

# Independent Lawyers in Myanmar

2017



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CEELI INSTITUTE  
PRAGUE

ADVANCING THE RULE OF LAW



# TRANSITION

Transition Promotion Program

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Front cover photo: The High Court Building at Pansodan Street, Yangon, by Burma Center Prague

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## Executive Summary

Independent lawyers hold a key role in promoting and practicing the rule of law, particularly in Myanmar where numerous challenges remain. Many of them provide pro bono legal aid to the needy and offer their assistance in human rights cases. In their work, they often have to cope with obstacles including administrative hurdles, insufficient equipment, deficient qualifications or experience, or even intimidation by powerful opponents.

This report presents selected cases that the independent lawyers defended and concludes the activities of 4 years in Myanmar (2013 – 2017), during which Burma Center Prague (BCP) together with the CEELI Institute (CEELI) supported independent lawyers through training, workshops and networking with the media and members of parliament.

While independent lawyers contribute an important part to the transition of Myanmar towards a stable and genuine democracy and the respect of civil rights, the heritage of over four decades of military dictatorship still impairs their work today. Associations of independent lawyers were illegal for long time and professional networks tried to operate underneath the radar of the administration, lacking a clear structure and even avoiding committing themselves to membership.

The first years of our program efforts in Myanmar were therefore dedicated to empowering the Myanmar Lawyers' Network (MLN), which was the first and main focal point of independent lawyers with a strong interest and experience in human rights cases – many of the actors have been victims themselves. While the political and legal situation opened up the possibility of consolidating this network as a registered entity, the project aimed to assess further needs and opportunities to empower independent lawyers in the regions of Myanmar.

Rather than adding further data to the already existent corpus of recent research about the rule of law in Myanmar, this report seeks to illustrate the current situation, the key role of independent lawyers and their requirements for doing future work by presenting several cases where their involvement is crucial to asserting the rights of those who otherwise would be left to their own devices.

Based on past project work, the report eventually tries to formulate some recommendations for future activities to support independent lawyers in Myanmar.

Information for this report was obtained through a variety of online publications, as well as individual interviews with Executive Committee members of the MLN and other lawyers.

## Independent Lawyers Associations: Overview

Since the country began its democratic transition, several independent lawyer associations have been set up. Close and intensive cooperation of BCP and CEELI with the Myanmar Lawyers' Network started from 2013. In recent years, our cooperation has expanded to various regional networks of independent lawyers as mentioned below.

### Myanmar Lawyers' Network (MLN)

Efforts to assemble the MLN began as early as January 2011,<sup>1</sup> but the first meeting of the then Lawyers' Network did not take place until June 2012.<sup>2</sup> The agenda for the first meeting called for reductions of the excessive increases in stamp duty tax on court documents, the reestablishment of the Bar Council as an independent body, and the return of lawyers' licenses, which had been revoked for political reasons.<sup>3</sup> On June 1, 2013, the name "Myanmar Lawyers' Network" was used for the first time.<sup>4</sup>

In August 2016, MLN went through organizational reform and is currently seeking official registration as an association.

The MLN strives to achieve the following objectives:

|   |  |  |   |
|---|--|--|---|
| <p><b>Promote &amp; Establish Rule of Law</b></p> <ul style="list-style-type: none"> <li>• The MLN seeks to accomplish this through advocacy, legal reform efforts, and legal aid.</li> <li>• Specifically, the MLN aims to defend vulnerable populations: workers, farmers, civil society and the poor.</li> </ul> | <p><b>Support the Future Generation of Legal Professionals</b></p> <ul style="list-style-type: none"> <li>• To bring up a new generation of lawyers who will protect the country's future with respectful laws.</li> <li>• Legal training is conducted in Yangon, Mandalay and its regional branches.</li> </ul> | <p><b>Raising Public Legal Awareness</b></p> <ul style="list-style-type: none"> <li>• The MLN aims to raise public understanding and respect of laws in order to support the rule of law.</li> </ul> | <p><b>Judicial System Reform</b></p> <ul style="list-style-type: none"> <li>• In cooperation with international organizations and partners, the MLN will support the creation of a judicial system with international standards.</li> </ul> |
|---|--|--|---|

### Independent Lawyers' Association Myanmar (ILAM)

Founded on January 19, 2016, ILAM is a voluntary bar association of lawyers in Myanmar (Burma). ILAM was formed in collaboration with the International Bar Association's Human Rights Institute (IBAHRI).<sup>5</sup>

BCP and CEELI have cooperated with regional branches of ILAM in Mawlamyine, Pyapon and Pyay.

