



# Legal Aid Network

ဥပဒေ အထောက်အကူပြုကွန်ရက်

Email:- [legalaidnetwork@gmail.com](mailto:legalaidnetwork@gmail.com)

/website:- [legalaidnetwork.org](http://legalaidnetwork.org)

## National Report on the Status of Legal Aid in Burma (Myanmar)

Presented by

Aung Htoo (Human Rights Lawyer)  
Founder of LAN



Copy Right ( မူပိုင် )

















## Recommendations of the UN Fact Finding Mission

- ***The Security Council should ensure accountability for crimes under international law committed in Myanmar,***
- ***preferably by referring the situation to the International Criminal Court or***
- ***alternatively by creating an ad hoc international criminal tribunal.***
- 安全理事會應依據緬甸締結的國際法問責，
- 建議轉介國際刑事法院，
- 或成立專門特設刑事法庭審理。
- 安理會

. **The list includes the names of alleged direct perpetrators**

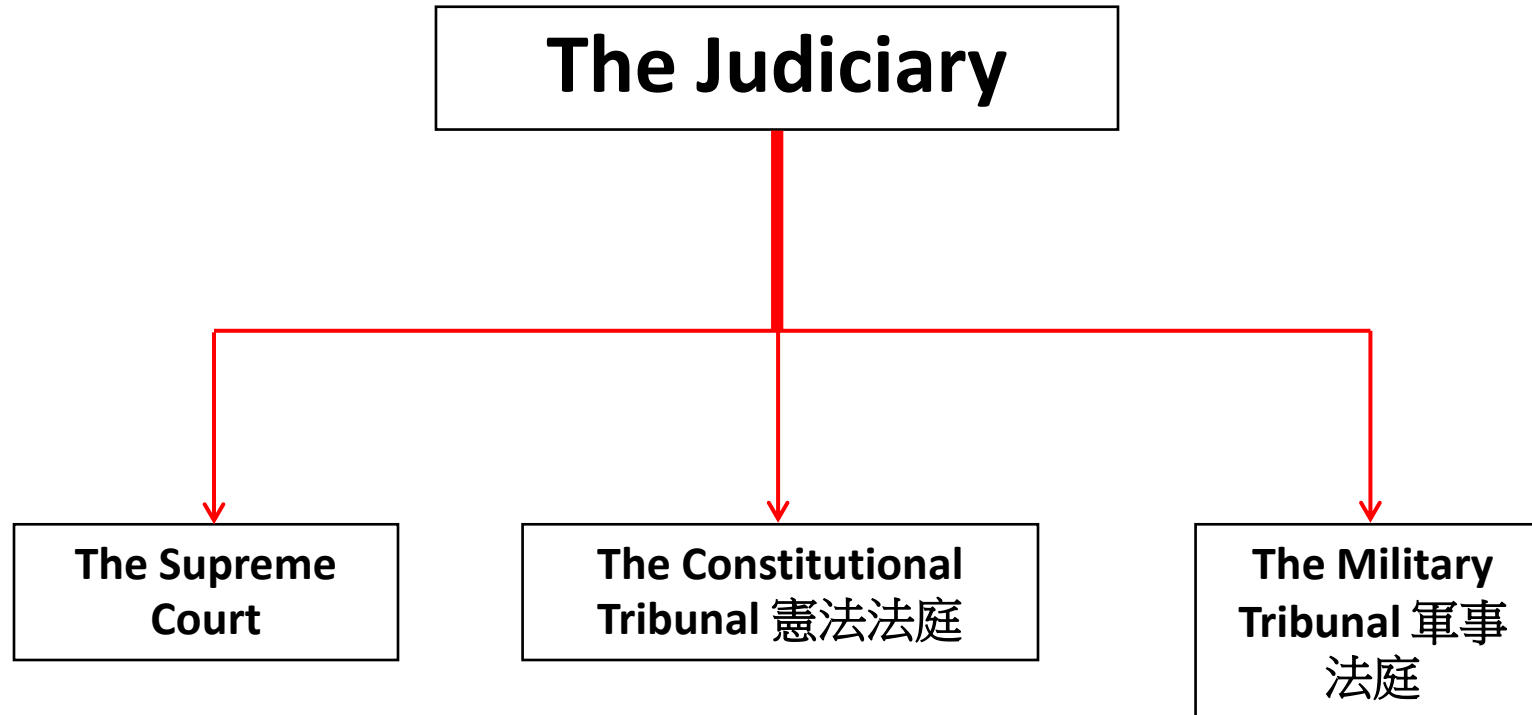
- *Army Commander-in-Chief, Senior-General Min Aung Hlaing;*
- *Deputy Commander-in-Chief, Vice Senior-General Soe Win;*
- *Commander, Bureau of Special Operations-3, Lieutenant-General Aung Kyaw Zaw;*
- *Commander, Western Regional Military Command, Major-General Maung Maung Soe;*
- *Commander, 33<sup>rd</sup> Light Infantry Division, Brigadier-General Aung Aung;*
- *Commander, 99<sup>th</sup> Light Infantry Division, Brigadier-General Than Oo.*
- 副總司令 Soe Win 副大將;
- 柁 第三特別行動局指揮官 Aung Kyaw Zaw 中將;
- 柁 西部司令部指揮官 Maung Maung Soe 少將;
- 柁 第 33 輕步兵師指揮官 Aung Aung 準將;
- 柁 第 99 輕步兵師指揮官 Than Oo 準將。

