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Fair Trial Elements in the Implementation of the Case Management Programme in Myanmar's Courts

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ABSTRACT

Myanmar Courts seek to provide a safe and accessible environment in which all persons are able to have equal access to judicial services and to obtain information form the courts. To implement effective court procedures in judicial proceedings, a case management programme was introduced in Myanmar in 2015. The case managementprogramme aims to give clients and lawyers sufficient time to make preparations for a trial, and ensure transparency in the judicial process. Effective and efficient justice is a principal element of fair trial and effective remedies. The parties in proceedings are treated without discrimination. The Constitution of the Republic of the Union of Myanmar guarantees that every citizen has the right to a defence.The State must ensure defendants have the opportunity to mount a defence, meaning they have adequate time and facilities to prepare their defence at all stages of proceedings. The case management programme aims to trycases without delay. This also seeks to ensure justice for alland to promote public confidence in the courts and the rule of law. According to the case management programme, although examining time is limited, clients and lawyers should have sufficient time to prepare

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> necessary documents and evidence. Adequate time and facilities to prepare a defence are needed at all stages of proceedings. When hearing a case, if there is not adequate time and facilities to prepare, it will impinge on the right to effective practicing the case. Although the case management programme aims to complete cases promptly, there would be harm for being so fast of examination. In submitting relative documents, there is limited time to find out of those documents which lead to difficulties. If documents are incomplete and only those available are examined, it willnot be fair for the defendant.

Introduction

Myanmar Courts aspire to constitute a safe and user-friendly environment in which all persons are able to have equal access to judicial services and to obtain information from the courts. The Judiciary of Myanmar has made commitments in their Strategic Action Area 1 of the *Judiciary Strategic Plan* (2015-2017) to provide equal access to the courts, to guarantee impartiality, and ensure the rule of law.[4] Strategic Action Area 1states that:

> Courthouses of the High Court, District Court and Township will be modernized to stand as symbols of the integrity and the critical role that the Judiciary plays in the protection of citizen's rights and maintaining the rule of law (Supreme Court of the Union 2014).

These commitments address the important human right to be tried without unduedelay. One response is a Case Management Program (CMP)[5] which was introduced

in Myanmar in 2015[6] when the Supreme Court of the Union of Myanmar issued the *Case Management Procedure* by Notification No.646/2018. The CMP aims to settle disputes fairly and promptly, to reduce delay and increase public trust, and make court procedures efficient and effective. The ambitions of the CMP are to both improve efficiency, and to

[4] It states that "the Judicial Strategic Plan Citizens deserve a court system that works to resolve casesin fair, just, timely, and efficient manner in accordance with the law." (The Supreme Court of the Union of Myanmar, 2018).

[5] While testing in pilot courts, the term Case Flow Management System was used. Later, in 2018when it was applied nationally, it was renamed to Case Management Programme

[6] The pilot courts were set up in Hlainghayar(Yangon Region), Taungoo(Bago Region) and Pha-Antownship courts, all in 2015

increase public confidence in the courts. These objectives are detailed in the 2015-2017 Strategic Plan under the "Strategic Action Area to Strengthen Efficiency and Timeliness of Case Processing":

> The Myanmar courts work to resolve cases that come before them fairly, promptly, and efficiently. Effective case flow management makes timely administration of justice possible not only in individual cases but also across the entire justice system. Maintaining timeliness of case processing and minimizing the burden on victims, witnesses and citizens caused by inefficient court procedures is the critical factor affecting our citizen's public trust and confidence in the courts. (Supreme Court of the Union 2014).

While the objectives may appear to be more procedural or managerial, it is important to show how the CMP is directly relevant to human rights in the court system. The strategy to improve the efficiency of the court process is mainly about increasing public trust in the Myanmar courts, but also to guarantee the human right to a fair trial, including the right to adequate time and facilities to prepare a defence, as found in ICCPR Art 3 (b), and the right to hearing without undue delay, found in ICCPR Art 3 (c).[7] The right to a fair trial is fundamental to human rights, and it is expected that courts should be effective, efficient, and transparent in the fair management of the cases brought before them. While not all elements of a fair trial rely on timely proceedings, many are related. It is essential in a democracy thatthe judiciary as a whole is impartial and independent of all external influence. But there are continuing problems of judicial independence in Myanmar. One way in which the judiciary can influence a case is by allowing delays which may be caused by direct or indirect improper influences, inducements, pressures, or threats. Ensuring a timely trial will reduce some of these problems of impartiality.

[7] While Myanmar has not ratified ICCPR and is thus not legally bound to this, these standards arefound in the CRC (Art 40), and may be interpreted under right to a fair trial in the UDHR.

