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The Myanmar *Shwe*:¹ Empowering Law Students, Teachers, and the Community Through Clinical Education and the Rule of Law²

STEPHEN A. ROSENBAUM,* BRITANE HUBBARD,** KAYLEE SHARP-BAUER,***
AND DAVID TUSHAUS****

1. *Shwe* means *gold* in Burmese, the principal Myanmar language. “Ah, Burma—now Burma was a golden land . . .” was the daily incantation of Rajkumar, protagonist and ardent optimist in Amitav Ghosh’s historical novel. AMITAV GHOSH, *THE GLASS PALACE* 494 (2000).

2. This article is derived from a paper delivered on December 14, 2018 at the Annual Conference of the Law and Society Association of Australia and New Zealand. The authors wish to acknowledge the contributions that BABSEACLE and MyJustice have made to the development of clinical legal education in Myanmar, along with International Clinicians in-Residence (2018-19) Bronwyn Ambrogetti, Nicholas Frayn, Freda Grealy, Richard Grimes, Petronilla Sylvester, Mary Pat Treuthart, and co-author Tushaus. The authors also thank the *Indiana Journal of Global Legal Studies* editors for their conscientious review and contributions; any errors are the authors’ own. The views here do not necessarily reflect those of BABSEACLE, MyJustice or their respective boards of directors, staff, or team members.

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Indiana Journal of Global Legal Studies Vol. 28 #1 (Winter 2021)
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AUTHORS' NOTE

As this issue of the *Indiana Journal of Global Legal Studies* goes to print, the Myanmar military leadership just detained Aung San Suu Kyi, as well as other government leaders and ruling party activists, declaring a year-long state of emergency. This coup d'état, predicated on unfounded claims of election fraud, will certainly have an impact on the future of the country's legal education system, fledgling democracy, overture to the world, and the rule of law.

ABSTRACT

Myanmar's attorneys, judges, law officers, and law teachers are slowly emerging from the isolated world they inhabited during decades of military authoritarianism. Almost a decade ago, the country triumphantly burst into an era of "disciplined" democracy under the leadership of Aung San Suu Kyi, de facto head of state. Yet, the legal education system continues to be marked by hierarchical and bureaucratic practices, infrastructural and pedagogical neglect, and low confidence in the formal justice sector. The authors—two American law professors and practitioners and two students—discuss the direction of legal education in Southeast Asia and how clinical legal education (CLE) methodologies can be used to empower law students, teachers, and their communities, with an emphasis on the rule of law and access to justice. They draw on their experience in developing and piloting Community Teaching and Externship Preparation law school curricula in 2017–19 under the auspices of non-governmental organization BABSEACLE (formerly Bridges Across Borders South East Asia Clinical Legal Education Initiative). They highlight two teaching modules: Community Needs Assessments and peer-to-peer "CLE English" classes at university law departments in remote regions of the country and the outskirts of Yangon. Along with receptiveness for new approaches to teaching, learning, and mentoring by international experts, the authors faced centralized decision-making and planning, no culture of faculty collegiality or autonomy, risk aversion, reluctance to "stand out" amongst peers, frequent teacher transfers, inadequate research skills, rote learning, undue reliance on "distance education," and limited English proficiency. Lastly, the authors comment on the future potential of this educational initiative and the "Development Industry." Warning against a "Project World" mentality, unwelcome imposition of liberal ideals of individualism, and neocolonial tendencies, they highlight the importance of consultation with educational institutions, awareness of the role of local intermediaries and informal justice sector, and the need for genuine coordination and partnership amongst donor agencies and NGOs.

I. INTRODUCTION: RULE OF LAW

*"We can't expect to eat the fruit of the mango tree we planted only yesterday."*³

*"We wanted justice; we got rule of law."*⁴

Myanmar's lawyers, prosecutors, judges, and law teachers are slowly emerging from an isolated world. After pursuit of a post-independence "Burmese Way to Socialism"⁵ and decades of military authoritarianism, the nation burst triumphantly into an era of "disciplined" democracy.⁶ Aung San Suu Kyi, the charismatic daughter of a charismatic national liberation leader, has championed the movement for decades.⁷

On the surface, democratic lingo is very appealing. References to "rule of law" and "access to justice" are as plentiful as seasonal mangoes. Even "human rights" is discreetly uttered in certain settings. The Sustainable Development Plan of 2018 declares that adherence to rule of law (ROL) is fundamental to democratic governance.⁸ The Union Supreme Court five-year strategic action plan proclaims that "[p]reserving and enforcing the rule of law is a cornerstone of democracy and one of the most important responsibilities of the Judiciary."⁹

3. U Nu, Prime Minister, Speech at the Constituent Assembly Moving the Adoption of the Constitution of the Union of Burma 255 (Sept. 24, 1947).

4. Ingo von Münch, *Rechtsstaat Versus Gerechtigkeit?*, 33 DER STAAT 165, 165 (1994) (Ger.) (quoting East German Dissident Bärbel Bohley, early 1990s).

5. See generally Robert A. Holmes, *Burmese Domestic Policy: The Politics of Burmanization*, 7 ASIAN SURV. 188 (1967) (quoting economic treatise used as blueprint for economic development and national independence to later explain domestic changes toward nationalism and reduction of foreign influence in Burma).