**(C) The 2008 Constitution of Burma : the Supreme Law of the Land**

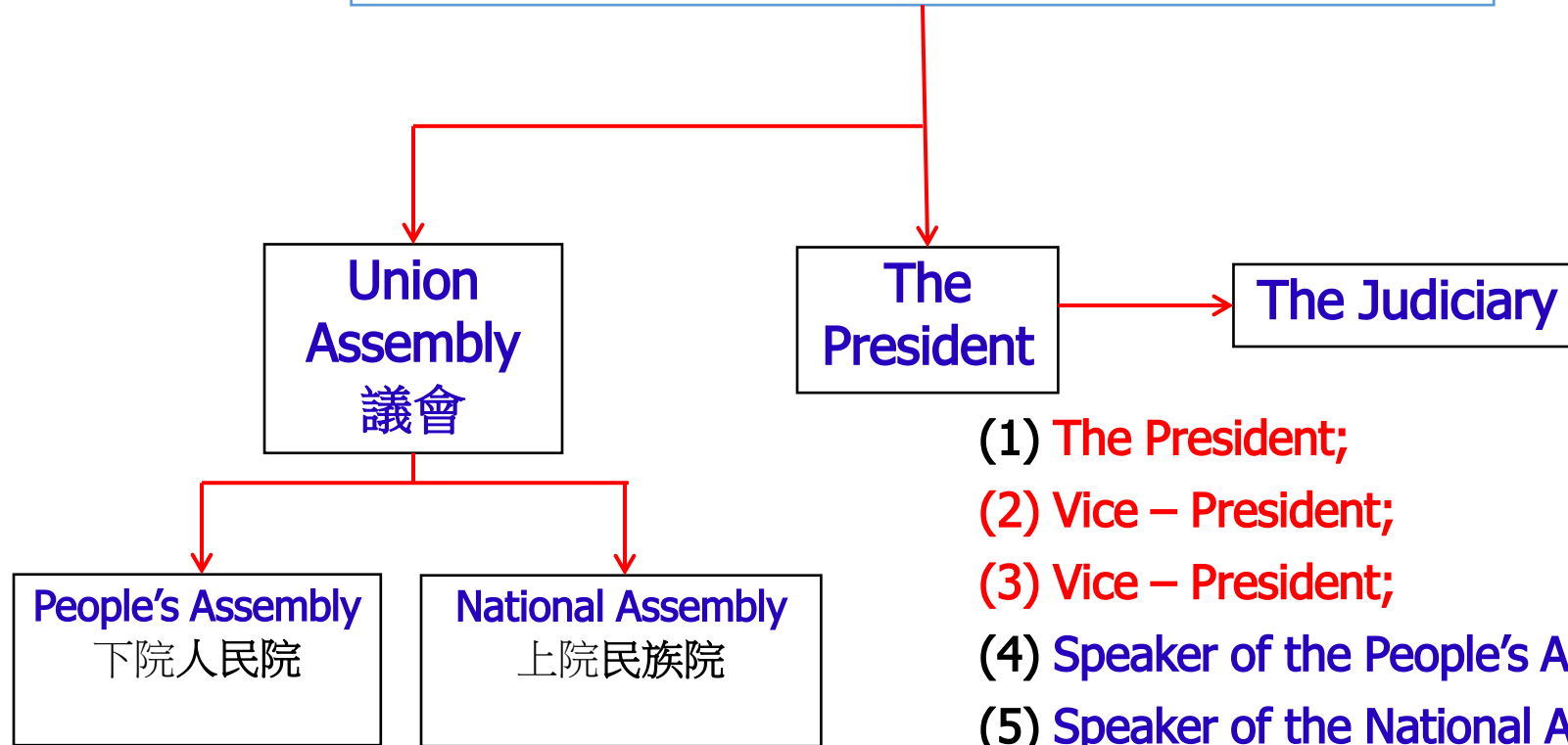
**Impunity Provision**

**Section 445:** No prosecution shall be instituted against the SLORC and SPDC or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties.

# 2008 Constitution



# National Defence and Security Council



- (1) The President;
- (2) Vice – President;
- (3) Vice – President;
- (4) Speaker of the People's Assembly;
- (5) Speaker of the National Assembly;
- (6) Commander - in – Chief;
- (7) Deputy Commander – in – Chief;
- (8) Minister for Defence;
- (9) Minister for Foreign Affairs;
- (10) Minister for Home Affairs;
- (11) Minister for Border Affairs;

Legal aid will not be sufficient only if our contribution focus solely on the court cases, albeit the practice of Fair Trial concept. It is because of the following factors:

- Feeling of fear prevail in the mentality of citizens;
- Legal aid lawyers, who attempted to defend the rights of victims, win in very few cases;
- The military perpetrators who committed heinous crimes against civilians can never be tried by civilian courts 公民法庭, but only by their military tribunals;
- The civilian courts themselves are not independent nor are they impartial or effective.

# A Brief Analysis of Legal Aid Law (2016)

- All main regulations are decided on the central level by the Union Legal Aid Body 聯邦法律扶助機構 formed by the Supreme Court, in consultation with the Union government;
- State controlled legal aid system is against the UN Principles which merely suggests the involvement of States in a wide range of stakeholders as legal aid service providers;
- The major types of heinous 殘暴 crimes – war crimes, crimes against humanity and genocide – are not stipulated in the law;
- To provide legal aid to women and children, no specific provisions are found;
- The right to seek fund from the international community and local donors is to be enjoyed merely by the Union Legal Aid Body.

Our LAN's legal service targets indigenous peoples, refugee/IDPs and stateless persons, and women.

Because indigenous peoples or ethnic nationalities in Burma cannot enjoy their right to self-determination since the time of independence of Burma, 1948, civil war has been waging on.

Due to negative result of civil war, the refugee/IDPs and stateless persons have come into existence, and women, particularly ethnic women, have become victims of heinous crimes and of economic atrocities in Burma.



We work on **the remaining scope of legal aid service** rather than legal representation in the Court which is subservient to the Myanmar military rulers and government authorities.

**We focus on the judicial reform** aiming to the emergence of independent, impartial and efficient Judiciary, not only in the Union level but also in the Ethnic States.

## Legal education:

We commonly provide legal trainings and also nurture ethnic youths who are qualified legally to a certain extent.

To this end, we found a small law school, known as Federal Law Academy, established in Mai Ja Yang, Kachin State, Burma.

Federal Law Academy

ဧကန်ရေလံဥပဒေအကယ်ဒမီ

Mai Ja Yang



Copy Right ( မူပိုင် )



Peace Justice Liberty Development  
**FEDERAL LAW ACADEMY**  
တပ်မတော်အထူးတန်းကျောင်း



We also printed some of our **analysis papers in Burmese** and distributed in some major towns and Ethnic States.

In addition, we produced **weekly television programs with the title, 'Federalism to Human Rights'**, broadcast by the television program of the Democratic Voice of Burma, which has access to over one million watchers.

Last but not least is that we also produce **video programs analyzing the contentious issues** in the country from legal aspect and distribute them by using online technologies.

## War Crime Evidence Collection Group

Legal information collection: We have already form a team, comprising with our legal staff, War Crime Evidence Collection Group (WCECG). In our Federal Law Academy, legal information collection constitutes one of the subjects that the law students must learn.

## Trainings

In addition, on request, we also provide trainings to CSOs, particularly women organizations.

## Providing legal advice:

- (1) Upon request, we **provide legal advice** to individuals and organizations; regularly produce legal analysis statements;
- (2) We select the thematic issues vis-a-vis human rights, the Rule of Law and federalism; **do legal analysis and research, produce legal analysis papers, and create legal debates** thereby leading to structural change of society;
- (3) We provide legal advice to some international organizations, including the **UN International Independent Fact Finding Mission.**  
聯合國獨立國際真相調查小組
- (4) In its aforementioned report, many of our legal advice were reflected.