Currently Myanmar has 397 courts across the entire country, all of which are planned to implement the CMP. In 2016, the programme was expanded from its initial implementation in three Township Courts in Hlainghayar, Taungoo and Pha-An(Thet 2017), to five additional courts namely: Monywa district court, Mawlamyine district court, Pathein township court and Chanayethazan township court and Magway township court. The CMP is intended to give clients and lawyers sufficient time to make preparations for trial and ensure transparency in the judicial process byrequiring the court to ensure schedules are kept according to the *Judicial Strategic Plan,* described as:

> Case Management is the arrangement carried out by the court in collaboration with parties involved in the case in order to continuously supervise with technical assistance in conducting timely disposition as perthe time standards for either criminal or civil cases in accordance with the Trial Procedure. (Paragraph 2 (a) of the Notification No.646/2018 of the Supreme Court of the Union of Myanmar).

These schedules include improving clearance rates from 91% for civil cases and 97% for criminal cases to 100%;[8] the fraction of cases lasting over one or two years (currently 7.2% of criminal and 19.7% of civil cases lasting over a year, butonly 0.3% and 1.3% respectively go over 2 years). The aim is to reduce to 5% within 3 years the fraction of cases taking more than one year. Another performanceindicator is that the ratio of postponements to hearings scheduled, which was 25%for civil and 40% for criminal cases, is to be brought down to 10% and 20% respectively within 3 years. These improvements are to be brought about by the CMP. This research seeks to determine if the CMP has had an impact on the right toa fair trial in Myanmar. It will ask two questions: Firstly, has the CMP strengthened access to a fair trial and access to justice in Myanmar? Secondly, does the CMP ensure effective adjudication?

[8] The clearance ratio is the ratio of cases filed to disposed cases in a year.

Case Management Procedures

In Myanmar there are three major procedural laws relating to case trial: the Civil Procedure Code (The Code of Civil Procedure [India Act V, 1908], 1909), the Criminal Procedure Code (The Code of Criminal Procedure Code [India Act V, 1898], 1989) and the Evidence Act (The Evidence Act [India Act 1, 1872], 1872). The CMP is concerned only with the first instance trial in criminal and civil cases. The process is not used in the appeals or supreme courts. In the procedure, cases are assigned one of three different case tracks and time standards: Quick Action Need Case (90 days for Criminal and 270 days for Civil Cases), Standard Simple Case (180 days for Criminal and 365 days for Civil Cases), and Complex case (270 days for Criminal and 540 days for Civil Cases).[9] There is no standard explanation given for case assignments as Quick Action Need, Standard Simple, or Complex, althoughit appears this is generally decided by the parties in an initial Case Management Conference. The CMP has three phases: initial phase, hearing phase and the judgment. This is summarized in a table in the Case Management Procedure:

Criminal Case

Type of Cases	**Time schedule**		
Quick Action NeedCase	90 days		
	CMP meeting & Final Pre-trial Conference (25) days	Hearing & Final Argument (55) days	Judgment (10) days

[9] It should also be noted that there are other activities of the CMP not discusses here, such as eachcourt having an intake counter and information centre for people to use as a source of information. There are also pamphlets and signboards so that the public will able to understand how to initiate a case.

Type of Cases	**Time schedule**		
Standard Simple Case	**180 days**		
	CMP meeting & Final Pre-trial Conference (50) days	Hearing & Final Argument (110) days	Judgment (20) days
Complex Case	270 days		
	CMP meeting & Final Pre-trial Conference (75) days	Hearing & Final Argument (165) days	Judgment 320) days

Civil Case

Type of Cases	**Time schedule**		
Quick Action NeedCase	270 days		
	CMP meeting & Pre-trial Conference (90) days	Hearing & Final Pre-Trial Conference & Final Argument (160) days	Judgment (20) days

Type of Cases	**Time schedule**		
Standard Simple Case	**365 days**		
	CMP meeting & Pre-Trial Conference (120) days	Hearing & Final Pre-Trial Conference & Final Argument (215) days	Judgment (30) days
Complex Case	540 days		
	CMP Management Conference & Pre-Trial Conference (180) days	Hearing, the filing of answer, the conduct of final pre-trial conference, the hearing of plaintiff litigant and witnesses @ hearing of final argument (330) days	Judgment (30) days

(Union Supreme Court, Republic of the Union of Myanmar, 2018)

Before the case is started, a number of meetings should be held between the parties. The process is detailed in Notification No. (649/ 2018) 1380 from the Supreme Court (Union Supreme Court, Republic of the Union of Myanmar, 2018). The first step is the Case Management Conference, a meeting with both parties, including

the lawyers and clients of both sides, the judge and clerk.This is to designate the case track and time, to set the date for submission of evidence and final witness lists, and to estimate the time needed for trial. Thesecond step is the Pre-trial Conference, again a meeting with both parties conductedbefore the verdict is issued in order to record the claims, to confirm with both partiesif they are ready for the Pre-trial Conference, and to set the date for the submissionof issues. The third step is the Final Pre-trial Conference to record presentationsfrom plaintiffs and defendants, to ensure all records, documents and evidence are verified and completed, and to set the date and time for hearing witnesses. The purpose of the CMP is to ensure that clients and lawyers have sufficient time to prepare their case, that parties to the case are in effective communication, and that the court gains the trust of the public through its transparency. According to the case schedule the court user will receive a notice on the schedule including a notification of the preparatory checklist of witnesses, dates, and other information in the first stage (Union Supreme Court, Republic of the Union of Myanmar, 2018). The intention is that the court user has enough time for preparation of the case. It should also be considered that the strict time limit may affect the right to a defence because if time is insufficient to adequately prepare a defence it will impingeon this right.

