to appear in all tribunals.³² Pleadors can appear only in District and Township Courts, and are differentiated between “High Grade Pleadors” who can take on all types of cases in those courts, and ordinary or “Second Grade Pleadors” who may handle only certain criminal matters and low-level civil disputes.³³

To obtain a license to practice, a law graduate must complete a one-year internship with an advocate of at least five years’ standing. Based on interviews with young lawyers, this internship often is a waste of time. Interns typically are given little substantive work and, at most, simply follow the mentor and perform menial tasks. Mentors, in turn, decry the lack of skills and substantive knowledge possessed by the graduates of the inferior legal education system.

In any event, when the mentor provides proof that this internship has been satisfactorily completed, a law graduate can apply for a license as a pleader. After practicing as a High Grade Pleader, the lawyer can apply for a license as an advocate.³⁴ For many years, only one year of practice was required but, after about 1999, the requirement was changed to three years.³⁵

Many pleaders make no effort to become an advocate. Burma is the poorest country in Southeast Asia.³⁶ Poverty, underdevelopment and internal conflict impact lawyers and clients alike. Lawyers, whether advocates or pleaders, typically struggle with these issues, often unable to afford the fees and costs associated obtaining and maintaining an advocate’s license. Moreover, in many areas, few clients have the resources to take a case to a higher court, so becoming an advocate is not necessary. On a more fundamental level, lawyers often cannot afford the transportation costs to present a case to a higher court in a regional center. Consequently, lawyers often remain pleaders, working in their local communities throughout their professional lives.

According to statistics reported by the International Bar Association obtained from the Attorney General and reported in 2012, Myanmar had 8,272 advocates and 39,682 High Grade Pleadors.³⁷ A study completed by UNDP in 2014 indicated that Myanmar had 9,000 licensed advocates, with 2,000 in active practice, and 40,000 licensed high grade pleaders with 15,000 in active practice.³⁸



While the CEELI / ILAC survey indicates that a majority of lawyers practice alone, a significant number of lawyers spend years working in a “law firm” headed by a senior advocate or pleader. Such “firms” are not legal entities; the government does not allow lawyers to create partnerships or other legal practice structures. Instead, the “firm” is more in the nature of an ongoing apprenticeship, where younger lawyers assist and observe the more senior lawyer on various matters.

In large part, these arrangements are a necessity, since the universities have given new lawyers little or no ability to take even simple cases into the courtroom. As with the internship, however, the quality of the apprenticeship is dependent upon the mentor. Unfortunately, it appears that many of these “firms” provide little serious training and even fewer opportunities for younger lawyers to have courtroom experience.

In significant part, this situation arises from the nature of the system in Myanmar, discussed below. To obtain favorable treatment, lawyers typically bribe or otherwise influence the Court by extrajudicial means. Older lawyers often establish and jealously guard these relationships. Clients want lawyers with the ability to obtain favorable treatment. Young lawyers, even those with substantial talent, are frozen out of the system and left to years of menial tasks, without ever gaining actual courtroom experience. Indeed, a number of participants reported that the role-playing exercises in the training programs were the first time they had ever examined a “witness.”

The CEELI / ILAC survey results reflect these economic realities. Private individuals typically are far less able to pay, and pay lawyers at lower rates, than business or governmental clients. Yet, every lawyer respondent in the Institute/ILAC survey indicated that a majority of their clients were private individuals; a very substantial majority indicated that all or most of their clients fell into that category. Additionally, 36% of the responding lawyers also provided work for non-profit groups, typically defending private citizens or groups engaged in protests or other reform-related activities.

At the same time, few responding lawyers represented lucrative clients. Only 20% of the responding lawyers reported doing any legal work for local companies, and 13% for international companies. And none of those reporting indicated that corporate clients were a majority of their practice.³⁹

Similarly, the types of legal work handled by the responding lawyers reflect the “street law” nature of law practices in Myanmar. The vast majority of lawyers in Myanmar – whether advocates or pleaders – are generalists. In the CEELI / ILAC survey, roughly 88% of lawyer respondents devoted a significant portion of their practice to criminal defense, with 60% stating that it was the majority of their practice. Again, while such legal services are critical in any democracy, criminal defense matters are typically low paying. In a country like Myanmar, where client incomes are very low and the government does not provide or reimburse counsel for representing indigent criminal defendants,⁴⁰ legal fees for such work are *de minimus*.

Other survey results are likewise indicative of the “personal service” nature of the respondents’ law practices. More than 62% of lawyer respondents indicated that they handled divorce matters, while 55% handled inheritance issues and 47% handled injury cases. In contrast, only 17% reported handling any commercial matters. Even among those lawyers, the commercial practice for most was minimal.