6. Constitution of the Republic of the Union of Myanmar, May 5, 2008, art. 6(d) (one of country's objectives is "flourishing of a genuine, disciplined multi-party democratic system").

7. Aung San, often referred to as "Father of the Nation," was assassinated six months prior to Great Britain's statutory grant of independence to the Union of Burma. His daughter Aung San Suu Kyi is chair of the National League for Democracy political party and serves as State Counsellor, the de facto head of Government.

8. MINISTRY OF PLANNING AND FIN., *Myanmar Sustainable Development Plan: (2018-2030)*, MYAN. INFO. MGMT UNIT, 13 (Strategy 1.3), https://themimu.info/sites/themimu.info/files/documents/Core_Doc_Myanmar_Sustainable_Development_Plan_2018_-_2030_Aug2018.pdf (last visited Sept. 4, 2020).

9. SUPREME COURT OF THE UNION OF MYAN., *Judicial Strategic Plan: (2018-2022)*, MYAN. NAT'L PORTAL, 6 <https://myanmar.gov.mm/documents> (last visited Sept. 4, 2020). This five-year plan, adopted in January 2018, is a sequel to what the Supreme Court called "the successful implementation" of the judiciary's 2015-17 three-year strategic plan adopted four years earlier. *Id.* at 1. Legal expert Andrew Harding disputed this laudatory assessment when he wrote that "since 2013 there have [not] been any really significant

The *Pyidaungsu Hluttaw* (Parliament) passed the National Education Law in 2014,¹⁰ and two years later, the bicameral legislature adopted the National Education Strategic Plan.¹¹ As if sorting through grains of white rice and fermented tea leaves, the juridical and educational elite have been choosing which laws and lawyering ingredients they want to retain from the British colonial past, and which donor-advised, post-Socialist, and neoliberal legal practices they should graft onto the physically and intellectually decayed tertiary educational infrastructure. The various national plans all require a corps of professionally and ethically trained lawyers¹² and jurists to ensure genuine implementation of rule of law in order to lift the “heavy burden” placed on “those who are poor and vulnerable.”¹³

Public investment in higher education is slowly rising, and there are now greater opportunities and openness among Myanmar’s universities

changes in the judiciary arising from the reforms under the [2015-17] Strategic Plan or otherwise.” Andrew Harding, *Theories of Law and Development: Asian Trajectories and the Salience of Judicial Reform in Myanmar* 12 (Nat’l Univ. of Sing. Ctr. for Asian Legal Stud., Working Paper No. 18/01, 2018). This view was shared by a former chair of the Myanmar Lawyers’ Network. *Id.* at 12-13. The current strategic plan identifies virtually the same five “strategic action areas” as those in the earlier judicial plan. SUPREME COURT OF THE UNION OF MYAN., *Judicial Strategic Plan: (2018-2022)*, 5-9 (last visited Sept. 4, 2020).

10. See generally National Education Law, 2014 (1376, New Moon of Thadingyut) (Myan.) (updating Myanmar’s outdated educational system). The law was amended in 2015.

11. See generally MYAN. MINISTRY OF EDUC., *National Education Strategic Plan 2016-21*, BRIT. COUNS., https://www.britishcouncil.org/sites/default/files/myanmar_national_education_strategic_plan_2016-21.pdf (last visited Sept. 5, 2020). The plan aims to attain both regional and international standards of academic excellence. Jonathan Liljeblad, *Democracy, Rule-of-Law, and Legal Ethics Education in Context: Directing Lawyers to Support Democratization in Myanmar*, 47 GA. J. INT’L & COMP. L. 451, 452 (2019).

12. The terms *lawyer* and *attorney* are used interchangeably here, although sometimes the former is confused with *law officer*, the Myanmar term of art for a public prosecutor.

13. MINISTRY OF PLANNING AND FIN., *supra* note 8, at 12. Australian National University Senior Lecturer Jonathan Liljeblad, further argues that “the context of Myanmar’s democratization calls for an expansion in legal ethics pedagogy that nurtures law graduates to be able to serve the country’s transition [to a democracy].” Liljeblad, *supra* note 11, at 453. When asked to define the conditions for rule of law (ROL), Senior Attorney U Sein Win Chan of the Cherry Law Group responded that “without peace, there can be no rule of law . . .” (interview with BABSEACLE International Clinician In-Residence (ICIR), Taunggyi, Jan. 22, 2019). Periodic reports and interview notes prepared by various ICIRs (on file with authors) form the bases of qualitative evaluation data referred to in this article. Because some of their comments are sensitive, or may jeopardize personal and institutional relations, they are not identified by name and, in some instances, their university location or date of interview is withheld.

to partner with international organizations and universities abroad.¹⁴ After 2012, an increasing number of foreign development actors, domestic and international policymakers, and civil society organizations (CSOs) have initiated a number of what one scholar called “frantic rule of law activities” in Myanmar.¹⁵

This article will review successes and challenges encountered in promoting legal educational reform in Myanmar within a centralized, hierarchical educational bureaucracy. We will discuss the direction of legal education in Association of Southeast Asian Nations (ASEAN) countries¹⁶ and how educators can use clinical legal education (CLE) methodologies to empower law students, teachers, and their communities, with an emphasis on ROL and access to justice. We draw here on the authors’ experiences in developing and piloting Community Teaching and Externship Preparation law school curricula from 2017 to 2019—namely, under the auspices of BABSEACLE, an international non-governmental organization (NGO).¹⁷

In particular, we will highlight two teaching modules: conducting a community needs assessment (CNA)¹⁸ and teaching peer-to-peer “CLE English” classes at university law departments in remote regions of the country and in the outskirts of Yangon.¹⁹ Finally, we will offer thoughts

14. See INST. OF INT’L EDUC., *INVESTING IN THE FUTURE: REBUILDING HIGHER EDUCATION IN MYANMAR* 18 (2013); MELISSA CROUCH, *ACCESS TO JUSTICE AND ADMINISTRATIVE LAW IN MYANMAR* 20 (2014).