### Union Lawyers' and Paralegals' Association (ULPA)

Some former members of the MLN founded a new organization on January 1, 2017. Union Lawyers' and Paralegals' Association (ULPA) mainly aims to raise legal awareness among the population and provides legal expertise in the legislative reform process of the country.

## Legal Aid Networks

Independent lawyers in regional areas tend to organize legal aid networks to represent local vulnerable populations. BCP and CEELI have cooperated with several of these, including the Shingnip Legal Aid Network in Myitkyina, Kachin State; Dawei Pro bono Lawyer Network (DPLN), Tanintharyi Division or Thazin Legal Aid Network in Sittwe, Rakhine State.

Apart from these, there are other lawyers' associations that play a significant role in promoting the rule of law in Myanmar, such as Myanmar Media Lawyers' Network (MMLN), Myanmar Legal Aid Network (MLAW), Legal Aid Network (LAN), and Public Legal Aid Network (PLAN).

## Case Examples

### Student Assembly Cases

#### Background

Parliament's enactment of the National Education Law on September 30, 2014, prompted discord among student leaders and education reformers who claim that they were insufficiently consulted when the law was drafted.<sup>6</sup>

#### Student Union Case

##### Facts

In January 2015, a group of university students began a march from Mandalay to Yangon, in which they protested against the National Education Law, and advocated for a higher standard of education, the right to form student unions, and the prioritization of teaching in ethnic minority languages.<sup>7</sup> The students met with police opposition in Letpadan (90 miles north of Yangon) on March 2nd and were prevented from continuing their demonstration.<sup>8</sup> On March 10th, the demonstrators attempted to push through the security blockade, resulting in a number of injuries and an estimated 127 arrests.<sup>9</sup>



Students, Buddhist monks and supporters on their march from Mandalay to Yangon in January 2015 for their protest against the education law. | source: THE IRRAWADDY

##### Status

In May 2015, roughly 70 student activists were still detained in Tharyawady Prison and only 11 have been granted bail.<sup>10</sup> Bail is conditional upon the detainee's provision of proof that he or she has access to at least US\$10,000 worth of assets, held by no more than two guarantors.<sup>11</sup> Most of the students have been charged with being a member of an unlawful assembly, joining or continuing an unlawful assembly, rioting, causing injury to a public servant, and disturbing national tranquility in violation of the Myanmar Penal Code and Peaceful Assembly Law Sections 143, 145, 147, 332, and 505(B), respectively. Some of the students are facing the possibility of up to 10 years in prison.<sup>12</sup> Two underage students, Myo Thiha and Aung Min Khaing, are charged with the same offenses at the Juvenile Court of Thayawady District.<sup>13</sup> Defense Attorney U Aung Thein has submitted pictures of police brutality at the scene of the arrests as evidence against the accusations.<sup>14</sup>

As of June 2016, many student activists were still on trial, though dozens have been released under a pledge by Aung San Suu Kyi.<sup>15</sup>

## Khin Khin Kyaw – Judicial Harassment Case

### Facts

Khin Khin Kyaw is a human rights lawyer and a member of a legal team representing more than 50 detained student protesters who participated in protests in Letpadan to oppose Myanmar’s National Education Law.

Ms. Khin Khin Kyaw was charged with disrupting court proceedings under Section 228 of the Penal Code. The charge is related to the proceedings at the Thayawaddy Township Court on September 2015, when she was representing the legal interests of the detained student protesters.<sup>16</sup>



Police beat a protestor against the education law during their crackdown at Letpadan in March 2015. | source: THE IRRAWADDY

### Status

Her trial started at the Thayawady Township Court on October 14, 2015 and it is still ongoing. She is facing up to six months in prison, fines, and revocation of her legal license.