## Advocacy: We do advocacy in five ways:

- (1) Invoking our legal information, legal analysis statements and legal analysis papers, **we discuss with the organizations which constitute a part of our Networking**;
- (2) We send **our delegation to Yangon**;
- (3) Based on **our Resource Hub**, established in Chiang Mai, Thailand, we regularly receive guest from national and international organizations and explain them our principles on the rule of law;
- (4) We attempt to convince leaders of many ethnic political forces so that they **reform their Judiciaries** to become independent, impartial and efficient, by applying international norms of fair trial, while focusing on procedural justice, with the underpinning of the Rule of Law;
- (4) Whenever we get opportunities to **cooperate with any part of the international community** – for example, joining efforts of Forum Asia, Global Justice Centre, Open Society’s Justice Initiative, Legal Aid Foundation of Taiwan etc.
- 我們利用收集到的法律資訊、編寫的法律分析聲明及法律分析文件，設法與我們網路下的分支組織進行討論;
- (2) LAN 派遣代表團前往緬甸舊首都仰光進行倡議。
- (3) 本組織以位在泰國清邁的資源中心為基地，定期接待國內外組織的來訪人員，就國內重大議題，闡述本組織的宗旨、目標、因應策略及政策;
- 4
- 5每當 LAN 有機會與國際社群接觸 (例如投入台灣法扶基金會的合作或參與國際法律扶助論壇)，我們都致力遊說國際法學界及人權領域社群，闡述 LAN 的策略、計畫和政策。



Law Reform: It is one of our instrumental tasks. We implement it as follows:

- (1) We recommend **the abrogation of the incumbent Constitution;**
  - (2) We facilitate **the emergence of a new federal democratic Constitution** along with the Constitutions of the constituent Units of the Union, in terms of Ethnic States/Provinces;
  - (3) We also provide support **drawing up of the Land Law (draft) and of Protection of Violence against Women Law.**
  - (4) We encourage the application of norms of the international human rights laws, humanitarian law, and international conventions to which Burma has been a party.
- (1) 本組織建議廢除 2008 年通過的現行《憲法》，
  - (2) 就民族邦而言，LAN 致力推動新的聯邦民主憲法以及下屬各地區的憲法。
  - (3) 協助草擬《土地法》(草案)，支援《婦女暴力防治法》。
  - (4) 倡導國家法律應落實國際人權法、人道主義法的準則，以及緬甸身為締約國的國際公約規範。



## National Report on the Status of Legal Aid in Burma/Myanmar

### Introduction

This National Report is developed in two parts. First some specific background information is introduced, and only in the second part the questions common to all countries are answered. The reasons for this reporting structure stem from the situation of Burma and LAN's particular features. An equitable access to justice and fair trial are far to be achieved in the country and thus a general description of the current situation is necessary.

LAN's activities are all concentrated around legal counselling, education, analysis, training, and advocacy to develop the country's legal culture and the emergence of independent, impartial and efficient Judiciary, which is the cornerstone of the Rule of Law. Its operations are concentrated in some major Ethnic States of the country and thus LAN is not providing representation services for both victims or suspects in the courts of Burma.

### Background Information

As an overall, in Burma genuine democratic state institutions haven't emerged yet. The transition from a military regime to an actual democracy is flawed by the inaction of the present government primarily formed by the National League for Democracy, headed by Aung San Suu Kyi. Notwithstanding occupying seats in the legislative body for six years and position of the government in her three years, it hasn't achieved any substantial progress in fields such as the rule of law, the judicial reform, the rectification of the criminal justice system, and the implementation of human rights and humanitarian law.

Actually the current government's policies are allowing a worrying regression in the field of civil and human rights, clearly demonstrated by the humanitarian crisis related to the Rohingya people, and the non- existence of any form of rule of law and continuous violations of human rights and the most basic principles of humanitarian law in the ethnic minority areas. In addition, the protracted impunity of perpetrators of major crimes, corruption and lack of efficiency and efficacy of courts, together with the instrumental abuse of justice, has become more evident than ever. For some details, it is worthy to be observed in the preliminary report of the UN Independent International Fact Finding Mission<sup>1</sup> issued on August 24, 2018.

---

<sup>1</sup> For some details, the preliminary report of UN Independent International Fact Finding Mission for Myanmar, issued on August 24, 2018 is worthy to be observed:

<https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>

The Mission made the strongest and most powerful recommendation in its report as follows:

*(a) The Security Council should ensure accountability for crimes under international law committed in Myanmar, preferably by referring the situation to the International Criminal Court or alternatively by creating an ad hoc international criminal tribunal. Further, the Security Council should adopt targeted individual sanctions, including travel bans and asset freezes, against those who appear most responsible for serious crimes under international law. It should also impose an arms embargo on Myanmar;*

*1. The Mission has drawn up a non-exhaustive list of alleged perpetrators of crimes under international law, indicating priority subjects for investigation and prosecution. The list includes the names of alleged direct perpetrators, but focuses on those exercising effective control over them. In relation to the recent events in Rakhine State, this includes the Tatmadaw Commander-in-Chief, Senior-General Min Aung Hlaing, as well as:*

- Deputy Commander-in-Chief, Vice Senior-General Soe Win;*
- Commander, Bureau of Special Operations-3, Lieutenant-General Aung Kyaw Zaw;*
- Commander, Western Regional Military Command, Major-General Maung Maung Soe;*
- Commander, 33<sup>rd</sup> Light Infantry Division, Brigadier-General Aung Aung;*
- Commander, 99<sup>th</sup> Light Infantry Division, Brigadier-General Than Oo.*

*The full list will form part of the Mission's archives, kept in the custody of the High Commissioner for Human Rights, and can be shared with any competent and credible body pursuing accountability in line with recognised international norms and standards.*

In regard to the status of the incumbent government, led by Aung San Suu Kyi, the Mission also highlighted in Para 93 of its report as follows:

*The constitutional powers of the civilian authorities afford little scope for controlling the actions of the Tatmadaw. Nor is there any indication that they directly participated in planning or implementing security operations or were part of the command structure. Nevertheless, nothing indicates that civilian authorities used their limited powers to influence the situation in Rakhine State where crimes were being perpetrated. The State Counsellor, Daw Aung San Suu Kyi, has not used her de facto position as Head of Government, nor her moral authority, to stem or prevent the unfolding events, or seek alternative avenues to meet a responsibility to protect the civilian population. On the contrary, the civilian authorities have spread false narratives; denied the Tatmadaw's wrongdoing; blocked independent investigations, including of the Fact-Finding Mission; and overseen destruction of evidence. Through their acts and omissions, the civilian authorities have contributed to the commission of atrocity crimes.*

It is primarily because the authentic power of State is not in the hand of democratically elected NLD government, led by Aung San Suu Ky, but because it is assumed by the Myanmar military leaders, headed by Min Aung Hlaing, Commander-in-Chief of the Armed Forces, under the 2008 Constitution, in which the rule of military dictatorship is entrenched, and its legal framework which denies not only individual rights and freedoms but also collective rights of ethnic nationalities. In accordance with the 2008 Constitution, the Army delegates selected and sent by Min Aung Hlaing constitutes one fourth of a total number of members of legislative bodies in both

Union levels and State or provincial levels. The National Defence and Security Council – in which Myanmar Army leaders constitute majority numbers permanently – is instituted in the Chapter of Executive, and it evidently influences the major functions of State, in terms of legislative, executive and judicial powers. Worst is that the existence and operation of separate military tribunals, which are independent from the supervision of civilian Supreme Court, are granted under the 2008 Constitution, thereby enabling the Myanmar Army to become the strongest institution in the entire country.