Perhaps most telling, 59% of the responding lawyers reported handling cases involving land issues. As discussed below, disputes over land involving farmers, minority communities and others are a major source of tension in Myanmar. While these cases tend to arise in different contexts, the prevalence of such disputes is indicative of the pervasive nature of land issues in the country. For Burmese lawyers, given their clients’ and their lack of resources, such cases present huge challenges especially when up against governmental, military or corporate opponents.



Burmese lawyers’ lack of resources shows up in other ways. Lawyers in practice lack sufficient office space, access to legal materials, or equipment:⁴¹

- 56% of lawyers responding to the CEELI / ILAC survey (62.5% for females and 44.5% for males) had no office outside their home. Of the remainder, many worked only sporadically at a “law firm” office run by a senior lawyer.
- 66% of responding lawyers had no access to a computer and printer, and another 4% had a computer only. For the former, preparation of court documents is done by hand, and either submitted in handwritten form or (for the majority) taken to a computer shop where it is typed and printed.
- 61% of the responding lawyers reported that they had access to the Myanmar laws relevant to their practices. However, several lawyers commented that written copies of Myanmar laws technically are available at some courthouses, but are kept under lock and key so that lawyers could not access them.

Lawyers on the frontline

As the country emerges from decades of oppression, advocates and pleaders in Myanmar will be on the frontlines of the legal battles that will shape the nature of reform. Yet, despite these responsibilities, such lawyers labor under severe handicaps, both in resources and training. As a result, certain conclusions emerge:

- Myanmar in 2014 has no particular shortage of legal professionals, but suffers from an acute lack of trained legal professionals.
- Now, and for the foreseeable future, these lawyers will be providing basic legal services and representation to private citizens, focused on criminal defense, land issues, divorce and inheritance issues.
- Given the undeveloped and rural character of Myanmar's economy, few Burmese lawyers do – or will – have significant involvement in commercial, intellectual property, or corporate matters.
- As with the legal education system, the official post-university “mentoring” model provides little actual training for law graduates entering the profession.
- Burmese lawyers typically lack the courtroom experience, or the economic or technical resources to provide effective representation to their clients.

The Official Bar

In many countries, deficits in legal education and lawyer training are being addressed by the organized bar. Unfortunately, the legacy of oppression in Myanmar suggests that reform of the official bar organs remains elusive.

At present, the profession is governed by a Bar Council Act, originally enacted in 1929. It provides for a 15-person Bar Council to regulate all advocates in the country. The High Court was given the power to discipline advocates and pleaders.⁴² After lawyers assumed important roles in the 1988 protests, and the Bar Council supported the pro-democracy movement, this Law was revised to give greater power over the Council to the government. A majority of the appointments to the Council thereafter were made by the Supreme Court, while the Attorney General was designated as the Council's chairman. In practice, Bar Council members were hand-picked by the SLORC.⁴³ A number of bar associations were denied registration, so that lawyers who continued to meet were subject to prosecution.⁴⁴ Politically active lawyers became targets, and the profession was generally emasculated.⁴⁵

Since 1988, control of the bar and attacks on individual lawyers have continued. Disciplinary procedures in place prior to 1989 were abrogated.⁴⁶ Over the past twenty-five years, lawyers have been routinely suspended, disbarred, or worse for representing individuals or causes opposed by the government. According to one report, more than 1000 Burmese lawyers were reprimanded, suspended or disbarred during this period.⁴⁷ The Bar Council was complicit, not independent.⁴⁸ As a result, the faith of most lawyers in their ostensible representatives is nil.⁴⁹ At the same time, the Bar Council has done little to promote continuing legal education or other training for lawyers.⁵⁰

Similarly, officially-sanctioned local bar associations were typically controlled by the government or its allies. As a result, a number of unofficial, unregistered organizations of lawyers have been formed by lawyers seeking to develop alternatives. Among these are the Upper and Lower Myanmar Lawyers Networks, established in 2012 by six human rights activist – lawyers and former political prisoners. These Networks are loosely organized, unofficial groups with over 500 participating lawyers, mostly younger lawyers interested in legal advocacy and legal aid. The Myanmar Legal Aid Network (MLAW), comprised of twenty “law firms” from around Myanmar, is also involved in pro bono work on a variety of issues. Still others, such as the Burma Lawyers' Council, work more with migrants and refugees in border areas.

Recent efforts have showed some promise of reform. A three-day conference in Nay Pyi Taw, organized by the International Bar Association's Human Rights Institute (IBAHRI) in February 2014, launched an effort to prepare a draft "constitution" for a new, independent national Bar Association to replace the Bar Council.⁵¹ Currently, a 15-person committee is working to complete a draft by Fall 2014, with a goal of obtaining approval from a national convocation of lawyers in late 2014 or early 2015. However, reaching a consensus among the multiple groups of lawyers is problematic. More important, major changes to existing legislation will be required for any new national bar association to be effective. At this point, the government has not demonstrated any eagerness to pursue these necessary legislative reforms.