## BBC Reporter Case

### Facts

On March 27, 2015, small groups of students took to the streets on their motorbikes in both Mandalay and Yangon, demanding the release of the 70 student activists who were arrested on March 10, 2015 in Letpadan.<sup>17</sup> While the police argue otherwise, the students allege that the Mandalay police attempted to break up their demonstration by knocking their motorbikes to the ground.<sup>18</sup> A police officer, Lance Corporal Ba Maw, claims that he was helping someone pick up a fallen motorcycle when local BBC reporter, Ko Nay Myo Linn, punched him.<sup>19</sup>

### Status

Ko Nay Myo Linn has been charged with assaulting a police officer under Chan Mya Thar Zi Township Code Section 332, which can carry a prison sentence of up to three years.<sup>20</sup> Defense counsel U Thein Than Oo argued that the police department lacks sufficient evidence regarding the identity of the attacker. The formal police complaint, filed at Chan Mya Thar Si Police Station, reportedly fails to mention the attacker’s name (instead, it referred to “one unknown person”).<sup>21</sup>

The journalist was handed a three-month jail sentence with hard labor on June 6, 2016. After the court in Mandalay accepted his appeal, he walked free from prison on July 21, 2016.<sup>22</sup>



## Defamation Cases

### Background

The Telecommunication Law was enacted under the previous Thein Sein government. It has been, and still is, used to stifle political dissent and should be brought before Parliament to discuss its repeal or amendment under the new National League for Democracy government.

There is a worrying trend of individuals being detained under Article 66(d) of the Telecommunications Law for insulting state leaders. In addition, we have found that it is often third parties, not the victims themselves, who are filing charges under this law.<sup>23</sup> Thirty-eight of the cases, or about 85 percent of the total, were submitted in nine months alone, since the NLD-backed government took office, under a democratically-elected government, and particularly one that has such a high number of people who have spent time in jail as political prisoners under the military junta.<sup>24</sup>

The following cases are only for example.

### Patrick Kum Jaa Lee

On October 14, 2015, Burmese activist Patrick Kum Jaa Lee was arrested without warrant for mocking the country's commander-in-chief of the armed forces, Min Aung Hlaing, on Facebook. On January 22, 2016, the Court found Patrick guilty of "online defamation" and sentenced him to six months in prison. Prior to his arrest and conviction, Chaw Sandi Tun, a young Burmese woman, was also detained for an online post mocking the military.

He was released on April 1, 2016 after serving his sentence.<sup>25</sup>

### Nay Myo Wai

In May 2016, a complaint was filed to police alleging that politician Ko Nay Myo Wai had defamed State Counsellor Daw Aung San Suu Kyi, President U Htin Kyaw and Senior General Min Aung Hlaing on Facebook.

The post in question suggested that the president and commander-in-chief had gained their positions as a result of improper relations with Daw Aung San Suu Kyi.

Nay Myo Wai, who leads the Peace and Diversity Party but ironically has gained notoriety for his staunch anti-Muslim views, was arrested on May 4. He was brought to trial under section 66(d) of the Telecommunications Law, which carries a potential three-year prison term for defamation using a communications network.<sup>26</sup>

After having been detained for over two months, ultra-nationalist provocateur Nay Myo Wai was discharged by a court in Irrawaddy Division.<sup>27</sup>

## Eleven Media

In October, the head of Yangon Region Command, Lieutenant Colonel Lin Htun, filed a complaint to police against Ko Myo Yan Naung Thein, who leads the NLD research team, after he allegedly posted criticism of the military's security operations in northern Rakhine State. He was detained in early November and the judge rejected applications for bail on November 9 and 17, 2016.

Eleven Media Group CEO Dr Than Htut Aung and chief editor Ko Wai Phyو were arrested on November 11, 2016 for allegedly defaming Yangon Region Chief Minister U Phyو Min Thein. They too were denied bail, despite applying on health grounds.

On January 6, 2017 the Tamwe township court in east-central Yangon released them on bail of more than US\$37,000 each after the two were held for nearly two months.<sup>28</sup>

## Letpadaung Copper Mine Cases

### Background

The Letpadaung Copper Mine project in the Sagaing Region is a joint venture between Wanbao Mining, a subsidiary of North China Industries Corporation (NORINCO), a Chinese military-owned defense company, and Union of Myanmar Economic Holdings Limited (UMEHL), the largest military-owned holding company in Myanmar.<sup>29</sup> A number of investigative reports on the subject have illustrated that local government officials in the Sagaing Region had used coercive techniques to compel villagers to sign contracts, resulting in the unwilling surrender of their land.<sup>30</sup>