Due to particular situation of Burma – about 70 years long civil war has been waging on since the time from the independence of the country, 1948 – human rights violations primarily against the ethnic nationalities in their own Ethnic States evidently committed by Myanmar Army have remained unabated. In this regards, the following extracted part from the “End of Mission Statement by the UN Special Rapporteur, Mrs. Yanghee Lee, on the situation of human rights in Myanmar issued in Seoul, 1 February 2018” is also worthy to be observed.

*First: belonging – the people I met all gave me the distinct sense that they are dislocated from where they belong. Myanmar is their home; it is where their parents and grandparents were born; where they built their homes, and farmed their land. Yet they have been displaced – in many cases for years, even generations – left living in camps with little or no access to basic rights – the rights to livelihood, education, and health. Even for those who were treated as aliens when they were in Myanmar, it is still where they belong and where they long to return. Sadly, the conditions are such that they do not know what to expect if they return, or are forced to do so—many even fear for their lives.*

*Second: equality – a need for recognition and equal treatment. The majority of those I met are from ethnic minority groups of Myanmar. They demand not only equal rights as individuals but also recognition of parity for all ethnic groups. They are not asking for the benevolence of the government; they are insisting on equal treatment, collectively and as individuals.*

*Third: and this is the most distressing recurring theme – attacks against ethnic minorities are not a new phenomenon. The atrocities committed against the Rohingya in the aftermath of the 9 October 2016 and the 25 August 2017 attacks have been – as highlighted by the Karen National Union in its statement last year marking the two-year anniversary of the nationwide ceasefire agreement – repeatedly witnessed before, albeit not on the same scale of the recent attacks against the Rohingya. I was told repeatedly by the other ethnic groups I spoke to – be they Kachin, Karen, Karenni, or Shan – that they have suffered the same horrific violations at the hands of the Tatmadaw over several decades and – in the case of some groups – continuing today.*

Legal aid will not be sufficient only if our contribution focus solely on the court cases, albeit the practice of Fair Trail concept. It is because of the following factors, in addition to the contentious issue that the entire civilian judicial system is subservient to the successive ruling military regimes as of now:

- (1) Given that feeling of fear prevails in the mentality of citizens, the victims or their lawyers dare not sue the (*Tatmadaw*) Myanmar army perpetrators and their government officials, who allegedly committed heinous crimes, in the national courts. Rare attempts, made by a few human rights activists, were turned down by the courts.
- (2) Although some legal aid lawyers, as defense councils, attempted to defend the rights of victims – human rights activists, democracy activists, land rights activists, media people, etc. – just very few cases win.
- (3) The military perpetrators, who committed heinous crimes – such as rape, murder, torture, looting, destruction of public properties etc. – against civilians can never be tried nor can they be convicted by any civilian court. They shall have to be indicted by their own

military tribunals, which have come into existence under the 2008 Constitution. They independently exist from the control of civilian Judiciary.

- (4) Even though some military perpetrators were provided penalties by those courts, nobody knew what actually happened after rendering the judgment for convict. Some information was received that the perpetrators – who committed such crimes under the command of their superiors – were released within a short time after the judgment.

Some parts of international community are in the process of taking actions against the Myanmar military perpetrators,<sup>2</sup> who allegedly committed war crimes, crimes against humanity, and genocide/ethnic cleansing in a way that they be indicted by the International Criminal Court or the Ad hoc International Criminal Tribunal, or sanctions are to be imposed on the Myanmar Army in one way or another. It is on one hand. On the other, the ruling regime led by Aung San Suu Kyi and Senior General Min Aung Hlaing are justifying their actions by invoking State sovereignty.

With reference to State sovereignty, the State Counsellor continued to argue, “Myanmar’s sovereignty would permit it to continue to investigate all violations of international humanitarian law.” The Myanmar Government may attempt to invoke ‘complementarity principle’<sup>3</sup> provided in the Rome Statue. It may be correct only if the following conditions are met in application of the national criminal jurisdictions:

(a) Investigation alone is not sufficient. The alleged perpetrators must be indicted and tried by the independent, impartial, and efficient tribunals, at least by establishing Hybrid Courts which apply a mix of national and international law both procedural and substantial and feature a blend of international and national elements, in particular international and national judges and staff. It is because the incumbent Courts in Burma do not meet the required competency and capacity, mentioned above, to the extent that the perpetrators who committed international crimes, violating international humanitarian law and other international criminal laws, can be heard and tried. Nor do they have any jurisdiction to adjudicate those international crimes.

(b) Seeking accountability on the perpetrators – who contravened, at least, international humanitarian law – should encompass the entire country, particularly all other Ethnic States, apart from Rakhine State. Rather, Myanmar Army Commander-in-Chief Min Aung Hlaing maliciously and incorrectly blamed the Kachin Independence Organization (KIO ) last month that despite the fact that his Myanmar soldiers evidently acted transgression of war crimes – by seriously torturing, committing gang rape and murdering – against the two young female volunteer Christian teachers from Kachin Baptist Convention in northern part of Shan State on January 19, 2015. In this regards, in addition to others, keeping silence by the State Counsellor and her government constitutes a criminal action which abets the continued commission of similar heinous crimes against innocent ethnic females in their own Ethnic States.

---

2

1. Armed Forces (Tatmadaw) Commander-in-Chief, Senior-General Min Aung Hlaing;
2. Deputy Commander-in-Chief, Vice Senior-General Soe Win;
3. Commander, Bureau of Special Operations-3, Lieutenant-General Aung Kyaw Zaw;
4. Commander, Western Regional Military Command, Major-General Maung Maung Soe;
5. Commander, 33<sup>rd</sup> Light Infantry Division, Brigadier-General Aung Aung;
6. Commander, 99<sup>th</sup> Light Infantry Division, Brigadier-General Than Oo.

