



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



CRIMINAL PROCEDURE IN MYANMAR

22 August 2024

TYPES OF OFFENCES



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Types of offences

- **Cognizable/non-cognizable**
- **Bailable/non-bailable**
- **Compoundable/non-compoundable**



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Cognizable/non-cognizable offences

- Cognizable offences (“**offences where the police may take action**”): Those for which the police may arrest without warrant (s. 4 (1) (f) Code of Criminal Procedure “**CCP**”)

Examples: Theft; criminal breach of trust; voluntarily causing hurt by dangerous weapons or means

- Non-cognizable offences (“**offences where the police may not take action**”): Those for which the police may not arrest without warrant (s. 4 (1) (n) CCP)

Examples: Cheating; forgery; voluntarily causing hurt



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Cognizable/non-cognizable offences

Idea behind non-cognizable offences:

Some offences are not severe enough to merit the expenditure of state resources each time: The police may investigate only if so ordered by a judge. Otherwise, the aggrieved party must investigate himself, present evidence and argue his case in court, things that otherwise the police and a public prosecutor would do.



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Cognizable/non-cognizable offences

In contrast, **cognizable offences** are always investigated by the police and prosecuted by a public prosecutor as their prevention and prosecution is always in the state's interest.



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Bailable/non-bailable offences

- **Bailable offences** are those that are explicitly specified as such in Schedule II to the Code of Criminal Procedure (for offences under the Penal Code) or in any other law.

Examples: Criminal breach of trust; voluntarily causing hurt; voluntarily causing hurt by dangerous weapons or means; cheating (fraud); forgery

- All other offences are **non-bailable** (section 4 (1) (a) CCP).

Examples: Theft; forgery of a valuable security; counterfeiting currency notes



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Bailable/non-bailable offences

- Discharge (release) is **mandatory** if the offence is bailable and the accused posts bail (s. 496 CCP).
- Discharge (release) is **discretionary** if the offence is non-bailable (s. 497 (1) CCP).
- If the accused was arrested without warrant by the police, he must petition the officer in charge of the police station. If he has in the meantime been brought before or remanded into custody by a court, he must petition the court (i.e., a magistrate).



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Bailable/non-bailable offences

- **Giving bail** (s. 499 CCP) means that
 - (i) the accused signs a bond promising to pay a certain amount of money if he does not show up for a court hearing and
 - (ii) this bond is guaranteed by one or more than one guarantor (“surety”).

In practice, it appears that sureties must be persons with immovable property in the township who are recognised by the police or court to be suitable sureties, and that they charge a fee.



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Compoundable/non-compoundable offences

Common scenario:

Often, victim of a crime institutes criminal proceedings only to pressure the perpetrator into providing some sort of compensation (e.g., return of stolen goods, refund of embezzled money, monetary compensation for physical harm) and wishes to terminate proceedings if this goal is achieved.

How can this be achieved?



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Compoundable/non-compoundable offences

1. If the police are still investigating:

- Reach out to the police station and inform them of intention to withdraw the complaint. Police may recommend to law office to close the case (e.g., because the “investigation is suspended,” para. 1438 Police Manual).
- This may require additional documents (e.g., affidavit that the withdrawal is voluntary, settlement agreement).



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Compoundable/non-compoundable offences

2. If the case is pending in court (because the police sent its charge sheet to the magistrate or the victim made a private complaint to the magistrate instead of going to the police):

- **If (i) the case was brought as a private complaint, (ii) the offence is non-cognizable or compoundable (meaning “removable;” such offences are listed in s. 345 CCP), and (iii) the complainant is absent from any hearing, the magistrate may discharge the accused (s. 259 CCP).**



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Compoundable/non-compoundable offences

- **In summons cases** (where offences are tried for which the punishment is not more than 6 months), the complainant may at any stage before a final order withdraw the complaint with the magistrate's permission whereupon the accused is acquitted (s. 248 CCP).
- **If the case is prosecuted before the court by a public prosecutor**, the complainant may try to persuade him to withdraw the case (with the magistrate's consent) whereupon the accused is discharged or acquitted, s. 494 CCP.