### Phosphorus Case

#### Facts

During a protest of the Letpadaung Copper Mine project on November 29, 2012, police allegedly used tear gas and phosphorus grenades to disperse the protestors.<sup>31</sup> It is estimated that at least 100 monks were hospitalized and 57 suffered deep burns requiring long-term medical care.<sup>32</sup>

#### Status

In response, the monks were preparing to sue the Minister of Home Affairs, Lieutenant General Ko Ko, as well as the National Police Chief, Police Major Zaw Win for compensation.<sup>33</sup> Defense lawyer U Aung Thein submitted a first information report, which the Hsalingyi Police declined to accept, claiming that no lawsuit can be brought against any officer who carried out those acts in good faith.<sup>34</sup> U Aung Thein has also sent a letter to President Thein Sein asking that a lawsuit be opened against government ministers.<sup>35</sup> He has pledged to, “push this case all the way and if [the] police don’t accept it, [he] will file [it with] the Supreme Court.”<sup>36</sup>

### Daw Khin Win Shooting

#### Facts

On December 22, 2014, a protest erupted in the Salingyi Township as workers for the Wanbao company tried to fence off farmland in preparation for an expansion of the Letpadaung Copper Mine project.<sup>37</sup> During the demonstration, police allegedly shot the 56-year-old farmer Daw Khin Win. Medical evidence indicated that she died from a gunshot



Villagers living near the Letpadaung Copper mine take part in Daw Khin Win's funeral in December 2014. | source: THE IRRAWADDY

wound to the head.<sup>38</sup> Nine Chinese workers and 11 villagers were also wounded in the clashes.<sup>39</sup>

### Status

On January 14, 2015, the Myanmar National Human Rights Commission submitted an investigative report in which they concluded that police actions in this instance violated international human rights provisions governing the right to life, liberty and security of the person.<sup>40</sup> On April 9, 2015, the Salingyi Township Court determined that Daw Khin Win's death constituted an offense warranting a murder investigation.<sup>41</sup> With the opening of the case, investigators will collect witness and law enforcement testimonies to determine whether any police personnel should be held criminally liable for the killing.<sup>42</sup> U Thein Than Oo plans to await further developments as legal proceedings move forward.<sup>43</sup>

In May 2017, the Myanmar Lawyers Network declared their will to reopen the case, after they learned that it had already been closed in 2015.<sup>44</sup>

## Land-Grabbing Cases

### Background

During the reign of the military junta, government bodies, particularly military units, were able to seize large tracts of farmland, usually without compensation.<sup>45</sup> While some of the land was used for the expansion of military bases, new government offices or infrastructure projects, much of it was used either by military units for their own commercial purposes or sold to private companies.<sup>46</sup> Today, with the influx of foreign investors, the problem of land-grabbing ensues and Myanmar's least-advantaged citizens are getting steamrolled in the process.<sup>47</sup>

### Kantbalu Township Case

#### Facts

Since 1991, the military has grabbed nearly 13,000 acres of farmland in Kantbalu Township alone, mainly for its own plantations (see, e.g., Army Sugarcane Project).<sup>48</sup> Many of the original farmers of the land remained there or returned to it after it had been seized, claiming that it had been confiscated without compensation.<sup>49</sup> In May 2014, roughly 400 farmers engaged in a communal protest in which they plowed the land that they said had been illegally seized from them in the 1990s.<sup>50</sup> Authorities have since brought cases against many of these farmers for trespassing and causing damage or loss of land.<sup>51</sup>

#### Holding

In July 2014, the Kantbalu Township Court sentenced 57 farmers to prison terms varying from three months to three years. Shortly thereafter, at least 15 prisoners were transferred from Shwe Bo Township Prison (a local prison) to serve time in remote prisons in Mandalay and Pegu divisions.<sup>52</sup> One month later, Kantbalu Township Court found an additional 173 people, whose ages ranged from 18 to 80, guilty of the same charges.<sup>53</sup>

#### Status

Defense attorney U Thein Than Oo is in the process of submitting a petition (in conjunction with the Global Justice Centre) to the United Nations, seeking help on the Kantbalu farmers' issue.<sup>54</sup>