<sup>3</sup> Article 1 of the Rome Statue of the International Criminal Court



## **An Analysis of Legal Aid Law 2016**

### **Introduction**

The law limits legal aid to criminal law cases. The subjects who have the right for legal aid are accused, detained, arrested, and vulnerable persons who cannot afford to pay lawyer fees, mentioning also individuals particularly disadvantaged because of their physical condition, foreigners, stateless people, and refugees. The law provides also victims and witnesses, but in the remaining parts of the law there is no definition about specific needs for protection by any category of people. Therefore, the law is apparently targeting specific underprivileged groups and communities but it lacks of any practical definition of how their rights will be protected and promoted.

The fact that the law is aimed only to people who cannot afford the expenses for criminal law proceedings is confirming the limited reach of the law itself. The main judiciary emergencies in the country, such as land rights, and the heinous crimes committed by the security forces, are not addressed in any way.

It is obvious that the law should provide means also for most contentious cases, involving the long standing practice of land requisitions for the benefit of companies owned by the so named cronies backed by the military or related to the violations of human rights and humanitarian law by the military must be addressed. Therefore, in the specific case of Burma, a definition of legal aid must include also civil law cases related to land rights, or at least try to cope with the impunity guaranteed to the military through the constitutionally defined Military Courts. This are just two examples of major issues that the law fails to address.

The law establishes a hierarchy in between bodies, all supervising and organizing legal aid activities in their territory of competency and on the immediately inferior level. So, for example, the regions and states control legal aid in their territory and supervise the township level courts and organizations. Each level has its own Legal Aid Body and all are under a kind of final supervision by the Union Legal Aid Body, which, in turn, each semester must present a report to the Parliament.

All main regulations are decided on the central level by the Union Legal Aid Body formed by the Supreme Court, in consultation with the Union government.<sup>6</sup> This well represent the extreme centralization of legal aid provision and the scarce representation and force of local institutions responsible for the implementation of the law, together with the organizations delivering services in different parts of the country.

As an overall, the law presents a worrying lack of definition. The existence of the Union Legal Aid Body, which controls the entire operation of legal aid mechanism financially,<sup>7</sup> embodies a sign of scarce engagement of the democratically elected members of the legislative body and a severe limit to the representation of local governments and the participation of the entities who are actually delivering legal aid services.

---

<sup>6</sup> Section 5 of the Legal Aid Law 2016

<sup>7</sup> Chapter 12, Sections 33 to 37 (b)

## Some Detailed Analysis

The section 2 (a) definition of ‘legal aid’:

*“Legal aid means hiring the lawyer, giving legal knowledge, tendering legal advice, giving assistance and giving information to the persons who are stipulated under such Law.”*

The said definition does not lay down any reasonable foundation for legal aid. It is quite vague when it is contrasted with the definition provided in Para 8 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice System.<sup>8</sup> It is as follows:

*8. For the purposes of the Principles and Guidelines, the term “legal aid” includes legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.*

The section 2 (c) definition of “Legal Aid Body”:

*“Legal Aid Team means Union Legal Aid Body, or Region or State Legal Aid Body, or Autonomous Region or State Legal Aid Body, or District Legal Aid Body, or Township Legal Aid Body.*

It is also against the UN Principles which provides, “The individual who provides legal aid is herein referred to as the “legal aid provider”, and the organizations that provide legal aid are referred to as the “legal aid service providers” and the first providers of legal aid are lawyers.<sup>9</sup> Accordingly, it can be realized that the individuals and organizations can provide legal aid at the fore front. Differently, Burma/Myanmar Legal Aid Law 2016 establishes **state controlled legal aid system**. The UN Principles, however, merely suggests the involvement of States in a wide range of stakeholders as legal aid service providers in the form of non- governmental organizations, community- based organizations, religious and non- religious charitable organizations, professional bodies and associations and academia.

Application of **state controlled legal aid system** is evident when the section 9 is observed. It is as follows:

*“If the organizations, which would like to conduct legal aid, apply to cooperate with in undertaking legal aid, their applications will be scrutinized in accordance with rules and regulations, and permissions will be granted.”*

Accordingly, the law is unclear whether the organizations only will be granted or not. It is contrary to the UN Principles, one of which enshrines that the first providers of legal aid are individual lawyers. In terms of application of **state controlled legal aid system** in Burma/Myanmar, what is evident is that only when applications to this end is granted, legal aid services can be provided by the organizations. In practice on the ground, many organizations, in addition to individual lawyers, are providing legal aid services without submitting applications. When the law says something which is not only unfair but also difficult to be binding in practice, enforcement power loses, and the rule of law is infringed.

---

<sup>8</sup> Hereinafter it will be referred to as the UN Principles.

<sup>9</sup> Para 9 of the UN Principles.



Supervision power is vested in the Union Legal Aid Body formed by the Chief Justice of the Union.<sup>10</sup> When the Supreme Court itself is subservient to the ruling military leaders and democratic regime, the Union Legal Aid Body lacks independence and stands only as an apparatus of the government authorities. It is contrary to the UN Principles.<sup>11</sup> The said body has the power not only for supervision upon the different level of legal aid bodies but also for laying down the implementation policy,<sup>12</sup> including, inter alia, stipulation of the regulations to be followed by the different levels of legal aid bodies.<sup>13</sup> It describes that the entire operations of all legal aid services have become under the control of the government authorities.

Another important power assumed by the Union Legal Aid Body is stipulation of the types of crimes for which legal aid services shall be provided.<sup>14</sup> The major types of heinous crimes – which have been striking almost entire society in Burma – are war crimes,<sup>15</sup> crimes against humanity and genocide<sup>16</sup>. It is undoubted that the said Body will not, or cannot, include the said three heinous crimes, in their list of types of crimes. As such, seeking justice for victims of heinous crimes is, merely a dream, but out of the framework of so-called legal aid law. Guideline 7 of the UN Principles, which highlights legal aid for victims, is death-end as far as the case of Burma is concerned.<sup>17</sup>

Especially, heinous crimes – allegedly committed by the Myanmar military leaders – against the Rohingyas minorities<sup>18</sup> should be included within the parameter of legal aid. Rohingyas have become stateless persons under the State policy, being practiced by Myanmar military leaders and the ruling democratic regime which accused the former as foreign citizens.<sup>19</sup> In addition to Rohingyas, other ethnic minorities should also enjoy effective legal aid services. However, the 2016 Legal Aid Law is keeping silent. It is against the UN Principles.<sup>20</sup>

---

<sup>10</sup> Sections 5 and 6 of the 2016 Legal Aid Law

<sup>11</sup> Para 59 of the UN Principles: To ensure the effective implementation of nationwide legal aid schemes, States should consider establishing a legal aid body or authority to provide, administer, coordinate and monitor legal aid services. Such a body should:

(a) Be free from undue political or judicial interference, be independent of the Government in decision- making related to legal aid and not be subject to the direction, control or financial intimidation of any person or authority in the performance of its functions, regardless of its administrative structure;

<sup>12</sup> Section 6 (A) of the 2016 Legal Aid Law

<sup>13</sup> Section 6 (C) of the 2016 Legal Aid Law

<sup>14</sup> Section 6 (B) of the 2016 Legal Aid Law

<sup>15</sup> Burma has been a party to Geneva Convention since 1948.