Similarly, subtle and not-so-subtle intimidation of the legal profession continues. International groups report instances where persons meeting with them have been questioned by security personnel.⁵² Official disciplinary actions, including threats and the actual revocation of licenses, continue to be used against lawyers involved in "politically sensitive" cases.⁵³ Basic procedural protections, such as the right to present evidence and defend themselves during disciplinary hearings, often are ignored.⁵⁴ According to some reports, despite government assurances, as many as 200 lawyers disbarred for political reasons have not regained their licenses.⁵⁵ In extreme cases, such as those involving Muslim Rohingya clients, lawyers decline to become involved out of fear of Buddhist retaliatory violence.⁵⁶ Though perhaps more restrained than in the past, such actions are unmistakable efforts at coercion, intended by some in power to continue the legacy of the past regimes.

The Private Bar filling the gap

The official bar in Myanmar, rather than promoting the competence and independence of the legal system, has been used as a vehicle for suppression. Current reform efforts, though holding some promise, are unlikely to produce significant near to mid-term improvement. Unofficial groups are filling the gaps, providing both training for their members and legal assistance to citizens and communities dealing with the issues inherent in the transition in Myanmar.

Lawyers and judges

Much of a lawyer's professional life is governed by his or her relationship with the Court. According to the CEELI / ILAC survey, the responding lawyers appeared in court in some fashion an average of 18 days per month.

However, in the past twenty-five years, few international observers have been allowed into Burmese courtrooms. As a result, international assistance programs frequently are offered in a vacuum, with little knowledge of or relation to the realities of the Burmese system. In fact, like much of present-day Myanmar, the court system is a uniquely Burmese institution shaped by its history and conditions in the country.

Court procedures in Myanmar are ostensibly governed by "The Burma Courts Manual," originally adopted during British rule.⁵⁷ Separate Civil Procedure⁵⁸ and Criminal Procedure⁵⁹ Codes apparently also exist.⁶⁰ However, the CEELI / ILAC survey indicated that roughly half of the responding lawyers apparently did not know that these procedures existed. Even where lawyers knew that procedural rules existed, a significant number of respondents did not have access to a copy. And even where the rules were known and available, lawyers reported that such rules are seldom observed in actual practice. Some even cited instances where judges simply left the courtroom for extended periods while witness testimony continued in their absence.

Given the haphazard adherence to procedural rules, day-to-day courtroom practices vary from court to court, and judge to judge. Nonetheless, survey respondents report that lawyers are routinely required to file paper documents, including written arguments, in court. Similarly, most lawyers responding to the survey reported that lawyers were usually permitted to make oral arguments to the court, but typically only at the conclusion of the case. However, only 35% of all responding lawyers reported receiving any advocacy training in the past, with a number of those citing only informal training by "mentors" during their early years.

As in many systems, litigation in Burma is disjointed, requiring repeated courtroom appearances. Proceedings are scheduled in piecemeal fashion, with pretrial procedures and evidence-taking requiring multiple court appearances spread over months or years. Trials in the Anglo-Saxon sense rarely occur. Instead, witnesses are scheduled to testify one at a time, with lengthy gaps between evidentiary sessions in a particular case.

Unlike certain systems, lawyers in Myanmar report that they are permitted to interview and prepare witnesses for their testimony at trial. Survey respondents report that while counsel may request that an adverse witness be called in a particular case, the judge decides if a particular witness will be summoned. Such discretion is often abused. Moreover, police, military and other government witnesses routinely do not appear when scheduled. As a result, cases may be delayed for months or years as the process of obtaining evidence plods slowly along.

Though the survey results were not unanimous, most respondents reported that cross-examination of witnesses was typically allowed. However, lawyers also reported that judges often arbitrarily limited cross-examination, particularly in sensitive cases or as retribution for failing to pay a bribe.⁶¹

While most respondents indicated that juries were not used in Myanmar, 15% reported that they were used in certain cases. While this lack of clarity mirrors the reports from other sources,⁶² it appears that trial by jury in Myanmar is at least under discussion.⁶³

Lawyering Skills

While adherence to procedural and evidentiary rules is inconsistent, such rules apparently exist in at least rudimentary form. Given this baseline, practice in the courts in Myanmar requires skills in a number of areas:

- client interviewing and counseling;
- case analysis;
- preparing written pleadings and arguments;
- witness preparation and examination; and
- oral advocacy.

Though current conditions often make these skills irrelevant in a particular case, lawyers in Myanmar will need skills as democratic reforms take root in the legal system. Equally important, as discussed above, many Burmese lawyers need opportunities to utilize these skills in actual courtroom situations. Such experience is invaluable, as lawyers seek to move the judicial system away from capriciousness and toward due process.