## Religious Conflict Cases

### Background

Although Muslims<sup>55</sup> have resided in Burma for centuries — and religious discrimination certainly existed in decades past — a heightened wave of Islamophobia emerged with the disintegration of the military junta in March 2011, and it has been spreading ever since.<sup>56</sup> Critics of religious intolerance insist that the rising Buddhist nationalism and anti-Muslim rhetoric, fueled by groups such as the Buddhist monk-led radical movement 969 and the Buddhist



The nationalist monk U Thaddhama a.k.a Myanan Sayadaw holds a 969 logo at a Dhamma talk in Yangon in May 2013. | source: THE IRRAWADDY

Nationalist Association for the Protection of Race and Religion (Ma Ba Tha), are threatening the country's democratic transition.<sup>57</sup> The following four religiously oriented cases are each plagued by a lack of information and evidence, calling into question the defendants' right to a fair trial.<sup>58</sup> Moreover, some have expressed concerns that the real culprits remain at large, while innocent people have been swept up by the justice system in order to demonstrate to the public that some action is being taken.<sup>59</sup>

### Buddhist Monk Killed in Meiktila

#### Facts

A skirmish in a gold retail shop over the value of a gold hairpin incited violence between Buddhists and Muslims for a period of several days in Meiktila. During that time, at least 44 people (including 20 students and several teachers)<sup>60</sup> were massacred at an Islamic school, and approximately 13,000 homes were burned.<sup>61</sup> The victims of these crimes were overwhelmingly Muslims.<sup>62</sup> On the evening of March 20, 2013, a monk passing on a motorbike was reportedly knocked down with a sword, doused in fuel and set on fire by a group of Muslim men.<sup>63</sup> The monk later died in the hospital.<sup>64</sup>

#### Holding

On May 21, 2013 six Muslim men and one boy were convicted and sentenced to varying prison terms.<sup>65</sup> U Myat Ko Ko received life in prison for murder with an additional two years for unlawful assembly, and two years for religious disrespect.<sup>66</sup> Four defendants were convicted of abetting a murder and lesser counts, receiving 2-14 years.<sup>67</sup> The 15-year-old boy received a seven-year sentence in juvenile detention.<sup>68</sup>

### Status

Defense lawyer U Thein Than Oo claims that no concrete evidence was presented during the trial, and that the witnesses produced during the trial were not actually eyewitnesses.<sup>69</sup> He has stated that he plans to appeal the verdicts.<sup>70</sup>

## U Tun Tun Killed in Mandalay

### Facts

On June 30, Wira Thu, the leader of the 969 movement, posted on Facebook that two Muslim employers had raped their Buddhist maid, Ma Soe Soe.<sup>71</sup> Although Ma Soe Soe later confessed to being bribed to fabricate the story, within one day, the false rumors had already incited violence between Buddhists and Muslims in Mandalay.<sup>72</sup> On July 2, 2014 at around midnight, in the midst of the riots, a 36-year-old Buddhist man, U Tun Tun, was attacked by a mob of 20-30 men wielding sticks and knives.<sup>73</sup> The victim died from a knife wound to the neck.<sup>74</sup>

### Holding

On December 31, 2014, 11 Muslim men were convicted of aiding and abetting the murder, and some were convicted of carrying weapons.<sup>75</sup> Their prison sentences ranged from 10-13 years with hard labor.<sup>76</sup> Mawlawi Kham Lay, Aung Zaw Tun and Than Win were each sentenced to 12.5 years of imprisonment.<sup>77</sup> Aung Khant, Tun Tun, Thiha, Myint Oo, Naing Lin Tun, Aung Myat Oo and Ye Htet Aung each received 10-year sentences.<sup>78</sup> Zaw Htwe was sentenced to 13 years.<sup>79</sup>

### Status

U Thein Than Oo claims that at least five of the accused were wrongfully convicted based on a complete lack of evidence, and he further asserts that two of the convicted persons were not at the scene of the crime.<sup>80</sup> He expressed his intention to appeal the verdict.<sup>81</sup>

## U Soe Min Htwe Killed in Mandalay

### Facts

During the same Mandalay conflict mentioned in the U Tun Tun case above, U Soe Min Htwe, a 51-year-old Muslim man, was attacked by a Buddhist mob of approximately 40 men while on his way to the mosque in the early morning of July 2, 2014.<sup>82</sup> He died from a knife wound to the back of his head.<sup>83</sup>