15. Kristina Simion, *Research Access and Ethics in Myanmar*, J. OXFORD CENTRE FOR SOCIO-LEGAL STUD. 49, 49 (2018).

16. Even if the legal community agrees on the need to graduate students who can function in a globalized economy and adhere to the ROL, the debate is more nuanced than a choice between a theory-based or practice-based education, or between acquisition of knowledge and acquisition of professional skills. See Stephen A. Rosenbaum, *Beyond the Fakultas’s Four Walls: Linking Education, Practice, and the Legal Profession*, 23 PAC. RIM L. & POL’Y J. 395, 401-06 (2014).

17. Co-founded by Bruce Lasky and Wendy Morrish, BABSEACLE has been a leader for almost twenty years in stimulating new educational approaches—notably clinical legal education or CLE—by “working collaboratively with universities, law students, law faculties, lawyers, members of the legal community, and justice related organizational partners since 2003 to develop justice education and pro bono related programs throughout Asia.” *About Us*, BABSEACLE, <https://www.babseacle.org/about-us/> (last visited Sept. 5, 2020).

18. The CNA was conducted by Myanmar law faculty and students with the assistance of co-author Tushaus, who was there in 2018 as an International Clinician In-Residence and again in 2019 as an ICIR and Fulbright Scholar Specialist. See *infra* Part III. Tushaus had previously served as Fulbright-Nehru Scholar at Banaras Hindu University, India (2012), Fulbright Specialist at The University of The Gambia (2017), and later as Ambassador’s Distinguished Scholar at Bahir Dar University School of Law, Ethiopia (2019-20).

19. Co-authors Hubbard and Sharp-Bauer, then undergraduate students, conducted the CLE English classes. See *infra* Part IV.

on the future of this initiative and on the state of law and development aid, while recognizing the place of informal justice and avoiding neocolonial tendencies and legal transplantism.²⁰

In this challenging environment, “internationals” have fostered faculty and student autonomy and helped build capacity for interactive teaching, scholarship, and collegiality. At the same time, they strive to reconcile the goals of the implementing NGO and its donors and the Myanmar law school partners.

Legal Education: Legacy of Isolation and Military Control

Myanmar (formerly Burma—formerly Myanmar—formerly Burma)²¹ presents its own set of unique challenges. A “democratically-elected, civilian-led government” assumed power in Myanmar in 2016²²

20. ROL is not simply about “transplanting formal mechanisms . . . [without] infus[ing] those procedural institutions with values and politics that will speak to issues . . . that matter to normal people.” Elliott Prasse-Freeman, *Conceptions of Justice and the Rule of Law*, in THE DYNAMICS OF AN EVOLVING POLITY 89, 90 (David I. Steinberg ed., 2015).

21. The names *Myanmar* and *Burma* both derive from the earlier Burmese *Myanmar*, an ethnonym for the majority Bamar ethnic group. Both names also have shifting political connotations as colonialist, neocolonialist, anti-colonialist, pro-military, or anti-military. Shortly after assuming power, Aung San Suu Kyi told diplomats that “there is nothing in the constitution of our country that says that you must use any term in particular.” *What’s in a name? Not much, according to Aung San Suu Kyi*, SOUTH CHINA MORNING POST (Apr. 23, 2016, 1:15 P.M.), <https://www.scmp.com/print/news/asia/southeast-asia>. We choose to use the nationally and internationally recognized name, Myanmar, although its usage has not been universally accepted for a variety of historical, political, and idiosyncratic reasons. See, e.g., Interview by Chistiane Amanpour with Thant Myint-U, Historian, CNN (Feb. 28, 2020), <https://edition.cnn.com/videos/world/2020/02/28/amanpour-interview-thant-myint-u-myanmar.cnn> (last visited January 22, 2021).

22. HUMAN RIGHTS WATCH, WORLD REPORT 2017: EVENTS OF 2016, at 147 (2017). The term “civilian-led” does not tell the whole story insofar as the Defense Services retain one-quarter of the seats in the national Parliament (*Pyidaungsu Hluttaw*) and control three key ministries. Professor Liljeblad sets out in detail the country’s constitutional and tripartite legal infrastructure and the “current status of Myanmar as a hybrid regime, whether labeled as a negotiated or tutelary transition [to democracy].” Liljeblad, *supra* note 11, at 453, 468-70, 472-74. Law lecturer Alex Batesmith and criminal lawyer-educator Jake Stevens assert that, under military dominance, “the law continues to be a tool of oppression and social control, feeding a justice system that is a dysfunctional mix of colonial-era legislation, military-controlled and degraded institutions riddled with corruption, and justice actors operating without any degree of professional competence, independence or integrity.” Alex Batesmith & Jake Stevens, *In the Absence of the Rule of Law: Everyday Lawyering, Dignity and Resistance in Myanmar’s ‘Disciplined Democracy’*, 28 SOC. & LEGAL STUD. 573, 581 (2018) (citations omitted). By the 1980s, the legal profession “had fallen a long way since its heyday about half a century earlier. Lawyers were no longer either politically powerful or economically prosperous.” Nick Cheesman & Kyaw Min San, *Not Just Defending; Advocating for Law in Myanmar*, 31 WISC. INT’L L.J. 702, 710 (2014).