Corruption

A major factor impacting any law practice in Myanmar is corruption. As the International Commission of Jurists (ICJ) recently observed, “corruption underlies and affects every aspect of a lawyer’s career, from completing law school, to retaining clients, accessing information, meeting with clients who are detained, securing meetings, submitting motions, presenting witnesses, winning cases, ensuring the enforcement of judgments, and retaining their licenses to practice law.”⁶⁴

Many attributes of corruption in current legal system can be traced to the Socialist regime that came to power in 1962. After that coup d’état, the judiciary was populated with retired members of the military. Control and management of the court system was taken over by the Ministry of Judicial Affairs, which also controlled the police and law enforcement. This new system became an arm of military rule, with the courts tasked to maintain political control.⁶⁵

The military regime in 1988 restored a nominally civilian, professional judiciary.⁶⁶ However, the system of governmental control over the judiciary remained unchanged. Moreover, like lawyers, these judges are graduates of – and subject to the inadequacies of – the legal education system discussed above. Many judges lack experience, knowledge of Burmese law and procedure, and training on the standards of judicial conduct.⁶⁷ As reflected in the Institute/ILAC survey results and interviews, in many instances, both judges and lawyers either are ignorant of, or simply ignore, applicable procedural codes and substantive law.

As a result, due process principles are seldom observed in the courtroom, and judicial and prosecutorial independence in Myanmar is essentially non-existent. Criminal prosecutions are conducted by “law officers” working under the Attorney General, who in turn is closely aligned with the government. Law officers frequently act on political orders, prosecuting without regard to proper procedures or sufficient evidence.⁶⁸

When police or military interests are implicated in a case, lawyers face additional pressures and threats. As several lawyers explained to the ICJ: “The police often play a detrimental role in ‘political’ cases, partaking in or allowing corruption, fabrication of evidence, courtroom delays, politically motivated investigations and prosecutions, denial of access to clients, and the undermining of the presumption of innocence.”⁶⁹



Judges are similarly subject to governmental pressure.⁷⁰ In cases challenging the government, military, high profile individuals, or their vested interests, or involving ethnic and minority groups, judicial decisions typically follow directions from government officials, particularly local and regional authorities.⁷¹

If judges resist this pressure, they often find themselves transferred to a less desirable assignment. Not surprisingly, judges view themselves “as administrators rather than arbiters, basing decisions on state policy, instead of legal reasoning and precedent.”⁷² Lawyers in such cases may face criminal charges, including contempt of court, to discourage them for opposing or challenging powerful state or private interests.⁷³

Economic corruption among judges and prosecutors is likewise pervasive.⁷⁴ In cases not involving political issues or the interests of the military, judges routinely extract bribes from litigants. Lawyers often bribe judges for outcomes (e.g. sentence reduction, speedy resolution), though not necessarily outcomes (guilt/innocence). Often, prosecutors will help lawyers negotiate bribes with the judges and share in the largesse. Court clerks frequently serve as intermediaries, transferring the agreed-upon bribe from the client to the judge.

Adding to this dysfunction is the bureaucratic nature of the Burmese courts.⁷⁵ At virtually every turn, a lawyer must obtain the cooperation of some state or court functionary to meet with detained clients, access information, or enforce a judgment.⁷⁶ Procedural requirements are ignored, or are selectively enforced to favor one party.⁷⁷

Lawyers report that, if bribes are not paid, trial delays and court schedules are manipulated to punish lawyer and obstruct the processing of the case.⁷⁸ Proceedings are intentionally scheduled at inconvenient times, especially if the lawyer must travel some distance. Prosecutors obtain repeated adjournments and judges are sometimes late by several hours.⁷⁹ Lawyers often travel long distances to remote courtrooms, only to have hearings cancelled or postponed.

Respondents to the CEELI / ILAC survey, when asked if they had the ability to examine government witnesses, reported that though the right nominally exists, government witnesses often simply do not appear. Other reports indicate that witness records are revised by the judge or clerk to change the contents.⁸⁰ At least according to some reports, these problems are worst at the district and township levels, where many lawyers and most ordinary citizens interact with the legal system.⁸¹

Despite recent efforts at reform, little progress has been made.⁸² Relations between judges and lawyers in Myanmar remain adversarial, with little mutual respect.⁸³ Clients see lawyers as “brokers” with police, witnesses, court clerks, opposing counsel and judges.⁸⁴ According to some, a lawyer’s acumen, analytical skills, and advocacy are irrelevant because decisions are based on bribery or influence, not the law. Lawyers, in fact, may be viewed as an obstacle to striking an advantageous deal.⁸⁵

Embedded corruption

In Myanmar, courtroom corruption “is so deeply embedded into the legal system that it is essentially taken for granted; accepted if not embraced.”⁸⁶ A lawyer is one of the actors in any courtroom, along with the judge and a law officer (prosecutor). Until lawyers have the professional ethics and skills to effectively function in a legal system based on due process and the rule of law, they will continue to fall back on their abilities as “brokers” in a dysfunctional system. While there is a necessary effort underway to address corruption among judges and law officers, reform will also require the development of a trained, ethical legal profession.