### Holding

On October 15, 2014, four Buddhist men were convicted of being accomplices to the murder because they were allegedly present when it took place and encouraged it.<sup>84</sup> Nyan Htay, Kyaw Zin Htet, Zin Min Tun and Pho Zaw were each sentenced to 10 years with hard labor.<sup>85</sup>

### Status

The families of the defendants expressed an intention to submit an appeal to Mandalay Divisional Court.<sup>86</sup> The defense lawyers in this case, including U Myint Aung, U Myint Oo, U Thazin Swe, and U Khin Maung Than, have not made any statements regarding the progress of the appeals.<sup>87</sup>

## U Htin Lin Oo Case

### Facts

U Htin Lin Oo, a prominent writer and former opposition (NLD) official, was arrested in December 2014 after an excerpt of his October 23, 2014 speech at a literature event went viral.<sup>88</sup> During his speech, Htin Lin Oo criticized the use of Buddhism as a tool for discrimination and prejudice.<sup>89</sup> Specifically, he stated that, “Buddha is not Burmese, not Shan, not Karen — so if you want to be an extreme nationalist and if you love to maintain your race that much, don’t believe in Buddhism.”<sup>90</sup>

### Holding

On June 2, 2015, Chaung Oo Township Court convicted Htin Lin Oo of committing “deliberate and malicious acts intended to outrage religious feelings” under Penal Code Section 295(a), and sentenced him to two years’ imprisonment with hard labor.<sup>91</sup>

### Status

London-based Amnesty International has declared Htin Lin Oo a prisoner of conscience who should be freed immediately.<sup>92</sup> U Thein Than Oo submitted an appeal in Monywa District Court, which was rejected on June 29, 2015.<sup>93</sup> He then intended to submit another appeal to the divisional court.<sup>94</sup>

On April 16, 2016, Htin Lin Oo was released from Monywa prison in Myanmar’s Sagaing Region as part of a Presidential pardon, which saw the release of 83 prisoners.<sup>95</sup>



## Other Activities of Independent Lawyers

### Reform Advocacy

#### Constitutional Reform

The existing military-drafted constitution from 2008 is generally viewed as inconsistent with modern notions of democracy.<sup>96</sup> One of the most contested provisions of the 2008 constitution involves Article 436, which stipulates that amendments to the constitution require a supermajority of parliamentary support, exceeding 75 percent of the vote.<sup>97</sup> Since the constitution reserves a quarter of the seats in the lower house for Myanmar's military, this effectively gives the military a de facto veto over any constitutional change.<sup>98</sup> Another provision, Article 59(f), effectively bars opposition leader Aung San Suu Kyi from seeking the presidency because her sons hold British passports.<sup>99</sup> Members of the MLN have participated in a number of events including constitutional reform forums at the Australian National University, University of New South Wales, and the Australian Parliament House, to name a few.<sup>100</sup>

“When Aung San Suu Kyi delayed taking oath of office under the 2008 Constitution, she was criticized for being inflexible. Now people understand that the Constitution is a trap. It was presented as part of an interim political transition that could be changed by popular demand, but in reality it maintains the whole political system under strict military control and cannot be amended without their approval. The military is even threatening to charge those who oppose this Constitution through peaceful means as criminals! How can we progress towards the rule of law when the highest law of the land is against the interests of the people?”

— U Aung Thein, Co-founder of MLN

#### Police Reform

Members of the MLN are pushing for the transition from a highly militarized police force to a more professional and civilianized force that is observant of the rule of law, answerable to an elected government, and respected by the people.<sup>101</sup>

#### Law Drafting

##### Association Registration Law

To remove the barriers to civil society that existed under the military junta, members of the MLN strongly advocated for a re-drafting of the 1988 Associations Law.<sup>102</sup> The new Association Registration Law, which was enacted on June 25, 2014, provides voluntary registration procedures for local and international NGOs and contains no restrictions or criminal punishments.<sup>103</sup>

## Legal Aid Law

The provision of legal aid in Myanmar is not presently an obligation of the state, even if the accused is threatened with the death penalty.<sup>104</sup> Although members of the MLN currently provide free legal assistance to the underprivileged community and other vulnerable groups in society, the existing demand for legal representation in Myanmar outweighs their capacity to take on cases.<sup>105</sup> The Legal Aid Law was passed on January 18, 2016 by Pyidaungsu Hluttaw under the Law No. 10/2016.<sup>106</sup>