In terms of time management, there are two areas where delays tend to occur and which the CMP is intended to speed up. These are in the presentation of documents and the cross examination of witnesses. Looking at these in turn, one of the more crucial rights is that every party to a suit has the right to know the nature of the opponent's case before the hearing of the suit so they can better prepare their case, acknowledging that clients need sufficient time to present sound evidence in their case. Order 11 Rule 1 of the Civil Procedure Code recognizes this right, and the plaintiff or defendant, by leave of the court, may deliver interrogatories in writing for the examination of the opposite party. In the CMP such discovery by interrogatories should be fixed in the pre-trail conferences, so no party is deprived of this right.

Moreover, according to Order 11 Rule 11 of the Civil Procedure Code the party interrogating can apply for further answers to interrogatories when answers are insufficient and the court may order further answers to be given, and this should be considered when planning the case schedule. Order 11 Rule 15 of the Civil Procedure Code allows every party to a suit an immediate inspection of any documents which a party has referred to in the pleadings or affidavits. This right to inspection can be exercised at any time. The pre-trial conference ensures thatevidence is certified and this should help to avoid any delays in the trial processitself. Under civil proceedings, every party to a suit can apply for the production of documents with good and sufficient reason if it has not been produced in accordancewith the requirements of Order 13 rule 1. This point is also important for fair trialrights and should be taken into consideration by the CMP.

Secondly, the Criminal Trial section 256 of the Criminal Procedure Code gives the accused the right to recall a witness for questioning in a warrant case. After a charge has been framed against the accused, the court has to ask the accused whether or not he or she wishes to cross-examine the prosecution witness whose evidence has been heard. This recall right is the privileged right of an accused person. The cross-examination of witnesses is important in establishing the facts of the case in every suit or proceeding. Time for examination of any recalled witnesses can delay the time frame of the case schedule. Sometimes, the Judge limits the time for the cross-examination of a witness to be completed within the time frame of the plan. An interview subject noted that judges do not want to give more than one hour for cross- examination of a witness as it is not a just cause for client under the best evidence rule (Interviewee, Lawyer, 2020). The duration of cross-examination shouldnot be strictly limited by the Judge.

Research Methodology

In order to understand the impact of the CMP program on stakeholders in the

court, including lawyers, judges, court officials and people using the judicial system, this study used a qualitative design based on analysing the views of stakeholders through interviews. A decision was made to focus only on those lawyers using a Court which implemented the CMP. The semi-structured interviews, each about 90 minutes long, were carried out with lawyers, staff officers and clients. Each of the nine interviews (five male and four female) were made face-to-face in the Hlaing Tharyar Township Court (one of the first courts to implement the CMP) and Yangon Bar Council. The interviews aimed to understand if the CMP guarantees and/or enhances access to justice. Interviewees were asked if cases were adjudicatedwithin the designated timelines stipulated by the programme. Is an equal right to participation in CMP meetings ensured? If there are delays, what are their causes? The advantage of using semi-structured interviews is to be able to adapt interview questions during the interview process and to further identify difficulties encountered during the process of the CMP. While researchers sought to interview two judges, only one judge was willing to be interviewed because the research topic concerned complicated and sensitive information about the judicial sector.

The sampling strategy for selecting lawyers was to invite three experienced and two less experienced lawyers. The experienced lawyers were expected to have been practicing over ten years and worked on at least 200 cases. For the lawyers interviewed, two had worked for ten years, and one for 18. They have each conducted more than 200 cases. The inexperienced lawyers have been working for less than five years (both interview subjects had both been working of 3 years) and conducted less than 10 cases. It was decided to interview both experienced and inexperienced lawyers to see if their different experience or background had an impact in how the CMP functioned, and if there was a difference in their response. Inthe end there was little difference seen. While many lawyers were approached, most lawyers were not willing to be interviewed for personal or privacy reasons. This was the greatest challenge for the researchers. The lawyers who did consent to an interview did not want to be

recorded so documentation was in terms of by note taking. Similarly, an interview could be made with only one staff officer from the courts. Three clients were also interviewed. Interviews were conducted from April – July 2020, during the Covid-19 crisis.