“Land Grabbing” Cases

Roughly 67% of Myanmar’s population lives in rural areas, and the majority depends on agriculture as a primary means of livelihood.⁸⁷ Land rights and land tenure thus form one of the major societal issues facing Myanmar today. Given the fundamental importance of property rights to most citizens in Myanmar, access to the courts to deal with such issues has major implications for the overall stability of the country.⁸⁸ “Land grabbing” cases accordingly comprise a significant portion of a Burmese lawyer’s practice, at least among the politically active.

To understand these issues and the impacts on lawyers, some background is in order. Under the Constitution in Myanmar, the State “is the ultimate owner of all lands and all natural resources above and below the ground.”⁸⁹ Thus, private ownership of real property is unknown. However, rural residents from both the Burman majority and ethnic minorities for centuries lived on and farmed land based on traditional forms of customary land ownership.⁹⁰ Yet, to obtain legal rights to their land, individuals and communities must obtain governmental approval for their continued possession of land that they and their ancestors may have occupied for centuries.

“Land grabbing” cases deal – in different forms – with the usurpation of traditional lands by the government and military. As one report described it, land grabbing is “the arbitrary or unjust accumulation of often large tracts of land usually taken by the economically or politically more powerful from low-income groups such as farmers or informal sector communities.”⁹¹

For many years before the recent reforms began, “land grabbing” was *ex officio*, often part of ongoing conflicts between the military government and ethnic minorities. Typically, state owned entities, including the military, acquired land which was “abandoned” by fleeing villagers. This “abandoned” land was soon occupied by military bases or large plantations run by powerful interests.⁹² In some cases, the military simply took control of the land for its own or crony enterprises. Lawyers report various instances where military confiscations took substantially more land than necessary for the particular project. Excess lands were transferred at a profit to other ventures or leased back to the original occupants.

Control of other properties was given to large, well-connected firms. According to one report, over the past 20 years, Burmese firms have taken control of roughly 1.5 million acres through various means, often using a veneer of legality.⁹³ In areas under its political control, the government has granted concessions for ventures such as large-scale rubber and oil palm plantations.⁹⁴



But in many cases, these acquisitions were purely speculative and the land was never developed.⁹⁵ In some instances, the speculators – like the military – leased the land back to the dispossessed farmers who had occupied the land for many years.

Legislation passed in 2012 was ostensibly intended to change the legal basis for the right to use land, while establishing a legal market to encourage domestic and foreign investment in land.⁹⁶ Among these laws were the Farmland Law and the Vacant, Fallow, and Virgin Land Law (VFV Law).

The Farmland Law allows farmers to obtain land use certificates (LUCs) for their land. Thereafter, land can be legally bought, sold and transferred on a land market with an LUC.⁹⁷ While facially attractive to a Western observer, the new system is fraught with difficulties. First, if a person does not receive an official LUC, he loses any right to use land that may have been in his family for generations. But procedures for obtaining LUCs are complex, cumbersome and opaque, especially given the extremely low level of education in Myanmar.⁹⁸ As a result, this scheme has effectively denied LUCs to the vast majority of occupants.⁹⁹ Moreover, the Law is administered by an administrative agency controlled by the Ministry of Agriculture and Irrigation (MOAI).¹⁰⁰ Perhaps most telling from a lawyer’s perspective, no judicial appeal is allowed from these decisions.

The companion VFV Law allows “fallow” lands or lands where no LUC has been issued to be reallocated by the government to domestic and foreign investors. Again, such decisions are made by an administrative agency controlled by the MOAI.¹⁰¹ As discussed above, few farmers have LUCs and thus technically are “squatters.” Moreover, Burma has 135 reported ethnic groups comprising about 35% of the total population.¹⁰² Many minority communities utilize village forests, waterways, fishponds and grazing lands on a communal basis.

Since no individual can establish the requisite use and occupation of the land, such lands are declared “vacant” or “fallow,” and are subject to “reallocation.”¹⁰³ Though farmers are technically eligible to receive such land, in practice the government allocates such land primarily to private entrepreneurs, companies and state enterprises.¹⁰⁴

These two new land laws have effectively deprived many individuals and communities of any legally recognized land rights, and the threat – often the reality – of losing their lands.¹⁰⁵ The pervasive corruption and cronyism that characterizes governance in Myanmar typically turns the administrative procedures into a sham proceedings.¹⁰⁶ Many instances have been reported in which farmers and entire communities have been dispossessed by the military to make way for various economic development schemes run by cronies and/or foreign investors.¹⁰⁷