Compoundable/non-compoundable offences

- **If the offence is listed as a compoundable offence** in s. 345 (1) CCP, the aggrieved person may compound the offence (i.e., request it to be removed from prosecution) **without** the magistrate's permission, and if it is listed in section 345 (2), compound it **with** the magistrate's permission.

The composition of an offence has the effect of an acquittal (s. 345 (6) CCP).



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**STATE ACTORS INVESTIGATING, PROSECUTING AND
ADJUDICATING CRIMES**



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State actors in the criminal justice system

- Myanmar Police Force (not covered in this presentation)
- Law offices
- Courts



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Law offices

Law offices exist at the township, district, Regional/State and Union level with the Union Attorney-General being the highest officer.

In criminal proceedings, their officers in particular

- **advise on and supervise the police investigation;**
- **prosecute criminal cases before the court; and**
- **file appeals against acquittals.**



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Courts

- Very simply put, the **hierarchy of courts** in Myanmar is, from low to high, (i) township courts, (ii) district courts, (iii) High Court of the Region or State, (iv) Supreme Court.
- Judges are appointed and their jurisdiction is determined by the Supreme Court.
- The **Supreme Court appoints** one township judge per township court and one district judge per district court. It may furthermore appoint (i) additional township judges, (ii) deputy township judges, and (iii) deputy district judges.



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Courts

- **Criminal cases are tried in the first instance at the township or district courts**, as follows: They are either tried by the township or district judge. Or, the township or district judge may assign the case for trial to another judge at his court.
- Judges at the township or district courts who try criminal cases are called **magistrates**. They may impose the following punishments depending on their rank:
 - Deputy township judge ranked **third class magistrate**: Imprisonment up to 3 months, fine up to MMK 30,000



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Courts

- Deputy township judge ranked **second class magistrate**: Imprisonment up to 1 year, fine up to MMK 50,000
- Deputy township judge ranked **first class magistrate**: Imprisonment up to 3 years, fine up to MMK 100,000
- Additional township judge if authorised by the Supreme Court as **special magistrate**, and **township judge** by virtue of his office: Imprisonment up to 7 years, unlimited fine



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Courts

- Deputy district judge if authorised by the Supreme Court as **district magistrate** and **district judge** by virtue of his office: Any punishment, but death sentence must be confirmed by the Supreme Court