Table 1: Interview profile of Stakeholders

Interview No.	Types	Gender
1	Lawyer 1	Male
2	Lawyer 2	Male
3	Lawyer 3	Female
4	Lawyer4 (less-experienced)	Female
5	Lawyer 5 (Less-experienced)	Female
6	Client 1	Male
7	Client 2	Female
8	Client 3	Male
9	Court Office Staff	Male
10	Judge	Male

Another source of data was records of 36 criminal and civil cases which have already received judgment. In these documented cases the reasons for delay were analyzed to see what caused delays, noting whose absence caused the delay and how many times a case was adjourned. These data can be compared to the responses from the court stakeholders to determine the effect of the CMP.

Myanmar Government policies and plans for the CMP are found in the Judicial Strategic Plans of 2015- 2017 and 2018 – 2022 (The Supreme Court of the Union of Myanmar, 2018), and the Fair Trial Guide Book for Law Officers from the Union of Myanmar Attorney General's Office (UAGO) (Ciment, 2018). There are few studies of the Myanmar judicial system apart from the NGO Justice Based, which monitored courts in Yangon over a four-year period (Justice Base, 2017), and the Amnesty International *Fair Trial Manual* (Amnesty International, 2014). These policies are considered alongside international human rights standards on the right to a fair trial, in particular provisionsof the International Covenant on Civil and Political Rights (ICCPR), and General Comment No.32 of the ICCPR on "Article 14 Right to equality before courts and tribunals and to a fair trial" (United Nations International Covenant on Civil and Political Rights, 2007).

Impact on the Right of a Fair Trial of Unreasonable Delay

The efficiency of justice is a major component of a fair trial, and the Myanmar Government has recognized this its Judicial Strategic Plan (2018 – 2022) (The Supreme Court of the Union of Myanmar, 2018), and the *Fair Trial Guide Book for Law Offices*, produced by the Union Attorney General's Office (UAGO) (Ciment, 2018). Currently, under Strategic Action Area 1 in the Judicial Strategic Plan to modernize Myanmar's courts and improve public access, the objective is for the court system to comply with the five key domestic and international fair trialrights, as identified by the My Justice program: the right to a defence, the right to adequate time and facilities to prepare a defence, the right to a hearing withoutundue delay, the right to a hearing by a competent, independent and impartialtribunal, and the right to a public hearing (My Justice, 2017). Every person has the right to a fair trial, in both civil and criminal cases, and the effective protection of human rights very much depends on a range of rights, such as access to competent,independent and impartial courts of law, professional prosecutors and lawyers, abiding by the principle of equality of arms, and ensuring the defence has a genuine opportunity to prepare and present its case and to

contest the arguments andevidence put before the court, on a footing equal to that of the prosecution.

The focus of this paper is on the right to be tried without undue delay. Reasonable and adequate time is needed for every step of a trial, starting from the moment a person is arrested or a case initiated through pre-trail preparation, up to the actual court case itself. The obligation to ensure reasonable time is only gradually being developed in the Myanmar court system and the process of reforming the national justice system to ensure judgments are made in a timely fashion is just beginning. It should be noted that reasonable time also includes providing enough time for a person charged with an offence to have adequate time and facilities to prepare their defence and being allowed a proper examination of materials and witnesses, which may include adequate legal and translation assistance. A trial may not be unreasonably short, resulting in the parties not having time for adequate preparation and defence. Efficiency of court proceedings is one of the major challenges of national justice systems today. For this research project data on cases at the Deputy District Court are analysed to determine the reasons for any delays. All these cases were tried using the CMP, which was initiated in this District Court in the middle of 2019. There are however some problems with these data. Some cases initiated prior to 2019 were later integrated into the CMP. Additionally, according to the court record form (e), case hearing postponements were recorded until the twentieth postponement and after these records of additional postponements were not kept, only the time of the postponement is noted. There can be multiple different reasons for each postponement and as such, the data do not necessarily show what drove each postponement, as the number and the cause of postponement can be different. For the cases shown in the tables below, ae all those accessible to the researchers in the five courts which practice CMP. The selection criteria for the cases were Typical civil cases in the data set mostly concern efforts around the recovery of money. Other cases concern the specific performance of contract, land disputes, anddivorce. The

records of delays for civil cases are given in the CMP reports and listed in Table 1, below. The causes of delays, as detailed in the CMP file, are as follows:

1. Delay due to the transfer of the judge[10]
2. Absence of the judge[11]
3. Absence of the plaintiff's lawyer;
4. Absence of the defendant's lawyer;
5. Absence of witness for the plaintiff;
6. Absence of witness for the defendant;
7. Absence of the plaintiff;
8. Absence of the defendant;
9. No time for the trial: In these cases, another trial is given priority, for example, when criminal cases must be given priority over civil cases
10. Other reasons: these would normally be emergency events.

[10] For cases where a judge is transferred to another court house.

[11] In all cases where a party to the case is absent cases of absence (numbers 2- 6), the records donot give any further details about why they are absent, for example was its sickness, a timetableclash, and so on.