<sup>16</sup> Burma has been a party to 1948 Genocide Convention since 1956.

<sup>17</sup> Legal aid for victim is not a vocabulary in the entire text of the 2016 Legal Aid Law.

<sup>18</sup> The preliminary report of UN Independent International Fact Finding Mission for Myanmar, issued on August 24, 2018: <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>

<sup>19</sup> The ruling regime never recognizes the term ‘Rohingyas’. Instead, they use another derogatory term, “*Bengalis*” as those who migrated from Bangladesh, thereby marginalizing them to become foreign citizens.

<sup>20</sup> Para 57 of the UN Principles: In the design of their nationwide legal aid schemes, States should take into account the needs of specific groups, including but not limited to the elderly, **minorities**, persons with disabilities, the mentally ill, persons living with HIV and other severe contagious diseases, drug users, **indigenous and aboriginal people, stateless persons**, asylum seekers, **foreign citizens, refugees and internally displaced persons**, in line with guidelines 9 and 10.

Even though Burma has been a party to CEDAW and Child Rights Convention, there is no specific provisions to provide legal aid to women and children in the 2016 Legal Aid Law and it is also contrary to the UN Principles.

In light of the 2016 Legal Aid Law, even though an organization receives permission from the Region or State Legal Aid Body and become a “Recognized Body”, it cannot provide legal aid services independently, as indicated above; it must undertake relevant tasks under the supervision of State or Region or Autonomous Region Legal Aid Body.<sup>21</sup>

For the organizations, which have become “Recognized Body”, they need to resolve the financial survival issue. Unfortunately, no provision is found in the said law which authorizes seeking fund from the international community and local donors. Rather, in conformity with the said law, such opportunity is to be enjoyed merely by the Union Legal Aid Body<sup>22</sup> but not the independent legal aid organization. The said Body will also receive State Fund, through the Union Supreme Court and manage it.<sup>23</sup> Provision on establishment of a legal aid fund is not found in the said law. It is against the UN Principles.<sup>24</sup>

Until 2016 the only effective law provision on legal aid was contained in the Union Attorney General Rules 2001 Rule 79, with further definition in the Attorney of the Union Law 2010 Section 36(1). This law provides that, when an accused in a case punishable with death sentence is in poverty, he or she can submit an application to the court for get a lawyer. All interested courts must have a list of lawyers available for legal aid. The whole process is supervised and funded by the Office of the Attorney General. In the fiscal year 2014-2015 there have been 399 criminal cases which benefited from this form of legal aid<sup>25</sup>.

As reported by the media, the Board will first draw some preliminary study about: “When giving legal aid, what is the poverty level of the target people? What level of income must people have before they can avail themselves of free help?” The level will vary depending on the region or state.<sup>26</sup>

The 2016 Legal Aid Law has been operating to a certain extent, but not well. The Union Legal Aid Body, responsible for regulations, organization, coordination, and supervision, is moving its first steps. Its operations started in May 2018.

### Concluding Analysis

The right of defence is one of weakest points of Myanmar’s judiciary system. Just mentioning a very general point, the result of a recent research by the English organization Justice Base shows that “(...) in 135 cases out of 155, the defendant did not receive legal representation

---

<sup>21</sup> Sections 6 (j) and 11 (f) of the said law

<sup>22</sup> Section 34 (a) of the said law

<sup>23</sup> Section 33 and 36 of the said law

<sup>24</sup> Para 61 of the UN Principles: To this end, States could take measures:

(a) To establish a legal aid fund to finance legal aid schemes, including public defender schemes, to support legal aid provision by legal or bar associations; to support university law clinics; and to sponsor nongovernmental organizations and other organizations, including paralegal organizations, in providing legal aid services throughout the country, especially in rural and economically and socially disadvantaged areas;

<sup>25</sup> [www.rlpd.go.th/rlpdnew/images/rlpd\\_1/ppt/Legal\\_Aid\\_in\\_Myanmar.ppt](http://www.rlpd.go.th/rlpdnew/images/rlpd_1/ppt/Legal_Aid_in_Myanmar.ppt) Accessed on June 7, 2018.

<sup>26</sup> Aung Kyaw Min. Union Legal Aid Board to provide help for poor people in pilot project. Myanmar Times, May 7, 2018. <https://www.mmtimes.com/news/union-legal-aid-board-provide-help-poor-people-pilot-project.html> Accessed on June 8, 2018.

until the first day of the inquiry stage or later. This means that in 87 percent of observed cases, partner lawyers were not present during remand hearings, which determine whether the court will detain an accused during the investigation period.”<sup>27</sup> In addition, accused or arrested persons are systematically subjected by the authorities to discouragement and threats to oblige them to confess and not to ask for legal representation.<sup>28</sup> These are only some examples of the general misery of Burma’s judiciary institutions and court system.

On the national level two main international programs have a part in the promotion and practice of legal aid: the MyJustice Program and the USAID Promoting the Rule of Law Project. Both bodies participate in the implementation of the 2016 Law, since they are collaborating with the Union Legal Aid Body.

The critical point here is that the organizations who collaborate with judiciary offices and institutions are reinforcing the operations of an overall dysfunctional system. In this way the international and local organizations are giving legitimacy to the top down, repressive system maintained by the current regime, which isn’t in any way conducive for the affirmation of the rule of law, the realization of human rights and an actual change in the juridical culture of the country.

LAN has chosen not to be involved, participate or support in any way the activities of current government and institutions. Otherwise it would be impossible to maintain our independent status.