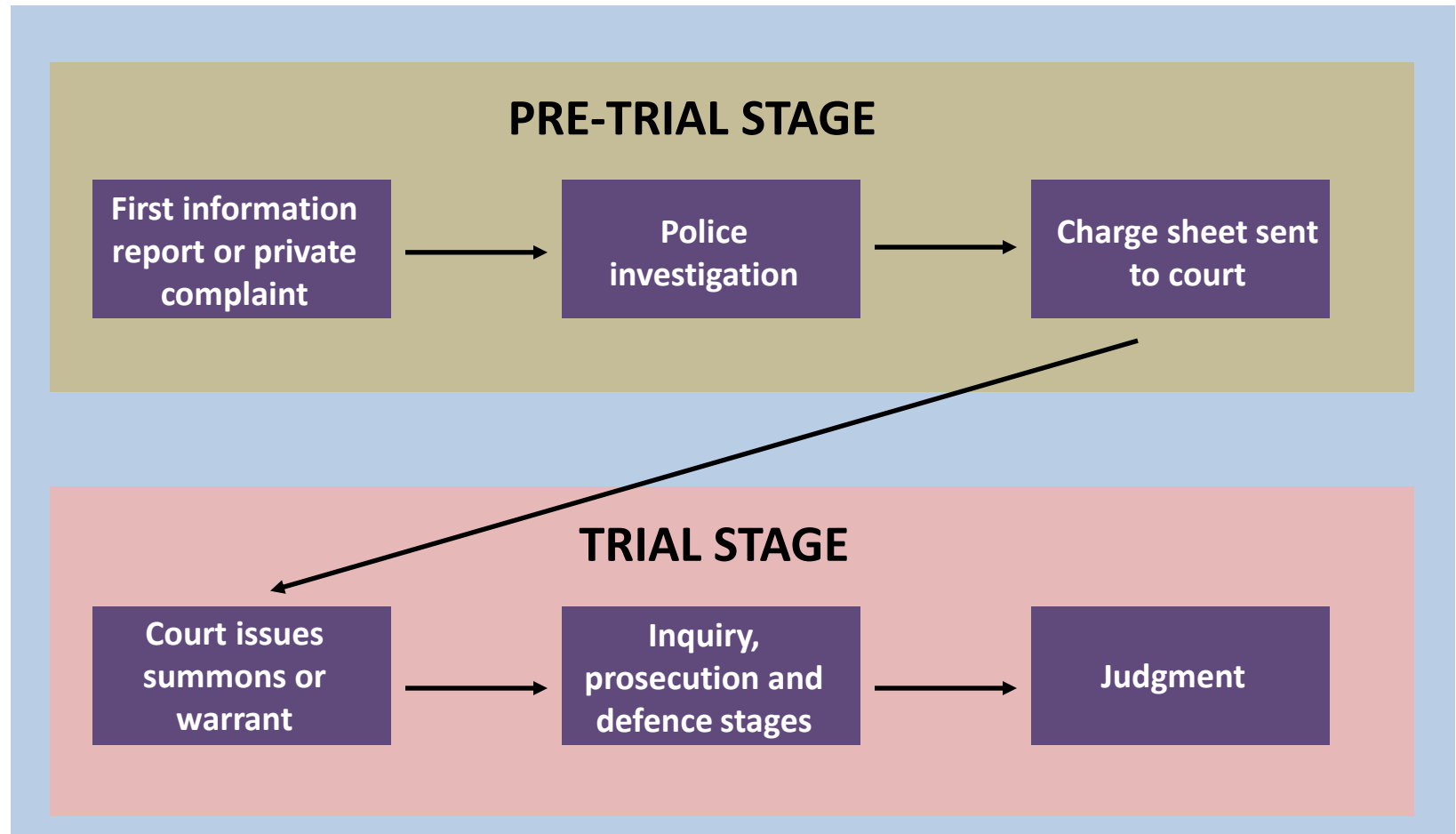
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CRIMINAL PROCEDURE STEP-BY-STEP FROM FIRST INFORMATION REPORT TO JUDGMENT



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Criminal procedure step-by-step



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**PRE-TRIAL STAGE: FIRST INFORMATION REPORT OR
PRIVATE COMPLAINT**



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First information report (cognizable offences)

- Should be made at the **police station within whose limits the offence was committed** (as officers of other stations may not investigate, s. 156 (1) CCP)
- May theoretically be made by anyone with knowledge of the case, irrespective of the degree of such knowledge (para. 1414 Police Manual). However, officers seem to insist that it be made by the **victim personally** out of preference for own knowledge over hearsay, at least in cases involving property (e.g., criminal breach of trust by an employee).



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First information report (cognizable offences)

- **If the victim is a company:** To be made by a director (with company registration certificate, company extract and resolution of the board of directors authorising him to make the FIR).
- Can theoretically be made orally and in writing (para. 1412 Police Manual), but officers seem to prefer (insist on?) **oral deposition**.



Private complaint (non-cognizable offences)

- To be made with a **magistrate** (s. 190 (1) (a) CCP).
- If a non-cognizable offence is reported to the police, they refer the informant to the magistrate (s. 155 (1) CCP).
- The police may not investigate a non-cognizable offence without the order of a magistrate (s. 155 (2) CCP).



Private complaint (non-cognizable offences)

- Upon receiving the complaint, the magistrate shall examine the complainant under oath (s. 200) and then
 - **dismiss the case** if he finds the complaint unconvincing (s. 203 CCP); or
 - **order the police to investigate** (s. 202 (1) CCP), following which the case proceeds like a cognizable case after a FIR is filed with the exception that the police may not arrest without warrant; or



Private complaint (non-cognizable offences)

- **start a criminal trial right away** by summoning the accused for the first hearing or issuing a warrant for his arrest (s. 204 CCP).

A public prosecutor is only involved if the court requests his involvement (rule 102 (c), (f) Union Attorney-General Rules).