Analysis or Data of the Reasons for Delay in Civil Cases

No	Case No	Started Date	Finished Date	Reasons for Delay											Total Number of Sittings	Total Number of Postponement of hearing at Court
				1	2	3	4	5	6	7	8	9	10	Appeal		
1.	132/17	21.2.17	23.4.19	2	1	1	-	-	2	-	4	-	1		48	11
2	27/18	5.1.18	25.4.19	-	-	-	2	-	-	5	-	-	-		25	7
3	178/19	8.3.19	29.4.19	-	-	-	-	-	-	1	-	-	-		5	1
4	767/15	23.12.15	29.4.19	2	1	4	-	2	-	1	4	-	5		55	19
5	340/16	7.4.16	1.4.19	1	-	3	4	3	-	5	1	1	2		62	21
6	341/16	7.4.16	1.4.19	1	-	3	3	6	-	4	-	-	2		66	17

No	Case No	Started Date	Finished Date	Reasons for Delay										Total Number of Sittings	Total Number Postpone-ment of hearing at Court	
				1	2	3	4	5	6	7	8	9	10	Appeal		
7	27/18	5.1.18	25.4.19	-	-	-	2	-	-	5	-	-	-		25	7
8	862/16	7.12.16	7.5.19	1	2	-	4	-	2	2	-	-	2		54	13
9	230/19	28.3.19	24.5.19	-	-	-	-	-	-	2	-	-	-		5	2
10	379/18	31.5.18	15.5.19	-	-	2	1	-	-	3	2	-	-		26	8
11	817/18	29.11.18	5.6.19	-	-	-	-	-	-	2	-	-	1		11	3
12	526/18	3.8.18	28.2.19	-	-	-	-	-	-	2	2	-	-		15	4
13	166/14	26.3.14	27.6.19	2	-	3	4	-	1	3	1	10	6		92	21

No	Case No	Start-ed Date	Finish-ed Date	Reasons for Delay											Total Number of Sittings	Total Number of Postpone-ment of hearing at Court
				1	2	3	4	5	6	7	8	9	10	Appeal		
14	298/13	2.7.13	16.1.19	1	1	4	3	-	-	4	3	4	-		89	23
15	823/18	30.11.18	20.1.19	-	-	-	-	-	-	2	-	-	-		5	2
16	337/12	30.7.12	13.8.18	4	-	-	2	-	3	-	-	4	5		90	18
17	183/19	12.3.19	10.5.19	-	-	-	-	-	-	1	-	-	-		5	1
18	434/18	25.6.18	11.9.18	-	-	1	-	-	-	1	-	-	-		4	2
19	347/17	9.6.17	3.9.18	1	-	-	3	3	-	1	-	-	-		21	8
20	42/13	30.1.13	17.9.18	-	3	2	4	-	2	1	-	6	2		73	23

No	Case No	Start-ed Date	Finish-ed Date	Reasons for Delay											Total Number of Sittings	Total Number of Postpone-ment of hearing at Court
				1	2	3	4	5	6	7	8	9	10	Appeal		
21	477/15	13.8.15	28.9.18	-	1	1	3	1	3	-	-	1	-		56	10
22	23/15	8.1.15	18.9.18	-	4	1	-	-	-	11	-	-	-		69	16
23	132/17	21.2.17	23.4.19	2	1	2	-	-	2	-	3	-	1		48	11
				17	14	27	35	13	15	56	21	26	27		940	248

From the table it can be seen that the absence of the plaintiff is by far themost common reason for a delay, constituting 22% of all delays. Absence of the plaintiff's lawyer is the second most common reason. It is not known why the plaintiff or their lawyer cannot come to the court to be tried, and it is odd that the plaintiff is twice as likely to be absent as the defendant. Given that the majority of cases are for the recovery of money and repaying debts, it would seem to be more likely that the defendant would be absent. It may be vexatious litigation, where the plaintiff is harassing the defendant, though this is one of many reasons for delay apart from the plaintiff's absence. The next most common reason for delay is the absence of the defendant's lawyer (at 14%). However, it should also be noted that the delays are fairly evenly spread among the 10 reasons. Similarly, there are on average 10.7 delays per case (with each case an average of 41 days long), and there were not many cases significantly diverging from this, with the most delays at 23 and the leastat one (though cases with no delays are not included). On average there is a delay every 3.8 days. It

appears this is quite uniform, with cases under twenty days all having 1-4 delays, and cases longer than 50 days having delays of 13 days or over. What this shows is that court delays are not the result of a few cases with significant delays, but fairly uniform delays across all cases. Another important point is that in most cases (15 of 24 cases, or 62%), there were at least 3 or more different reasons for delays, so they cannot be attributed to a single reason. Examining the most delayed cases, which are cases having more than 20 delays, each of these cases is long (between 62 to 92 sittings), showing that the longer the case, the more delays occur. Secondly, each of these highly delayed cases is attributable to at least seven different reasons for delay. Again, there is not a single cause for the delay but a variety of absences causing delays. For civil cases it appears the reasons for delays cannot be attributed to specific kinds of cases, as the delays are quite uniform, and not to a single cause, as the reasons are fairly uniformly spread. These findings are significantly different from criminal cases, which are detailed below.