for the first time since the coup d'état led by General Ne Win more than a half-century earlier. Before this transition, the country was secluded from much of the world, and the regime was subject to "praetorian politics," in which "the military played an active role propagating the ideological necessity of military protection and defence²³ for the Myanmar state."²⁴ At the heart of this ideology was "the indispensability of the military to state stability and security."²⁵

The national security mindset continues to underpin the politics of unity, with real and perceived threats posed by non-Bamar ethnic groups.²⁶ This includes the Rohingya—whose identity label the Government refuses to recognize. The Rohingya, along with other minorities have faced discrimination, displacement, and violent attacks.²⁷

The march toward democratic reform proceeds under the watchful eye of military careerists and civilian bureaucrats. Since weaning itself

23. When directly quoting writings in the English language, we defer to the American or British orthographic preferences of the writer or publisher.

24. Jacqueline Menager, *Myanmar's New Generation: A Study of Elite Young People in Yangon, 2010 to 2016*, at 51-52, 146 (Nov. 2017) (Ph.D. thesis, Australian National University), <https://openresearch-repository.anu.edu.au/handle/1885/144288>.

25. *Id.* at 52.

26. The flawed 1982 Citizenship Law is particularly severe in its exclusion of the Rohingya ethnic group from eligibility for full citizenship, leaving them virtually stateless. See BURMESE ROHINGYA ORGANISATION UK, MYANMAR'S 1982 CITIZENSHIP LAW AND ROHINGYA 1 (2014). Rohingya schoolteacher Futhu, who resided in an overcrowded Bangladeshi refugee camp, recalled that none of his family had migrated from Bangladesh to Myanmar's Rakhine State:

They'd only been driven there as refugees after one of the many armed operations against the Rohingya — of which there have been roughly a dozen since 1948...[T]here [a]re 135 recognized ethnic groups in Myanmar, called taing-yin-tha, which is often translated as 'national race' but literally means something like 'offspring of the land,' or indigenous. Those 135 groups, including the neighboring Rakhine [ethnic group] and the country's main ethnic group, the Bamar, ha[ve] the rights and citizenship that went along with official recognition, but the more than one million Rohingya d[o] not.

Sarah A. Topol, *The School Teacher and the Genocide*, N.Y. TIMES MAG. (Aug. 8, 2019), <https://www.nytimes.com/2019/08/08/magazine/rohingya-genocide-teacher.html>.

27. See, e.g., HUMAN RIGHTS WATCH, WORLD REPORT 2020: EVENTS OF 2019, at 409-13 (2020). In 2018, a fact-finding panel of the United Nations Human Rights Council found there may be sufficient evidence of genocide against this long-maligned minority, along with crimes against humanity and war crimes. Human Rights Council, Rep. of the Independent International Fact-Finding Mission on Myanmar on Its Thirty-Ninth Session, at 1, U.N. DOC. A/HRC/39/64 (2018). In January 2020, the International Court of Justice ordered Myanmar to prevent genocidal violence against the Rohingya minority and preserve any evidence of past crimes. See Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), Order, 2020 I.C.J. 1, at 1 (Jan. 23). Publicly evoking the "R-word" is *verboden* for law and development aid actors who want to maintain credibility or in-country longevity.

from military rule, the nation has undergone rapid change. Myanmar recently moved into the medium human development category with a ranking of 147 out of 189 countries on the Human Development Index (HDI).²⁸ Despite its improved score on the HDI, this is still low when compared with other countries in East Asia and the Pacific.²⁹ In addition to the low score, almost one-third of Myanmar's population lives under the national poverty line.³⁰

The troubled history of postsecondary education in Myanmar is well documented,³¹ prompting legal scholar Myint Zan to warn a decade ago that “the scale of work necessary to restore the quality of its law schools was extensive and should not be underestimated.”³² “From the military coup of 1962 until 1999, Myanmar closed its universities on numerous occasions.”³³ Beyond the closures, a wide range of factors have inhibited local university law departments, running the gamut from cumbersome hierarchy and centralized bureaucracy to unpredictability in scheduling, enrollment, and teacher tenure. Lack of teacher autonomy, frequent faculty transfers, heavy reliance on “distance education,” and inadequate resources have also contributed to diminished academic standing.³⁴

28. UNITED NATIONS DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2020, THE NEXT FRONTIER: HUMAN DEVELOPMENT AND THE ANTHROPOCENE 2 (2019), http://www.hdr.undp.org/sites/all/themes/hdr_theme/country-notes/MMR.pdf.

29. *Id.* at 4.

30. *Basic 2018 Statistics: Economic Research and Regional Cooperation Department*, ASIAN DEV. BANK (May 2018), <https://www.adb.org/mobile/basic-statistics-2018/>.