Because proceedings are deemed administrative, lawyers have no ability to be involved. Moreover, with no right of appeal, lawyers cannot directly challenge the actions of the State. “Land grabbing cases” accordingly involve litigation of various types that arise from some aspect of a land tenure dispute. In some instances, the litigation may be for an illiterate farmer who sold his LUC to a speculator or developer, not understanding the import of the transaction. In situations where the land was taken by the military, and sold or “reallocated” to a private company, litigation may be brought against the recipient to recover compensation or the land. Still other cases deal with the political aspects of the land tenure battles. Lawyers defend farmers and members of minority communities charged with political crimes for demonstrating against the seizure of their lands, or with trespass when they reoccupy them.¹⁰⁸ Other lawyers defend reporters or activists who report on these activities.¹⁰⁹

Land grabbing is topical

The category of “land grabbing” cases is topical, not substantive. Such cases typically do not involve unique or obscure legal principles, but instead are criminal and civil cases that arise from “land grabbing” disputes. From a lawyer’s perspective, while the political atmosphere may be supercharged, the actual cases require expertise in mainstream procedural rules and substantive law, rather than specialized training in some esoteric subject matter.

Final conclusion

The slow emergence of lawyers in Myanmar from the hardships wrought by military rule brings to light the somewhat unique nature of the Burmese legal profession:

- For the next several decades, the current lawyers in Myanmar will be a critical component of extending the rule of law to ordinary Burmese citizens
- The cases handled by these lawyers, even those involving major issues for the reform process, typically are not complex but instead involve basic legal principles and routine proceedings.
- Lawyers in Myanmar are not a small elite, but instead are a large group composed primarily of untrained graduates of a substandard legal education system.
- Though passionate and committed, many Burmese lawyers handling such cases are severely hampered by their lack of fundamental skills and courtroom experience.
- Advocates and pleaders are further shackled by the endemic lack of resources throughout the country.
- Judicial corruption in Myanmar diminishes the value of professionalism and the public perception of lawyers.
- Official bar organizations, now and for the foreseeable future, will not act effectively to resolve these issues.
- Efforts at reform of the Burmese legal system should account for these lawyers, and include broad-based programs focusing on issues and skills relevant to the actual cases facing Burmese lawyers.

At the end of the day, for the rule of law to take hold in Myanmar, advocates and pleaders must be capable and willing to deliver professional legal representation to the citizens. Respect for the law is built on a case-by-case basis, when a citizen’s contact with the legal system is handled in an ethical and professional manner consistent with due process. Burmese lawyers must take on this task, and deliver the services required in a democratic society.

The CEELI / ILAC Survey

During training sessions in Yangon and Mandalay in August 2014, participants were asked to complete a written survey concerning a variety of matters related to their practices. No effort was made to obtain a statistically representative sample of all Burmese lawyers. The participants were members of the Networks primarily from Yangon and Mandalay who wanted to attend the training programs.

Due to the differences in the arrangements for the workshops, 80% of the responses were from the Mandalay workshop. Thus, the participants may not represent a fair cross section of the general population of Burmese lawyers. Moreover, though the survey was translated into Burmese, language and translation issues undoubtedly affected the accuracy of some responses.

Obviously, the survey was non-scientific; the sole purpose was to obtain some skeletal information concerning the practices of the participants. Nonetheless, the survey does provide insights into circumstances under which at least these lawyers practice law. And, while generalization is difficult, the data provide some clues about the situations faced by the broader community of lawyers in Myanmar.

In the two workshops, 94 written surveys were returned. Of these, twelve were from law students or law graduates in their one-year “apprenticeship” training. Except where otherwise noted, the statistics cited in this paper are derived only from the responses of the lawyers.

Looking solely at the lawyer responses:

- 20% of responses were from Advocates, 74% from High Grade Pleaders, and 6% were from Second Grade Pleaders.
- Women constituted 70% of the lawyer respondents.
- Women accounted for 73% of the High Grade Pleaders, and 63% of the Advocates.
- The average age of those responding was 32.7 years, with a median of 30 and a range from 21 to 65.
- The average age was 28.8 years for female respondents, and 39.4 for males.
- The average age was 37.9 years for Advocates, 31.8 years for High Grade Pleaders, and 25.6 for Second Grade Pleaders.