Shown below are the data for criminal cases (Table). All cases were also collected in the Deputy District Judge Court and mostly concerned narcotic drugs and psychotropic substances, rape, and murder. The categories of reason for delay of criminal cases are:

1 Delay due to the transfer of the judge.
2 Absence of judge: [12]
3 Absence of law officer (public prosecutor);
4 Absence of lawyer for the accused;
5 Absence of prosecution witness;
6 Absence of witness for the accused;
7 Absence of accused;

[12] In the following cases where a party to the case is absent, the records do not give any furtherdetails about why they are absent (for example was its sickness, a timetable clash, and so on).

8 Absence of complainant

9 Other reasons

Analysis or Data of the Reasons for Delay in Criminal Cases

No	Case No	Started Date	Finished Date	Reasons for Delay									Total Trial Times	Defer Times
				1	2	3	4	5	6	7	8	9		
1.	92/18	23.3.18	10.4.19	-	-	-	-	13	-	-	2	-	37	20
2	93/18	23.3.18	10.4.19	-	-	-	-	13	-	-	2	-	38	25
3	166/18	24.5.18	18.4.19	-	-	-	-	6	2	-	-	-	21	8
4	88/18	16.3.18	10.4.19	-	1	-	1	8	5	-	-	-	36	15
5	419/18	23.11.18	21.5.19	-	-	-	-	3	-	-	-	2	20	5
6	41/18	9.2.18	17.6.19	-	-	-	-	14	-	-	-	1	42	22
7	341/17	19.12.17	3.6.19	-	-	-	-	15	-	-	-	-	50	26
8	182/18	5.6.18	19.2.19	-		-	-	13	-	-	-	-	25	13

No	Case No	Started Date	Finished Date	Reasons for Delay									Total Trial Times	Defer Times
				1	2	3	4	5	6	7	8	9		
9	4/18	5.1.18	12.10.18	-	-	-	1	6	2	-	-	-	27	9
10	55/17	27.2.17	17.8.18	-	1	-	-	13	-	-	1	-	50	39
11	326/16	8.12.16	17.8.18	-	-	-	-	11	-	-	4	-	59	49
12	167/17	23.6.17	14,9.18	-	-	-		15	-	-	-	-	35	27
				-	2	-	2	130	9	-	10	3		

The reasons for delays in criminal cases are significantly different from civil cases. For a start, there are around twice as many delays (21.5 per case, compared to 10.7). This is not due to number of sitting days as civil cases are longer on average (civil cases have on average 41.2 and criminal 36.6 sitting days). These delays are also far more common in criminal cases, with a delay occurring onaverage every 1.7 sitting days. As the table shows the single greatest reasons for a delay is the absence of the prosecution witness, which constitutes 83% of delays. The prosecution witness in most cases is a police officer, or Ward Administrative Officer, who are local government officers. When police officers are prosecution witnesses, they may be absent because they have to give evidence in multiple trials at the same time, or they may have other police work which keeps them from the courthouse. Every case in this sample has been delayed by an absent prosecution witness. Interestingly, there are few, if any, delays due to judges and lawyers, in contrast to civil cases. Furthermore, there are few other reasons for delay. The quantitative data shows that the reasons for delays in civil and criminal cases are different. It should be expected that the Strategic Plans of the CMP program would address this. The data show that the number and reasons for delays differ significantly between civil and criminal courts. While criminal delays are far worse, with delays happening more regularly, the reason for the delays

are clear – an absence of a prosecution witnesses. However, for civil cases, while delays are fewer,there are many different reasons for this. If judicial delays are to be addressed different strategies are needed for civil and criminal courts.

Judicial Delay and Case Management

When speaking to stakeholders in the court system, a different set of problems emerged in comparison to the quantitative data in presented above. While the case data show that absences contribute to many delayed sittings, interviewees indicated that other problems such as trial planning, management of witnesses, and accessing documents, created problems.

The right to adequate time and facilities to prepare a defence is an important aspect of the principle of 'equality of arms': the defence and the prosecution must be treated in a manner that ensures both parties have equal opportunity to prepare and present their case.[13] This right applies at all stages of the proceedings, including before and during trial and during appeals (Heine, 2014). Judges must also abide by the principle of equality of arms, meaning that all parties to a proceeding must have the same procedural rights. Courts must ensure that the defence has a genuine opportunity to prepare and present its case, and to contest the arguments and evidence put before the court, on a footing equal to that of the prosecution.[14] Adequate time to prepare a defence depends on the nature of proceedings, as preparations for

[13] The ICCPR General Comment Number 13, 1984 explains that the meaning of "adequate time" depends on the circumstances of each case, but the facilities must include access to documents another evidence which the accused requires to prepare his case, as well as the opportunity to engageand communicate with counsel. If the defense considers that it has not bad sufficient time and a facility to prepare its, it is thus important that is requests and adjournment of the proceedings (OHCHR, A Manual on Human Rights for Judges, Prosecutors and Lawyers).