31. See generally, Myint Zan, *Legal Education in Burma Since the mid-1960s*, 12 J. BURMA STUD. 1 (2008) (analyzing Burma's legal education developments post-March 1962 Revolutionary Council military coup); CROUCH, *supra* note 14, at 20-22. A noted Myanmar legal scholar maintains that “legal education has been seriously degraded over half a century . . . symptomatic of the derelict state of tertiary education generally” in the nation. Andrew Harding, *Law and Development in Its Burmese Moment: Legal Reform in an Emerging Democracy*, in LAW, SOCIETY AND TRANSITION IN MYANMAR 377, 392 (Melissa Crouch & Tim Lindsey eds., 2014).

32. Jonathan Liljeblad, *Transnational Support and Legal Education Reform in Developing Countries: Findings and Lessons from Burma/Myanmar*, 14 LOY. U. CHI. INT'L L. REV. 133, 141 (2016).

33. CROUCH *supra* note 14, at 20. During times of unrest, the military attempted to use lecturers “to try to dissuade students from demonstrating.” Melissa Crouch, *Rediscovering “Law” in Myanmar: A Review of Scholarship on the Legal System of Myanmar*, 23 PAC. RIM L. & POL'Y J. 543, 545-46 (2014). “The longest period of closure was after the 1988 democracy uprising, when universities were only open for the equivalent of three out of twelve years until 2000.” *Id.* at 546. For an excellent account of the personal cost of university closures, see PASCAL KHOO THWE, *LAND OF THE GREEN GHOSTS* 155-235 (2002).

34. See MYAN. CLE PROGRAMME CONSORTIUM, *THE GLOBAL PATH AND FUTURE OF CLINICAL LEGAL EDUCATION IN MYANMAR* 33-38 (Apr. 2016); *Rediscovering “Law” in Myanmar*, *supra* note 33, at 546.

Even with the waning of the military regime, legal education has been characterized by formal, institutionalized learning based on absorption of theoretical knowledge without a focus on development of legal professional skills or ethical training.³⁵ Teaching is typified by classroom call-and-response³⁶ and rote memorization.³⁷ Critical thinking, problem-based learning, and service learning are virtually nonexistent.³⁸

Myanmar is “emerging as a prosperous nation” as its economy continues to grow.³⁹ Development aid has increased as the transition to democracy has been seen by the international community as a positive step.⁴⁰ Of the \$1.51 billion Myanmar has received in grants and loans, however, a relatively small amount has been allocated to education.⁴¹

35. See ILAC/CEELI INST., EMERGING FACES: LAWYERS IN MYANMAR 7-11 (2014), <http://ceeliinstitute.org/wp-content/uploads/2011/09/Emerging-Faces-webedition-FINAL-1.pdf>; see also Liljeblad, *supra* note 32, at 137-43.

36. Nicholas Ross, Carly Ardussi, David Tushaus, Soe Thiri Win, & Zwe Pyae Sone Lwin, *Understanding Myanmar and the Way Forward for Legal Education: From Rote Learning to Community Engagement Through Clinical Legal Education*, 7 ASIAN J. LEGAL EDUC. 97, 100 (2020) (noting Myanmar’s education is dominated by “parrot” or rote teaching, lessons taught directly from book, and by high student-to-teacher ratios). The students’ response in unison is reminiscent of a cross between Buddhist chanting and American little red schoolhouse. Notwithstanding the interactive, applied learning approaches encouraged and modeled in 2018 and early 2019, co-authors Tushaus and Hubbard observed that chanting was still an entrenched practice in June 2019.

37. See ANTHONY WELCH & MARTIN HAYDEN, REPUBLIC OF THE UNION OF MYANMAR: SUPPORT FOR EDUCATION SECTOR PLANNING 24 (2013) (“Evidence suggesting that even teachers exposed to more inquiry-based and child-centred forms of pedagogy often revert to rote forms of instruction after a time.”), <https://www.adb.org/sites/default/files/project-document/79489/46369-001-tacr-02.pdf>; The 2016-2021 Education Strategic Plan calls for “a move away from a system focused on the accurate repetition of acquired content knowledge to a more balanced system that assesses student learning progress against national learning standards.” MYAN. MINISTRY OF EDUC., *supra* note 11, at 19. Repetition of content is not a uniquely Myanmar phenomenon. In a review of legal education in Southeast Asian neighbor Indonesia a few years ago, one commentator lamented that “because the answers expected from them at exams should be as close to what they have been dictated as possible,” this has resulted in a “culture . . . in which students will never think critically about a subject.” Adriaan Bedner, *Some Notes on the Future of Indonesian Legal Education* (2013) (unpublished manuscript) (on file with authors); as in Myanmar, “[t]he same text books [sic] are used for years and teaching methods are one way [sic] communications.” *Id.*

38. See INST. OF INT’L EDUC., *supra* note 14, at 19 (2013); CROUCH, *supra* note 14, at 20-21; Liljeblad, *supra* note 32, at 140-50.

39. *Member Fact Sheet: Myanmar*, ASIAN DEV. BANK 1 (May 2020) <https://www.adb.org/sites/default/files/publication/27782/mya-2019.pdf>.

40. See *About Myanmar*, UNDP MYAN., <http://www.mm.undp.org/content/myanmar/en/home/countryinfo/> (last visited Aug. 21, 2020); see also WELCH & HAYDEN, *supra* note 36, at 3-4 (noting increased international engagement with local constituencies).