Endnotes

- 1 The CEELI Institute is an independent, not-for-profit, international provider of post-graduate, professional legal education headquartered in Prague, Czech Republic.
- 2 The Burma Center Prague is a non-governmental and non-profit organization based in Prague, run by Burmese living in the Czech Republic and by other supporters of Burma, whose mission is to contribute to democratization and respect for human rights in Burma.
- 3 ILAC is an international consortium comprise of over 50 professional associations and technical assistance organizations that have come together to better coordinate their work, make expert assessments, and advise stakeholders on how to rebuild justice systems in post-conflict countries. See "The Survey," *infra*.
- 4 Myint Zan, *Legal Education in Burma Since the 1960s*, 3-4 (2008), available at http://www.burmalibrary.org/docso7/Legal_Education_in_Burma_Unpublished_Version.pdf
- 5 "Rangoon University: A History of Protest," *The Irrawaddy*, December 9, 2013.
- 6 *Ibid.*, at 4.
- 7 *Ibid.*, at 7.
- 8 *Ibid.*, at 7.
- 9 *Ibid.*, at 9-11.
- 10 *Ibid.*, at 4.
- 11 *Ibid.*, at 14.
- 12 *Ibid.*, at 14-15.
- 13 International Commission of Jurists (ICJ), *Right to Counsel: The Independence of Lawyers in Myanmar* 25-26 (2013).
- 14 ICJ, *supra* note 14, at 25-26.
- 15 Myint Zan, *supra* note 5, at 14-15.
- 16 *Ibid.*, at 43.
- 17 *Ibid.*, at 15, n. 38.
- 18 In the 1980s, the name of Rangoon Arts and Science University was changed to Rangoon University, and later to Yangon University. See Myint Zan, *supra* note 5, at 4, n. 9.
- 19 Rangoon University: A History of Protest, *The Irrawaddy*, December 9, 2013, available at <http://www.irrawaddy.org/burma/multimedia-burma/rangoon-university-history-protest.html>.
- 20 *Ibid.*
- 21 Myint Zan, *supra* note 5, at 43.
- 22 *Ibid.*, at 23, n. 59.
- 23 *Ibid.*, at 23.
- 24 ICJ, *supra* note 14, at 25-26.
- 25 Rangoon University: A History of Protest, *supra* note 20.
- 26 Myint Zan, *supra* note 5, at 17.
- 27 *Ibid.*, at 17.
- 28 ICJ, *supra* note 14, at 32.
- 29 UNESCO Institute of Statistics, <http://www.uis.unesco.org/DataCentre/Pages/BrowseEducation.aspx>. By way of further example, when licensed advocates and pleaders were asked in the survey to estimate the percentages of their practices devoted to various types of cases, few could provide responses totaling 100%, even when coached in Burmese.
- 30 See, e.g. <http://www.babseacle.org/articles/remarkable-pace-cle-myanmar/>
- 31 For a chart showing the various courts in Myanmar, see New Perimeter, et al., *Myanmar Rule of Law Assessment* 30 (March 2013), available at <http://www.burmapartnership.org/wp-content/uploads/2013/03/Myanmar-Rule-of-Law-Assessment-3-5-13.pdf>.
- 32 International Bar Association Human Rights Institute (IBAHRI), *The Rule of Law in Myanmar: Challenges and Prospects* 61 (2012).
- 33 Myint Zan, *supra* note 5, at 13.
- 34 *Ibid.*, at 13, n. 34. However, some lawyers report long delays in actually receiving an advocate's license after qualifying and applying. See ICJ *supra* note 14, at 13.
- 35 United States Agency for International Development (USAID), *Property Rights and Resource Governance – Burma* 5 (2013).
- 36 IBAHRI, *supra* note 33, at 62.
- 37 United Nations Development Program (UNDP), *Bridges to Justice: Rule of Law Centres for Myanmar - A Feasibility Study* 5 (2014).
- 38 These results may have been somewhat skewed, given that the respondents were MLN members, rather than supporters of the existing government-run Bar Council. Nonetheless, anecdotal evidence indicates that even among government-favored lawyers, few have a significant corporate clients. Moreover, since the respondents were primarily from Yangon and Mandalay, the centers of commerce in Myanmar, lawyers in other areas likely would see even fewer corporate clients.
- 39 New Perimeter, *supra* note 32, at 33.
- 40 *Ibid.*, at 35.
- 41 IBAHRI, *supra* note 33, at 61.
- 42 "A Brief Analysis On The Judiciary Of Burma," 18 *Legal Issues on Burma* 2, 20 (August 2004).
- 43 IBAHRI, *supra* note 33, at 61.
- 44 ICJ, *supra* note 14, at 18.
- 45 IBAHRI, *supra* note 33, at 62.
- 46 *Ibid.*, at 63; New Perimeter, *supra* note 32, at 35.
- 47 ICJ Centre for the Independence of Judges and Lawyers, *Myanmar – Country Profile* 15 (2014).
- 48 See IBAHRI, *supra* note 33, at 63-64; Asian Legal Resource Centre (ALRC), *A Special Appeal on Behalf of Lawyers in Myanmar (Burma) Whose Licenses Have Been Revoked for Defending Persons Accused in Political Cases or for Political Activities* (December 23, 2011).