[14] This also includes the adequate time to consult with the defendant is particularly crucial for a defense because lawyers must understand the key facts, conduct investigations, identify defensewitnesses and prepare for potential counterarguments before presenting their case to the court (Justice Base, 2017).

preliminary proceedings, trial or appeal may differ according to the circumstances of each case. If an accused believes that the time allowed preparing the defence, including speaking with counsel and reviewing documents, has been inadequate they should request that the court adjourns the proceedings. Courts havea duty to grant reasonable requests for adjournment, and adjournments must provideadequate time for the accused and counsel to prepare the defence (Heine, 2014). The CMP addresses this through the three pre-trial conferences: Case Management Conference, Pre-trial Conference, Final Pre-trial Conference. What should happen through this process is that the Judiciary must ensure that defendants have adequate time and facilities to prepare their defence at all stages of proceeding. To do this a range of actions are expected. These include that factor such as thenumber of charges, the complexity, technicality of evidence, the number of witnesses, and so on must be considered. At the first case management conference at the beginning of the case the judge plays an important role because they determine the question of law and of fact after discussion with both parties. Upon these facts the hearing timetable is drawn up. The prior identification of issues of lawand fact, the establishment of a procedural calendar for the life of the case and the exploration of possibilities for the resolution of disputes through methods other than court trial are step by step goals of case management. This requires the early assignment of a case to a judge who then exercises judicial control over the caseand tracks every stage. The judge should ensure the judicial process ensures active participation and join communication amongst the parties and the lawyers. The court assists the parties and the lawyers in identifying the real controversies and seeks early responses from both sides on the questions of fact and law, which should minimize or narrow controversies.

In reality, lawyers have found the CMP meetings and discussion difficult, and in interviews lawyers noted their dislike of the process because relevant laws have yet to be amended to practice the CMP. In the CMP they have to organize the procedures and negotiate the hearing time and trial date with the court, although this all depends

on the judges. Sometimes, it may be easy but sometimes not. While the judge seeks to cooperate with all parties other than the complaint of the lawyers, in most CMP meetings the lawyer does not attend personally but rather assign their junior. Clients choose their lawyers and they do not like when junior lawyers take charge in their cases. As a result, some lawyers do not personally like the CMP (Interviewee, Lawyer 1, 2020). Sometimes judges may impact the rights of parties bypushing for a quick hearing, or to reduce the amount of time for the cross- examination of a witness. Although the CMP aims to complete the case within a fixed period, the pressure to meet this time goal could harm a party because of the overly fast examination of the case. Lawyers interviewed noted that judges frequentlyrequest the defence counsel to hurry up while allocating sufficient times to law officers and lawyers for the complainant to present their cases. In one case, whenthe defendant's lawyer asked the complainant a question during cross-examination, the judge hurried the lawyer by telling him to please ask the question quickly. The defence lawyer requested to ask a second quick question but was not allowed to. Instead, the judge continued to ask the lawyer to please go faster and quicklyconduct a cross-examination of the witness because the judge had an appointmentto go and another case hearing (Justice Base, 2017).

When interviewing clients, they knew about the courts using the CMP program, and how they assigned trial dates, and dates to submit the list of witnesses. Through this process the client should be able to estimate the end date oftheir case (Interviewee, Client 2, 2020). Most clients know that the CMP fixes the date for the trial and defines to submit the witnesses (Interview Client 3, 2020). However, as demonstrated by the data, many cases are delayed and do not satisfy the defined duration in the case management system. Under the CMP a lawyer'srole is largely unchanged as the lawyer is obligated to follow the rules and procedures of the court. However, many clients do not understand the meeting procedures of the CMP. Clients want the judge to explain the process more clearlyas they are unfamiliar with the law, terminology, and process. One client facing prosecution felt they were restricted in

examining the facts because of the use of the CMP by the prosecution (Interviewee, Client 1, 2020).

The cross-examination is the most effective of all means for extracting truth and exposing falsehood. Section 138 of the Evidence Act provides that after the direct examination, the court must allow the cross-examination of witness if the adverse party desires. The cross-examination of witness is the right of the adverse party (Daw Khin Nu v. The Union of Myanmar and one, 1979) The rightto cross-examine witnesses,[15] which is an essential aspect of the right to a fair trial, requires, in principle, that the applicant should have an opportunity to challenge any aspect of the witness statement or testimony during a conformation or an examination. Since the length of time for the examination of witnesses varies depending on the nature of the case, limiting the period of chief examination and cross examination may harm the right to a fair trial (Interviewee, Client 3, 2020). Cross examining includes the analysis of witness statements and also examination as to whether witness statements are believable or not. In some situations, the client requests a witness to give a statement at court without their knowing the facts of the case, and they may give false statements. Therefore, the lawyer needs to examine more deeply to find supportive evidence for the case; as a result, limiting the time for cross examination may harm the parties' rights (Interviewee, Client 3, 2020). Sometimes, the client faces the absence of a witness which leads to difficulties (Interviewee, Client 2, 2020). In particular, many witnesses appear voluntarily and have to interrupt their personal duties to do so, so it is not always easy to submit the exact list of witnesses in time (Interviewee, Client 1, 2020).