41. See *Member Fact Sheet: Myanmar*, *supra* note 39, at 1.

The current state of the education system's disrepair is compounded by a lack of funding for education over a prolonged period of time.⁴²

Low Public Confidence in the Justice Sector

Against the oratorical backdrop, research shows that trust in Myanmar's formal justice sector institutions and the legal profession is low "due to a history of eroded respect for the rule of law" and "the poor state of legal education," among other factors.⁴³ A comprehensive survey of over 3,500 Myanmar adults, undertaken by MyJustice,⁴⁴ found that:

- ❖ Low public trust in justice institutions remains a "critical issue."
- ❖ People view the role of law as "a means [of] control[ing] people and ensur[ing] public security" rather than "protecting people's rights" or "resolving disputes."
- ❖ Ninety-two percent of those surveyed "fully agree" that everyone "should be treated fairly and with respect when facing justice issues" but twenty percent of respondents do not know the purpose of the law.
- ❖ "Overwhelmingly, people identify the ward or village tract administrator as the primary actor for justice functions."⁴⁵

42. Myanmar's educational expenditures comprised only 2.2% of GDP in 2017. *Government Expenditure on Education, Total (% of GDP) – Myanmar*, THE WORLD BANK, <https://data.worldbank.org/indicator/SE.XPD.TOTL.GD.ZS?locations=MM> (last visited Aug. 22, 2020).

43. INT'L COMM'N OF JURISTS, RIGHT TO COUNSEL: THE INDEPENDENCE OF LAWYERS IN MYANMAR 3-4 (2013), <http://www.burmalibrary.org/docs16/ICJ-MYANMAR-Right-to-Counsel-en-red.pdf>. It is not simply amongst the lay public where confidence is low. After attending a meeting of Myanmar law students and local lawyers, one visiting clinician wrote in his weekly report: "Perhaps the most interesting thing for me was to discover that, of the 20+ students in attendance, only two planned to become lawyers. When we asked why, we were told that law is considered to be low status." (ICIR Weekly Report to BABSEACLE, 2019).

44. SEARCHING FOR JUSTICE IN THE LAW, MYJUSTICE (Mar. 2018), https://www.myjusticemyanmar.org/sites/default/files/Policy%20Brief_20042018_Screen_fit_0.pdf. MyJustice (www.myjusticemyanmar.org) is the face of the British Council in Myanmar, the United Kingdom's international organization for cultural relations and educational opportunities.

45. This latter finding was confirmed with more nuance in a subsequent MyJustice Policy Brief: "Justice is when the ward administrator mediates and resolves an issue without bias, including punishment to fit a crime." LISA DENNEY, WILLIAM BENNETT, & KHIN THET SAN, UNDERSTANDINGS OF JUSTICE IN MYANMAR (Nov. 2016),

Notwithstanding “the ubiquity of its usage and the importance of the idea, the rule of law. . . is endowed with ‘a multiplicity of definitions and understandings.’”⁴⁶ The World Justice Project has articulated four universal ROL principles:

- ❖ The government and its officials as well as individuals and entities are accountable under the law.
- ❖ The laws are clear, publicized, stable and just; are applied evenly, and protect fundamental rights, including the security of persons and property.
- ❖ The process by which laws are enacted, administered and enforced is accessible, fair, and efficient.
- ❖ Justice is delivered timely by competent, ethical, and independent representatives who are of sufficient number, have adequate resources and reflect the make-up of the communities they serve.⁴⁷

<http://www.asianbarometer.org/pdf/MyanmarReport2016.pdf>. While piloting a sexual and gender-based violence (SGBV) clinic at Taunggyi University in the summer of 2019, co-authors Tushaus and Hubbard encountered legal professionals who wanted to first investigate whether abuse by a husband against his wife is “justified.” If not, these professionals opined that village leaders should mediate these disputes, regardless of the disputants’ lack of training or inherent inequality between parties. In a paternalistic society where incidents of domestic violence are increasing at an alarming rate, such traditional forms of dispute resolution in these cases are problematic. *See* Russell Kabir, Mainul Haque, Masoud Mohammadnezhad, Nandeeta Samad, Shabnam Mostari, Shiny Jabin, Md. Anwarul Azim Majumder, & Md. Golam Rabbani, *Domestic Violence and Decision-making Power of Married Women in Myanmar: Analysis of a Nationally Representative Sample*, 39 ANNALS SAUDI MED. 395, 398, 401 (2019). However, as discussed below, clinical legal education has the potential to expose students to effective practices in customary law that respect contemporary human rights norms and compensate for parties’ imbalance in ability to negotiate or otherwise meaningfully participate.

46. David Tolbert & Andrew Solomon, *United Nations Reform and Supporting the Rule of Law in Post-Conflict Societies*, 19 HARV. HUM. RTS. J. 29, 31 (2006) (citation omitted). ROL “is not a recipe for detailed institutional design [but] an interconnected cluster of values.” *Id.* (citation omitted). Hong Kong University scholars Marco Wan and Janny Leung unequivocally concluded that “the phrase ‘rule of law’ has been so overused and misconstrued that it has become virtually meaningless.” Marco Wan & Janny Leung, *The Rule of Law & the Cultural Imaginary in (Post-)colonial East Asia*, 18 L. TEXT CULTURE 1, 1 (2014). A more critical analysis is offered by anthropologist Elliott Prasse-Freeman: “[B]ringing the rule of law to Burma’ seems to mean simply transplanting the western liberal tradition: formal checks and balances through judicial review, institutions that ensure (ill-defined material articulations of) human rights, and so on.” Prasse-Freeman, *supra* note 20, at 90.