## National Land Use Policy

Laws affecting land in Burma are also poorly harmonized, as legislation is typically sector-specific and does not take into account other relevant and preexisting acts.<sup>107</sup> One survey of the legal framework found that in 2009 at least 73 active laws, amendments, orders, and regulations had a direct or indirect bearing on housing, land, and property rights.<sup>108</sup> Farmers, ethnic minority groups and their advocates are concerned that the new National Land Law, which is intended to “harmonize” existing legislation, will not remedy ongoing land confiscation issues.<sup>109</sup> In January 2016 the government adopted a reviewed National Land Use Policy, which included the recognition of customary land management practices.<sup>110</sup>

## Legal Advocacy Training in Mandalay

Legal advocacy training has been running every weekend in Mandalay for the past two years.<sup>111</sup> During these sessions, senior members of the MLN conduct mock trials, and lecture on doctrinal topics including evidence, civil procedure, and criminal procedure, among others.<sup>112</sup>

## Myanmar Media Lawyers’ Network

The Myanmar Media Lawyers’ Network (MMLN) was established on April 1, 2015 in response to a surge of lawsuits filed against members of the media with the goal of promoting and defending freedom of expression.<sup>113</sup> Since its founding, the MMLN has held trainings that focus on issues of particular importance to Myanmar’s democratic transition, such as regulation of print and broadcast media and criminal content restrictions.<sup>114</sup> Recent estimates indicate that there are 80 members. The First Chair of the MMLN is U Aung Soe and its General Secretary is U Ko Than Zaw Aung.<sup>115</sup>

## Collective Efforts by the Myanmar Lawyers' Network

### Reduction of Court Fees

Court fees in Myanmar were notoriously high, making it difficult, for instance, for low-income farmers to file suit in land-grab cases.<sup>116</sup> Through its efforts, the MLN was able to reduce court fees by 65%.<sup>117</sup>

### Privatization of the High Court Building

#### Facts

The Pansodan colonial building, which was built in 1911, housed the country's highest court until the capital was moved to Nay Pyi Taw in 2005.<sup>118</sup> Part of the building has been converted to condominiums, and the Myanmar Investment Commission awarded a tender to the Tun Foundation Bank to turn the remainder of the building into a museum and restaurant.<sup>119</sup>

The MLN filed suit against the Myanmar Investment Commission, claiming that the private development of this structure violates national heritage and conservation laws.<sup>120</sup> They specifically referenced that under Protection and Preservation of Cultural Heritage Regions Law Section 20, anyone found to have destroyed or "willfully" altered the original form and structure of a heritage site faces one to seven years in prison.<sup>121</sup>

#### Status

U Thein Tun, who is the majority investor in Myanmar Consolidated Media, decided to postpone the project based on the opposition from the MLN.<sup>122</sup> Although Tun Foundation Bank won the tender, they did not sign a contract for the project.<sup>123</sup> It is possible that the Myanmar Investment Commission may still accept alternative project proposals in the future.<sup>124</sup>

### Privatization of the Small Claims Court Building

#### Facts

The Strand Road colonial building, formerly the Police Commissioner's Office, was leased to a private developer, Flying Tiger Engineering, in 2012.<sup>125</sup> Switzerland's Kempinski Group, a Thai investor, and a Burmese conglomerate have since joined the project, and together they planned to open a 229-room hotel under the brand name Kempinski Yangon<sup>126</sup>, although work was still delayed in 2016.<sup>127</sup>

#### Status

The MLN attempted to sue the Yangon region Chief Minister, U Myint Swe, former Myanmar Investment Commission head U Zeyar Aung, Flying Tiger Engineering Co. Ltd., and Prime Residence Co. Ltd. under Section 42 of the Specific Relief Act in November 2013 and again in December 2014.<sup>128</sup> Thus far, the judicial authorities have rejected the lawsuit.<sup>129</sup>

The MLN has recently expressed plans to submit a writ of *certiorari* to the High Court concerning this issue.<sup>130</sup>

## Student Protests

A group of prominent lawyers, MLN senior members, represented the students who were arrested during the March 10, 2015 crackdown (more about the case on page 7).

## Burma Center Prague / CEELI Institute Project Activities

### Building Legal Skills and Capacity

Burma Center Prague and the CEELI Institute teamed up in 2013 to conduct both legal and organizational training to support the Myanmar Lawyers' Network.