In order to ensure that the right to defence is meaningful, clients and their lawyer must have adequate time and facilities to prepare the documents and

[15] Fair trial rights guarantee under the Article 14 (3) (e) of the ICCPR in the context of criminal proceedings – a right to "examine or have examined, the witnesses against him". The Human RightsCommittee has commented that this right of cross-examination must, to satisfy the principle of equality of arms, be such that the accused has the same legal powers of cross-examination as are available to the prosecution (Legal Digest of International Fair Trial Rights, Office for Democratic Institutions and Human Rights (ODIHR), 2012).

evidence. This may be an unfair situation for the clients if documents are not complete and only those available are examined. When documents are not submitted in time, this can impinge on the rights of parties because of an inability to submit evidence (Interviewee, Client 1, 2020). In submitting documents, there is limited time to find out if any of those documents which could lead to difficulties. In some cases, this may entail visiting Government offices to access the necessary documents, but it has been found that for some offices it is impossible to get such documents promptly, and as a result they cannot be submitted to the court (Interviewee, Client 1, 2020). This means that the client cannot guarantee that all relevant documents are available. When the evidence in documents is not presented in a timely way judges may force lawyers to start without them (Interviewee, Lawyer 2, 2020). Lawyers must have adequate time to study the necessary documents for the examination of a case and then adequate time to consult with the defendant. This is particularly crucial for the defence because lawyers must understand the key facts, conduct investigations, identify witness and prepare for potential counterarguments before presenting their case to the court.

It was widely noted that in the CMP common difficulties include calling witnesses and finding documents. A lawyer can cause a delay due to Order 13, Rule 2 of the Civil Procedure Code because they may have to prove further or additional evidence, either documentary or oral. If a witness is absent, they may be removed from the list of witnesses already submitted to the court. Some courts admit absence with leave but some do not. This can lead to loss of the right to give sufficient evidence for the party to the suit. There is a conflict with the Civil Procedure Code which may harm the right to a fair trial. If the case is submitted to a higher court for appeal or revision, it may take years to finish since the higher court does not use the CMP (Interviewee, Lawyer 1, 2020). Further, because the CMP is applied in the first instance courts this is where the hearing of the case and examination of witnesses occurs. The examination of witnesses is not necessary during the appeal and revision of the case, as arguments and judgments are the main aspects in this process. The result

is that once a witness or document is omitted for the case because of the CMP, it may never be re-included, which is denying justice to the party.

Conclusion

The objective of the CMP is to try a case without delay. The purpose is also to ensure justice for all and promote public belief and confidence in the court and rule of law. With the CMP, although examining time is limited, clients and lawyers should have enough time to prepare their necessary documents and evidence. In hearing a case, if there is not adequate time and facilities to prepare, it will impinge on the right to effectively hear the case. An injured party has a right to remedy as a fundamental right. Yet, as this research has found, there are still problems in the CMP process. If the objective of the CMP is to complete the case as fast as possible, an awareness must be maintained that speed does not guarantee the truth. By implementing the CMP, court users know when their case should finish, and they can prepare evidence and for hearings in advance. This programme can reduce delays by enforcing the responsibilities of the relevant stakeholders.

An analysis of the data has found that civil cases have a wide variety of reasons for delay, including the absence of lawyers and witnesses, but for criminal cases delays are almost exclusively caused by the absence of the prosecution witness. But when interviewing the parties in the cases a variety of additional problems were found around managing documents, witnesses, and adequate time. The absence of a party may be because clients may not clearly understand the process and so judges should explain in the steps in the first case management meeting, something not always done. Also, judges need to be flexible when adjusting the trial plan and reserving new hearing times. Judges should give lawyers enough time for cross examination and avoid putting pressure on lawyers to speed up their questioning. Lawyers are responsible for giving advance notice to their client and also to avoid calling too many witnesses that can lead to a need to move the hearing time if they are absent. In the absence of a

witness, the instruction for removal of the witness from the witness list may affect the right to a proper defence. Lawyers have to examine the witness until they get the main point, but there are problems if such an examination takes longer than the allotted time as it affects the fair trial right. It is not clear whether the CMP ensures the right to a fair trial by trying to complete the trial within a predetermined timeframe. There is harm in both a very fast examination and a very slow one. It appears the CMP will be integrated into normal court procedure and become consistent with existing procedural law, but the question still remains whether the trial of a case within a predetermined time is an effective implementation of the right to a fair trial in reality.

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