47. WORLD JUSTICE PROJECT, RULE OF LAW INDEX 9 (2016), https://worldjusticeproject.org/sites/default/files/documents/RoLI_Final-Digital_0.pdf. This NGO has identified nine

In acknowledging the public's low confidence, the Union Attorney General's Office issued a 2015–19 Strategic Plan committed to “safeguard[ing] the principles of the Rule of Law in Myanmar in accordance with international standards . . . so that Myanmar's development as a democratic nation is based on justice, good governance and integrity.”⁴⁸ This transformation will “largely depend[] on the work of legal practitioners ‘on the ground’ who demand that legal standards be met and who intermediate the notion of a state of law to the people.”⁴⁹ Furthermore, “[w]hile public awareness [of the law] remains important, for Myanmar's justice sector reform to work, people *must see and experience* the law protecting their rights.”⁵⁰

English Language Dominance

English is the international idiom of scholarly and professional research and networking and the language of much of the world's legal education literature. After undergoing years of alternating language instruction policies from English to Burmese to English,⁵¹ English is the officially designated language for law (and other curricula) in Myanmar, likely because of its utility.⁵² It is, however, an open secret that the policy is honored in the breach or implemented in a cursory manner.⁵³

factors by which it measures adherence to these principles, including: alternative dispute resolution mechanisms that are accessible, impartial, and effective; an informal justice that is timely and effective, impartial and free of improper influence, and also respects and protects fundamental rights. *Id.* at 10-13 (2016).

48. UNION ATTORNEY GEN.'S OFFICE, *Moving Forward to the Rule of Law: Strategic Plan 2015-2019*, UNDP: MYAN. 13 (2015), https://www.mm.undp.org/content/dam/myanmar/docs/Documents/2016/UNDP_MM_UAGO_Strategic_plan1.pdf.

49. BURMA CTR. PRAGUE & CEELI INST., INDEPENDENT LAWYERS IN MYANMAR 23 (2017), <https://ceeliinstitute.org/wp-content/uploads/2017/09/Independent-Lawyers-in-Myanmar.pdf>.

50. SEARCHING FOR JUSTICE IN THE LAW, *supra* note 44 (emphasis added).

51. See Myint Zan, *supra* note 31, at 24-30.

52. Speaking at a 1962 post-colonial regional legal education conference, Singapore's Chief Justice stressed the utility of English as the language of instruction and public discourse and urged the former British colonies “not to reject English under the pressure of nationalism, but to retain and strengthen it as a national asset.” Harry E. Groves, *Southeast Asian Conference on Legal Education*, 15 J. LEGAL EDUC. 429, 433 (1962).

53. An International Commission of Jurists study found that:

[F]ew law students have adequate proficiency in the language, making comprehension of the lectures and materials extremely limited. Lecturers often resort to explaining English language curriculum in the Myanmar language, despite being responsible for preparing students for written tests that are administered in English. Recent law school graduates describe rote memorization of English language questions and answers from review materials provided in advance or during study sessions with professors, without comprehending the substance of questions and answers.

Extracts of old British codes are sprinkled throughout textbooks, which are otherwise devoid of much commentary or analysis.

Millennial and Generation Z students may have a better grasp of English than their teachers, but their levels of proficiency also vary, and their textbooks may be filled with scribbled translations of whole passages. This extra layer of complexity only creates a barrier to mastering legal concepts. Moreover, most relevant laws, case law, and legal commentary are published in the Myanmar language and, perhaps more importantly, the courts also operate in the Myanmar language.⁵⁴

Why maintain the fiction that the instructional *lingua franca* of law school is English? There is no need to blame or shame anyone for using their native language as a means of instruction and communication. The primary objective of building teacher and learner capacity is mastery of methodology, and to meet that objective requires the ability to communicate with non-Myanmar-speaking workshop trainers, mentors, and international clinicians. It is important, however, that adherence to an English-only policy not be implemented at the expense of nuanced and full comprehension.

II. SOUTHEAST ASIA EDUCATION DEBATE: JURISPRUDENCE VERSUS PRACTICE

The debate over the form and substance of Southeast Asian legal education has not necessarily ended; there is disagreement about what constitutes “the appropriate curricular balance between theory, doctrine, and practice, or what role the government should play in directing the orientation of legal studies and careers.”⁵⁵ Even where there may be shared recognition about the desirable objectives and outcomes for law graduates, the legal community acknowledges that law faculties have limited human and material resources to meet them, that jurisprudence is underdeveloped amongst jurists, that robust research by faculty is lacking, and that students possess few skills in critical thinking.

The contemporary conversation about the direction of legal education is mirrored in sister law schools across Southeast Asia and

RIGHT TO COUNSEL: THE INDEPENDENCE OF LAWYERS IN MYANMAR, *supra* note 43, at 32.

54. CROUCH, *supra* note 14, at 25. Professor Myint Zan writes about the irony of requiring an English language law curriculum where many educators and graduates have only minimal proficiency in the language and will encounter legal texts and oral proceedings exclusively in the Myanmar language. Myint Zan, *supra* note 31, at 68-69 n.5.