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**PRE-TRIAL STAGE: RIGHTS OF THE ACCUSED DURING
POLICE INVESTIGATION**



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Rights of the accused during police investigation

- Union Attorney General’s “**Fair Trial Handbook for Law Officers**” from 2018 still on the webpage of the Ministry of Legal Affairs. It is unknown to what extent law officers may consider this guidance to have been rendered obsolete in the meantime.
- **Right to access a lawyer in pre-trial detention:** Abolished with the SAC’s amendment of the Legal Aid Law in 2021.
- **No threat or violence during interrogation:** Legal safeguards exist in ss. 163 (1) CCP, 24 Evidence Act, 330, 331, 503 Penal Code.



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Rights of the accused during police investigation

- **Right to remain silent:** Exists somewhat, as confessions made during police interrogation are only admissible as evidence if they are recorded by a magistrate who must advise the accused that he is not obliged to confess and be satisfied that the confession is made voluntarily (ss. 164 CCP, 25, 26 Evidence Act).
- **Right to be informed about the grounds for arrest:** No specific provisions.



Rights of the accused during police investigation

- **Presumption of innocence until convicted:** Mentioned in case law until the 1960s. Furthermore, later in court, the prosecution must prove that the accused committed the crime (s. 101 Evidence Act).
- **Right to an interpreter during police interrogation:** Abolished with the SAC's amendment of the Legal Aid Law in 2021.
- **Consular assistance for foreign nationals:** Myanmar is a member of the Vienna Convention on Consular Relations.



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PRE-TRIAL STAGE: POLICE INVESTIGATION



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Important powers of the police when investigating

- Arresting the accused without warrant for cognizable offences
- Making searches and seizures
- Compelling witnesses to testify



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Arresting without warrant

- If accused is suspected to have committed a cognizable offence, the police may **arrest him without warrant** and detain him for **24 hours** (s. 61 CCP).
- The police may furthermore **search the accused** and place in safe custody all articles except clothes found upon him (s. 51 CCP). Women may only be searched by women (s. 52 CCP).



Arresting without warrant

- If the investigation is not completed within 24 hours and there are reasons to believe that the accusation is well-founded, the **police must forward the accused to the nearest magistrate** (s. 167 (1) CCP) who must decide whether to order continued detention.
- The remand period ordered by the magistrate may extend to **15 days** (para. 1741 note 2 Police Manual) and may be extended by another 15 days to 30 days in total if the offence is punishable with not less than 7 years (s. 167 (2) CCP).



Arresting without warrant

- The process of remanding the accused into custody for up to 15 days each time may be **repeated multiple times** (para. 1741 note 2 Police Manual) without there being, it appears, a specific upper limit on how many times the accused may be remanded.



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Making searches and seizures

The police may:

- search **for the accused** and
- search **for documents and things.**



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Searching for the accused

- If there is a warrant on the accused or the accused is suspected of a cognizable offence, a police officer may **demand access to any place** where the accused is suspected of hiding (section 47 CCP). If access is not granted, **he may break into the place** if the accused might otherwise escape (s. 48 CCP).
- No search warrant from a court required.



Searching for documents and things

- Officer in charge of the police station (or court) **may order any person in writing to produce any document or thing** considered necessary or desirable in an investigation, inquiry, trial or other proceeding (s. 94 (1) CCP).
- Such order may only be made by a district or higher court if **Myanmar Post** should deliver a document, parcel or thing (s. 95 (1) CCP).
- An order compelling a **bank** to produce ledgers and other books used in their ordinary business **may only be made by a court** (s. 5 Bankers' Books Evidence Act 1891).



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Searching for documents and things

- If there is reason to believe that the person will not produce the document or thing or if the possessor is not known, the **police may search (without search warrant from a court)** for the document or thing **within the limits of the police station** (s. 165 (1), (2) CCP) or require another police station to search (s. 166 (1) CCP).
- Police may demand access to the place to be searched. If access is not granted, **they may break in** (ss. 165 (3), 102, 48 CCP).



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Searching for documents and things

- **Persons** found in the premises suspected of concealing articles **may be searched**, provided that women may only be searched by women (ss. 165 (3), 102 (3), 52 CCP).
- Search must be conducted or ordered **by officer in charge of the police station or officer conducting the investigation** (s. 165 (1) CCP).
- Searches may only be conducted **in the presence of two witnesses** who must sign the list of articles found (ss. 165 (3), 103 (2) CCP).