////////////////////////////////////

#### Some Answers to the Questions Raised by Legal Aid Foundation of Taiwan

Country	Population	GDP	Poverty Line & Percentage of Population in Poverty	Total No. of Practising Lawyers in the Country
Myanmar	51.4 million estimated by UNDP	63.22 billion USD World Bank 2016 74 billion USD 2018 1400 USD per capita GDP 2018 GDP growth 6.8% both in	Government of Myanmar 2015: 19.4% of population in poverty World Bank 2015: 26.1% Asian Development Bank 2015: 32.1%	About 40,000 advocates and 11,000 High Court Lawyers (Myanmar Times 2017) 9,000 licensed advocates, with 2,000 in active practice, and

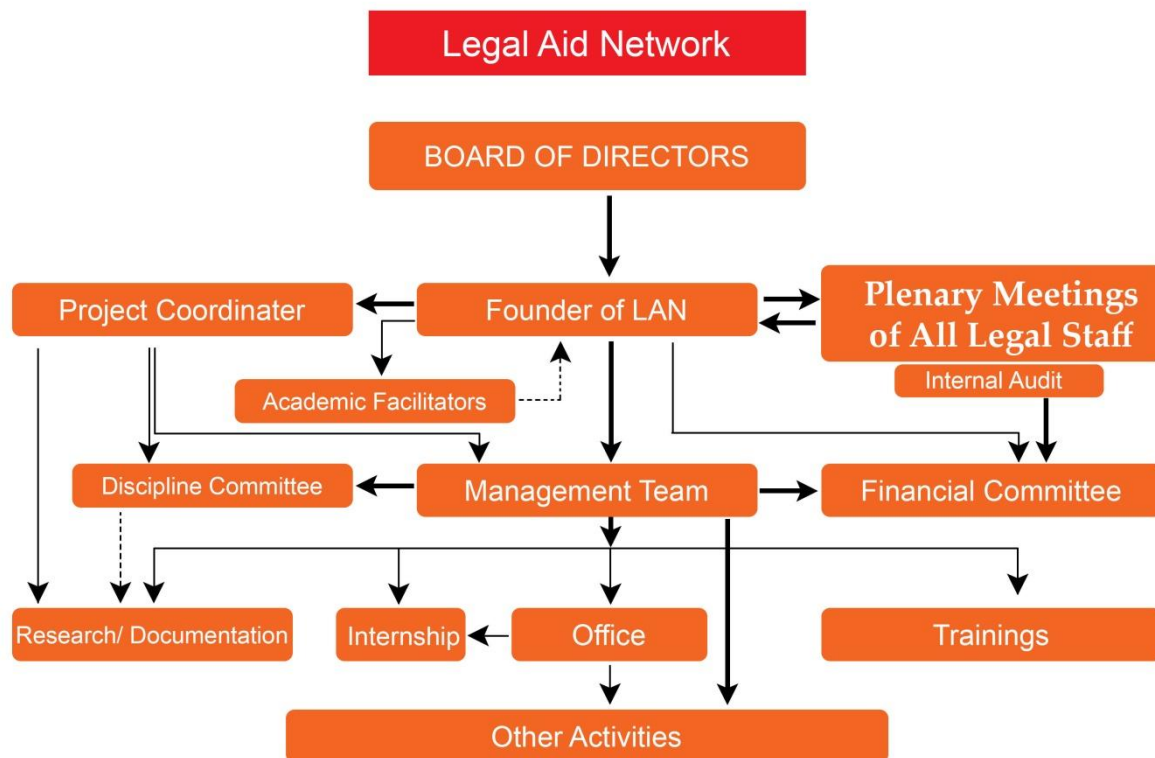
27 Justice Base. (2017) *Monitoring in Myanmar: An Analysis of Myanmar’s Compliance with Fair Trial Rights*. p.8 <http://user41342.vs.easily.co.uk/wp-content/uploads/2017/10/Justice-Base-Monitoring-in-Myanmar-An-Analysis-of-Myanmars-Compliance-with-Fair-Trial-Rights-ENG.pdf>

Available also in Burmese Language on [http://justicebase.org/?page\\_id=44](http://justicebase.org/?page_id=44) . Accessed on June 7, 2018.

28 Ibidem, p.8-9

		2017 and in 2018		40,000 licensed high grade pleaders with 15,000 in active practice (UNDP 2014)
		Estimate Asian Development Bank		

3. LAN's organizational structure is as follows:



4. (a) LAN relies on three main funding sources: Open Society Foundations, Civil Rights Defenders and Burma Relief Centre.  
 (b) No.

6. Types of legal services being provided by our Legal Aid Network (LAN) is mentioned under question 8.

**8. Has your organization (or legal aid organizations in your country) developed services targeting specific underprivileged communities or other legal issues?**

This forum is especially interested in community groups such as women, children, the elderly, indigenous peoples, migrant workers, refugees and stateless persons, social welfare/benefits issues, persons with disabilities, and the homeless, etc.

Please **select at most three fields** and elaborate on the following:

Our LAN's legal service targets indigenous peoples, refugee/IDPs and stateless persons, and women.

(a) Background reasons: why target this group/issue? Why launch this type of service?

1. indigenous peoples:

Because indigenous peoples or ethnic nationalities in Burma cannot enjoy their right to self-determination since the time of independence of Burma, 1948, civil war has been waging on. Due to negative result of civil war, the refugee/IDPs and stateless persons have come into existence, and women, particularly ethnic women, have become victims of heinous crimes and of economic atrocities in Burma.

(b) Scope of legal aid service: legal education, information, advice, representation, advocacy and law reform

Except representation, we work on the remaining scope of legal aid service. Rather than legal representation in the Court which is subservient to the Myanmar military rulers and government authorities, we focus judicial reform aiming to the emergence of independent, impartial and efficient Judiciary, not only in the Union level but also in the Ethnic States which will constitute the future Federal Union of Burma with the underpinning of the Rule of Law.

(c) Is the financial eligibility criterion for this community group the same as other legal aid applicants?

No.

(d) How do you promote this service and deliver legal education to your target community?

Legal education: We commonly provide legal trainings and also produce ethnic youths so that they can operate in legal related works, including in the civil society organizations after attending our small law school, known as Federal Law Academy, established in Mai Ja Yang, Kachin State, Burma. We also printed some of our analysis papers in Burmese and distributed in some major towns and Ethnic States. In addition, we produced weekly television programs with the title, 'Federalism to Human Rights', broadcast by the television program of the Democratic Voice of Burma, which has access to over one million watchers. Last but not least is that we also produce video programs analyzing the contentious issues in the country and distribute them by using online technologies.

Legal information collection: We have already form a team, comprising with our legal staff, War Crime Evidence Collection Group (WCECG). In our Federal Law Academy, legal information collection constitutes one of the subjects that the law students must learn. In addition, on request, we also provide trainings to CSOs, particularly women organizations.