The need for trainings and education in Myanmar is vast. With support from the Czech Ministry of Foreign Affairs (Transition Promotion Program), the CEELI Institute and Burma Center Prague are assisting the Myanmar Lawyers' Network through a series of training and program development efforts.

Since 2013, CEELI and Burma Center Prague have delivered several series of legal trainings in 11 towns of Myanmar (Yangon, Mandalay, Taunggyi, Patheingyi, Mawlamyine, Myittha, Myittha, Dawei, Sittwe, Loikaw, Pyaw, Pyaw), primarily designed to provide practical skills development on matters such as case development and organization, use of relevant legal materials in support of legal arguments, and basic advocacy skills. CEELI and Burma Center Prague also carried out a special program to mentor a small cadre of dedicated trainers, helping to prepare talented young lawyers to act as trainers in their own communities. Special efforts are made to include participants from the ethnic and rural regions of Burma, where lawyers traditionally have little opportunity for training or peer development, despite having to bravely persevere under the most challenging conditions.

These workshops with the Myanmar Lawyers' Network provide an opportunity for the participants to engage with international and local colleagues to discuss the unique role lawyers can play in advancing human rights and rule of law. Participants discuss lessons learned from other countries that have undergone similar transitions and how to conduct targeted advocacy and outreach to educate communities on their rights.



CEELI Institute and BCP conduct a training workshop in Myanmar. | source: CEELI INSTITUTE

## Transformation Experience Sharing

As a complementary activity to legal skills trainings, Burma Center Prague and the CEELI Institute have conducted debates about the rule of law and Central and Eastern European transformation experience for Myanmar lawyers' better understanding of political transformation, legislative change, and the role of lawyers in the process.

Apart from these debates, since November 2016 Burma Center Prague and CEELI have also organized several roundtable discussions on legislative reform for the members of Myanmar national parliament and the members of the Myanmar Lawyers' Network in Nay Pyi Taw and Yangon. The roundtable discussions aim to promote better cooperation of lawmakers and legal professionals to reform repressive laws into democratic ones.



Roundtable discussion on legislative reform. | source: BURMA CENTER PRAGUE

## Recommendations

Based on our experience in past years supporting independent lawyers and working with the Myanmar Lawyers' Network, we recommend focusing future support on the following topics:

- The success of Myanmar's transformation towards a state of law largely depends on the work of legal practitioners "on the ground" who demand that legal standards be met and who intermediate the notion of a state of law to the people. Therefore, these independent lawyers will continue to need strong support to do their work efficiently, competently, and without obstructions from the authorities.
- Main focuses for future support are the increasing of capacity, particularly of practical skills, networking with colleagues, lawmakers and media, and the improvement of working conditions.
- Due to the nature of Myanmar's infrastructure, which prioritizes urban areas, and rigid structures in many existing organizations, independent lawyers in smaller towns and inaccessible regions need special attention.
- Legal reform, a process of examining existing laws, and advocating and implementing changes in a legal system, usually with the aim of enhancing justice or efficiency, is crucial in the current transformation of Myanmar. Lawmakers, with the support of other legal experts, can efficiently speed up the process.

## Implementing Project Partners

### Burma Center Prague

Burma Center Prague is a non-governmental and non-profit organization run by Burmese living in the Czech Republic and by other supporters of Burma (Myanmar). The organization was founded and registered under Czech law in 2006.

The mission of Burma Center Prague is to contribute to the democratization of Burma and the respect for human rights. It seeks to improve the lives of people in Burma and Burmese in exile by analyzing the situation in Burma and by informing and involving the European public; by serving as a bridge between Europe and Burma; by providing needed services for Burmese, in particular capacity building and facilitating the integration of refugees; and by supporting the empowerment and active participation of Burmese for the transition of Burma.



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[www.burma-center.org](http://www.burma-center.org)

### CEELI Institute

The CEELI Institute is an independent, not-for-profit, international provider of post-graduate, professional legal education headquartered in Prague, Czech Republic. The mission of CEELI is to develop and train an international network of legal professionals committed to the rule of law.

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Through innovative training programs and other activities, CEELI works with judges, lawyers, civil society, government officials, and other professionals in countries building laws-based societies to support fair, transparent, and effective judicial systems, strengthen democratic institutions, build respect for human rights, and promote the continuing development of market economies.

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