- 49 ICJ Centre, *supra* note 48, at 15.
- 50 See <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=4670e898-428b-440d-b986-52b35593d40d>.
- 51 See IBAHRI, *supra* note 33, at 63; ICJ, *supra* note 14, at 25, n. 86. On occasion, BCP representatives working on the MLN training program have been questioned by security officials.
- 52 ICJ, *supra* note 14, at 22.
- 53 *Ibid.*, at 24.
- 54 ICJ Centre, *supra* note 48, at 17-18.
- 55 ICJ, *supra* note 14, at 20.
- 56 An English language translation of a version of the Manual may be found at <http://www.blc-burma.org/?q=node/157>.
- 57 Alec Christie, *The Rule of Law and Commercial Litigation in Myanmar*, 10 *Pacific Rim Law & Policy Journal* 47, 54 (2000). In fact, an English translation of portions of such a Code can be found at http://www.burmalibrary.org/docs14/Code_of_Civil_Procedure-ocr.pdf.
- 58 See <http://rulebyhukum.blogspot.com/2012/08/trial-by-jury-myanmarburma.html>.
- 59 Christie, *supra* note 58, at 54.
- 60 See also ICJ Centre, *supra* note 48, at 41.
- 61 Compare <http://rulebyhukum.blogspot.com/2012/08/trial-by-jury-myanmarburma.html> ("While Chapter XXIII of Myanmar's Code of Criminal Procedure does provide for a jury trial in certain criminal cases, it has not been used since 1946.") with <http://defensewiki.libj.org/index.php/Myanmar> ("Trials before high courts and courts of session are conducted before a jury.")
- 62 MPs call for uprightness of judicial system, right to trial by jury (August 21, 2012), <http://www.burmalibrary.org/docs14/PH-NLM2012-08-21-day30.pdf>.
- 63 ICJ, *supra* note 14, at 15-16.
- 64 A Brief Analysis On The Judiciary Of Burma, 18 *Legal Issues on Burma* 2, 8 (August 2004).
- 65 IBAHRI, *supra* note 33, at 56.
- 66 ICJ Center, *supra* note 48, at 8.
- 67 See IBAHRI, *supra* note 33, at 63.
- 68 ICJ, *supra* note 14, at 19.
- 69 New Perimeter, *supra* note 32, at 31.
- 70 ICJ Center, *supra* note 48, at 11.
- 71 IBAHRI, *supra* note 33, at 56.
- 72 ICJ, *supra* note 14, at 22.
- 73 New Perimeter, *supra* note 32, at 31.
- 74 ICJ, *supra* note 14, at 5.
- 75 *Ibid.*, at 15-16, 38.
- 76 ALRC, *Myanmar/Burma: Effects of endemic corruption in Myanmar's courts on rights of citizens* (February 25, 2010), http://www.alrc.net/doc/mainfile.php/alrc_st2010/597.
- 77 ICJ Center, *supra* note 48, at 39.
- 78 ICJ, *supra* note 14, at 39.
- 79 ALRC, *supra* note 79.
- 80 ICJ, *supra* note 14, at 16.
- 81 Tomás Ojea Quintana, *Special Rapporteur on the situation of human rights in Myanmar, Report to the Human Rights Council*, ¶63, UN Doc. A/HRC/22/58 (April 17, 2013).
- 82 ICJ, *supra* note 14, at 41.
- 83 *Ibid.*, at 5.
- 84 *Ibid.*, at 15.
- 85 *Ibid.*, at 15-16.
- 86 USAID, *supra* note 36, at 4.
- 87 See *Displacement Solutions, Myanmar at the HLP Crossroads* 24 (October 2012).
- 88 Constitution of the Republic of the Union of Myanmar, Article 37.
- 89 Displacement Solutions, *Bridging the Gap* (June 2013).
- 90 Displacement Solutions, *supra* note 88, at 5.
- 91 Displacement Solutions, *supra* note 90.
- 92 Displacement Solutions, *supra* note 88, at 6.
- 93 USAID, *supra* note 36, at 8.
- 94 Mizzima News, *Burmese land ownership a work in progress* (August 23, 2012), <http://mizzimaenglish.blogspot.com/2012/08/burmese-land-ownership-work-in-progress.html>
- 95 See, e.g. *Transnational Institute, Access Denied: Land Rights and Ethnic Conflict in Burma* (May 2013), <http://www.burmalibrary.org/docs15/TNI-accesdenied-briefing11-red.pdf>.
- 96 USAID, *supra* note 36, at 9.
- 97 Displacement Solutions, *supra* note 88, at 7.
- 98 Transnational Institute, *supra* note 96.
- 99 USAID, *supra* note 36, at 4.
- 100 *Ibid.*, at 4.
- 101 *Ibid.*, at 4.
- 102 Transnational Institute, *supra* note 96.
- 103 USAID, *supra* note 36, at 14.
- 104 See Displacement Solutions, *supra* note 88, at 11-13.
- 105 USAID, *supra* note 36, at 15.
- 106 See, e.g. *Transnational Institute, supra* note 96; Displacement Solutions, *supra* note 88, at 6.
- 107 USAID, *supra* note 36, at 20.
- 108 See, e.g. Reuters, *Myanmar jails reporters, newspaper boss for 10 years* (July 10, 2014).

Through this report, based upon interviews with street lawyers, and a written survey of nearly 100 workshop participants in August 2014, ILAC and The CEELI Institute wish to provide a more complete picture of lawyers in Myanmar.

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