Searching for documents and things

- The **occupier of the premises** or his representative(s) **may attend** during the search, **must sign the list of articles** found and **must be given a copy** thereof (ss. 165 (3), 103 (3) CCP).
- Paras. 1703-1717 Police Manual describe in detail how searches are to be conducted.
- Searches **may also be ordered by a court** with a search warrant (s. 96 CCP).



Compelling witnesses to testify

- Any investigating police officer **may order in writing the attendance of witnesses** and examine them (sections 160, 161 (1) CCP).
- **Witnesses must answer the officer's questions** unless such answer might expose them to criminal charges (s. 161 (2) CCP).
- The examination may be reduced into writing, but the **witness may not be compelled to sign** his statement (s. 162 (1) CCP).



Compelling witnesses to testify

- Witness statement made before a police officer **may not be used as evidence in court** (s. 162 (1) CCP)
- Rather, the witness shall be summoned again at the trial stage to give **testimony again in court**, and his earlier statement may only be introduced to detect contradictions or impeach his credibility (ss. 162 (1) CCP, 145, 155 Evidence Act).



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END OF THE PRE-TRIAL STAGE: POLICE SENDS CHARGE SHEET TO COURT OR ASKS LAW OFFICE TO CLOSE THE CASE



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Charge sheet sent to court or case closed

- If the investigation has concluded and **the police think that there is sufficient evidence** to prosecute the case in court, the police officer in charge of the police station must
 - (i) ask the **law officer** to review the case (rule 99 Attorney-General of the Union Rules), and
 - (ii) send a police report ("**charge sheet**") with relevant information and documents to **the magistrate** (s. 173 (1) CCP).



Charge sheet sent to court or case closed

- If the police **think that there is not sufficient evidence**, the officer in charge of the police station must **send the case to the law officer who must decide whether to close it** (para. 1438 Police Manual).
- If the accused has been remanded into custody by a magistrate, he shall be released immediately if he signs a bond (at the discretion of the officer in charge, with or without sureties), section 169 CCP. A release without bond is only possible on the orders of a magistrate (para. 1444 Police Manual).



MARTIAL LAW IN SOME TOWNSHIPS



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Martial law imposed in some townships

- The imposition of **martial law** in particular means that public administration may be directly exercised by the **Regional Military Commander** or persons appointed by him and **military tribunals** are established.
- Military tribunals **may try civilians during the period in which the martial law order is in force** for crimes listed in an appendix to the martial law order (specific offences, all offences in a particular law, offences related to certain topics).



Martial law imposed in some townships

- Military tribunals are **distinct from courts martial** which try military personnel.
- Martial law orders **do not make reference to any procedural code** such as the Code of Criminal Procedure.
- Military tribunals may impose the following punishments:
 - (i) Death;
 - (ii) imprisonment with hard labour “for unlimited years;”
or
 - (iii) highest punishment in the respective law.



Martial law imposed in some townships

- No appeals, but **applications for reversal** may be made to the SAC Chairman (death sentences) or the relevant military commander (other sentences).



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UNLAWFUL ASSOCIATIONS ACT AND COUNTER- TERRORISM LAW AND RULES



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Counter-Terrorism Rules

(See also previous more detailed [presentation](#) and “[Myanmar discerns NGOs terrorism financing](#)” in NP News, 21.07.2024)

- Decreed by the SAC on 1 March 2023 as by-laws to the 2014 Counter-Terrorism Law.
- Explicitly suspect that money and assets from NGOs flow to “terrorists,” and that “terrorists” masquerade as NGOs to secure funding. Rules order the creation of inspection teams tasked with conducting regular and random checks of the finances of NGOs.



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Counter-Terrorism Rules

- Affect also banks and telecoms.



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Declared “terrorist groups”

- **ARSA:** Since 25.8.2017
- **ULA/AA:** 23.3.2020 - 11.3.2021
- **CRPH, NUG, PDF and their subordinates:** Since 8.5.2021
(declared by the SAC)

(Separately, groups may be declared “unlawful associations” under the Unlawful Associations Act 1908.)

No public list of terrorist groups and unlawful associations - must be researched by searching the Myanmar Gazette or news articles



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