Providing legal advice: We undertake this in four ways:

- (1) Upon request, we provide legal advice to individuals and organizations;
- (2) Having observed the underlying legal issues – taking place in Burma, many times in connection with the actions of the international communities which focus on Burma – we regularly produce legal analysis statements and provide legal advice as well as comments;
- (3) We select the thematic issues vis-a-vis human rights, the Rule of Law and federalism; do legal analysis and research, produce legal analysis papers, and create legal debates thereby leading to structural change of society;
- (4) We provide legal advice to some international organizations, including the UN International Independent Fact Finding Mission. In its aforementioned report, many of our legal advice were reflected. Forum Asia, the largest regional human rights organization, has already agreed that it will cooperate with our organization LAN for legal advocacy in Asia as well as among the UN mechanism. Our legal advice, inter alia, includes the indictment of the perpetrators who committed heinous crimes – war crimes, crimes against humanity and genocide – in Burma by the national courts which have adopted the international norms of the Universal Jurisdiction. We will also provide legal advice to other countries, which have not yet adopted that, to do so in order that seeking international justice be promoted.

Advocacy: We do advocacy in five ways:

- (1) Invoking our legal information, legal analysis statements and legal analysis papers, we discuss with the organizations which constitute a part of our Networking in one way or another;
- (2) We send our delegation to Yangon, the former capital of Burma for advocacy. They meet representatives from Embassies, CSOs, lawyers, ethnic political parties and individual human rights and democracy activists and explain the current issues invoking legal information and analysis which we have already done.
- (3) Based on our Resource Hub, established in Chiang Mai, Thailand, we regularly receive guest from national and international organizations and explain our aim, objective, strategy, and policies in connection with major issues, taking place on the ground;
- (4) In today Burma, while the Myanmar military leaders and government authorities commit

international crimes,<sup>29</sup> some Ethnic Armed Organizations (EAOs) also violate human rights to a certain extent. We explain to and encourage those organizations to solve the problems – happened between the respective organization and their people who live in their designated areas as well as among the EAOs themselves – by reforming their Judiciaries to become independent, impartial and effective, and by applying international norms of fair trial, focusing on procedural justice, with the underpinning of the Rule of Law.

(5) Whenever we get opportunities to cooperate with any part of the international community in one way or another – for example, joining efforts of Legal Aid Foundation of Taiwan and attending international legal aid forum – we exert efforts to convince international legal and human rights communities to accept our LAN’s strategy, plan and policies.

Law Reform: It is one of our instrumental tasks. We implement it as follows:

- (1) We recommend the abrogation of the incumbent of Constitution, which is adopted in the 2008, passing through the sham national referendum. Under this constitution, democracy exists only superficially while entrenching the rule of the military dictatorship; the status of Aung San Suu Kyi who was recognized as a democracy icon and human rights champion of Burma has already turned to the one who is also accountable – from the aspect of superior/command responsibility - for international crimes, committed and being committed by the Myanmar military leaders; the status of the Rule of Law has become evidently worse and termination of the civil war is still only a dream; due to lack of the Rule of Law and of stability of society which should be underpinned by the Rule of Law, economic situation of the country is currently from bad to worse. The emergence of federal principles with the underpinning of the rule of law is the main strategic objective. The access to justice is part of this strategy, but can only be achieved through the affirmation of collective rights related to self-determination and the realization of provincial sovereignty;
- (2) We facilitate the emergence of a new federal democratic Constitution along with the Constitutions of the constituent Units of the Union, in terms of Ethnic States;
- (3) We also provide support drawing up of the Land Law (draft) and of Protection of

---

<sup>29</sup> On September 6, 2018, invoking violations of human rights being suffered by the Rohingyas in Rakhine State, Burma, the Pre-trial Chamber of the ICC ruled that the ICC can exercise its jurisdiction for international crimes started occurring in Burma, which is not a party to Rome Statue, and end that crime in the Bangladesh, which is a party to the Rome Statue. This is a landmark ruling for the ICC and, it has already shaken the entire society in Burma. Reference: Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19 (3) Statue: [https://www.icc-cpi.int/CourtRecords/CR2018\\_04203.PDF](https://www.icc-cpi.int/CourtRecords/CR2018_04203.PDF)

Violence against Women Law.

(4) We encourage the application of norms of the international human rights laws, humanitarian law, international conventions to which Burma has been a party, in national laws.

(5) We initiate the formation of the Ministry of Justice, which lacks in Burma and reapplication of the Jury System.

(e) Do you collaborate with other legal or non-legal organizations/ professionals in this service? How does the collaboration work?

Already stated above.

(f) How do you provide the most effective service with limited funding?

Already stated above.

(g) Can you tell us about your service performance and outcomes?

Already stated above to some extent. If goes on details, it will be very long report.

Have you met any challenges and then adopted any solutions?

Already stated above to some extent. If goes on details, it will be very long report.

11. Already stated above to some extent. If goes on details, it will be very long report.

12. We don't know modern or not. We are using the following communication technologies:

For instance, our video lessons are also available on our website and the internet. The videos have a significant diffusion also because of the spread from one user to another. In recent years, through the diffusion of smart phones the practice to exchange video material is widely practised. The download of big video file is relatively expensive and can be difficult in remote areas. Thus it's very common that videos are copied from one device to another.

Because of the location of LAN in a remote and not easily accessible area phone and internet are essential in networking activities, education, training, and the provision of services. To communicate with legal practitioners and other contact persons in remote areas the use of Myanmar's 1<sup>st</sup> Generation 1G mobile network is essential since often this is the only way to speak with the people living in the villages affected by violations of land law, human rights and humanitarian law. Moreover, internet and social media are widely used for communications and get first-hand information about the need for legal support.

In addition, we extensively use audio and video-conferences for networking and evidence collection activities, many times by using Signal. This communication system serves also to connect our Resource Hub in Chiang Mai, a kind of branch office in Thailand, with the main office in Mai Ja Yang and legal practitioners, paralegals, victims, and witnesses inside the country. Also our legal staff sent to locations where there is a necessity for legal support is using this kind of technology.



In this way we could facilitate the interviews of victims and witnesses of humanitarian and human rights law violations in Northern Myanmar by the UN Fact Finding Mission FFM. In 2017 the members of the UN FFM were barred to enter Myanmar by the government.

Many legal aid organizations and associations don't have a website and use Facebook as a mean to get visibility and, sometimes, to contact with people requesting their services. The diffusion of internet in Burma is recent and almost completely relying on mobile networks. Because of their low knowledge of information technology IT, the users often aren't able to access services provided on the internet and use mostly Facebook for all kind of communications and information. Our LAN is applying these technologies to a noticeable extent.

13. No survey was done.

14. The ruling Myanmar military leaders are creating environment of 'Fear' by using legal and non-legal means. We are attempting to respond to it by implementing our programs, already mentioned under question 8.

15. Not yet sufficiently.

16. You may observe our answer under point 8.

**Legal Aid Network**

September 13, 2018