55. Rosenbaum, *supra* note 16, at 396-97. Educators in ASEAN countries have been debating the direction of legal instruction and lawyer training, from Indonesia to Malaysia and from Singapore to The Philippines. *Id.* at 406-12.

should resonate with legal educators everywhere who are examining traditional pedagogy. For example, how much emphasis should be placed on knowledge of legal detail as opposed to a greater understanding of the law? This is what one Southeast Asian law commentator has called the distinction between “doctrinal” and “theoretical” approaches.⁵⁶ Another commentator argues that, due to curricular time constraints, law schools cannot inculcate both a thorough theoretical understanding of the law and the skills demanded by the world of commerce, government, and society at large.⁵⁷

Myanmar aspires to meet ASEAN and international standards in university education in less than two decades.⁵⁸ To that end, the trends in Singapore, Malaysia, The Philippines, and the United States serve as models for reform, with individual law schools exercising autonomy in their pedagogical predilections.⁵⁹

Clinical Legal Education: Innovative and Interactive Teaching

Clinical legal education methodology and interactive teaching are no longer the exclusive domain of law faculties in North America, Europe, and Australasia.⁶⁰ For a number of years, great strides have also been made in Africa, Asia, and South America where a number of homegrown

56. Tan Cheng Han, *Challenges to Legal Education in a Changing Landscape—A Singapore Perspective*, 7 SING. J. INT'L & COMP. L. 545, 566 (2003).

57. Hikmahanto Juwana, *Legal Education Reform in Indonesia*, 1 ASIAN J. COMP. L. 1, 5-6 (2006). Instead, Professor Juwana argues, the undergraduate curriculum should concentrate on providing theoretical and doctrinal mastery of the laws and not be “burdened” with the need to provide professional legal education, which can be reserved for a later graduate level phase. *Id.* at 11-12; see also Adriaan Bedner, *Indonesian Legal Scholarship and Jurisprudence as an Obstacle for Transplanting Legal Institutions*, 5 HAGUE J. RULE L. 253, 257 (2013) (lamenting that law graduates never learn to “do law” or “to acquire an effective ‘internal legal attitude’” because the study of law is “highly theoretical, but at the same time superficial.”).

58. Liljeblad, *supra* note 11, at 452.

59. *Id.* at 462-63.

60. See generally THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE (Frank S. Bloch, ed. 2010); EXPERIMENTAL LEGAL EDUCATION IN A GLOBALIZED WORLD: THE MIDDLE EAST & BEYOND (Mutaz M. Qafisheh & Stephen A. Rosenbaum, eds., May 1, 2016). The regional trend toward clinical and “practical” legal education was spurred in large part by BABSEACLE and the Open Society Justice Initiative. Rosenbaum, *supra* note 16, at 406, 409-12. Having multiple university partners in Southeast Asia operate their own brand of successful clinical programming in different legal systems has also helped overcome possible challenges to clinical education as a “Western pedagogical method not appropriate” for the region. Bruce A. Lasky & M.R.K. Prasad, *The Clinical Movement in Southeast Asia and India*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE 41 (Frank S. Bloch, ed. 2010).

legal aid clinics and curricular innovations are flourishing.⁶¹ Global evidence suggests that clinical experience during legal studies imbues students with practical lawyering skills, sensitizes them to the needs of marginalized and diverse communities, and engenders long-term commitment to rule of law, professional ethics, and public service.⁶²

Clinical education encompasses many meanings, ranging from in-house, live-client settings in law schools to field placements or externships.⁶³ “Applied legal education” or “experiential legal education” may more accurately describe, in today’s Myanmar educational context, what constitutes an interactive, reflective, and experiential learning process to help students understand how the law works in action.⁶⁴

A new generation of Myanmar’s legal professionals and students is eager to engage with a world long closed off, where individual initiative was either culturally discouraged or politically perilous. Training

61. THE GLOBAL CLINICAL MOVEMENT, *supra* note 60.

62. See MYANMAR CLE PROGRAMME CONSORTIUM, *supra* note 34, at 24, 26, 41.

63. See, e.g., CYNTHIA BATT ET AL., CLINICAL LEGAL EDUCATION ASSOCIATION: HANDBOOK FOR NEW CLINICAL TEACHERS 11-14 (8th ed. May 2017), <https://www.cleaweb.org/resources/Documents/2017%20CLEA%20New%20Clinicians%20Handbook>. For an explanation of the “live-client” clinical concept and detailed pedagogical guidance, see generally DAVID F. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS (2002). According to veteran global clinician Richard Wilson, “[A] law school can call its clinical legal education program by any name — live-client clinic, legal aid, field placement (externship or internship), street law, simulation or role-play, apprenticeship or any other local name — so long as the focus is on student experiential learning — learning by doing.” Richard J. Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 GERMAN L.J. 823, 829 (2009). In Wilson’s view, however, the learning must also be done “for academic credit.” *Id.* But see Suzanne Rabé & Stephen A. Rosenbaum, *A “Sending Down” Sabbatical: The Benefits of Lawyering in the Legal Services Trenches*, 60 J. LEGAL EDUC. 296, 297 n.2 (2010) (explaining that “legitimate pedagogical debate” about the optimal experiential model is “sometimes manifested in a divisiveness and competitiveness” amongst faculty overseeing in-house clinics, simulation classes, and externships).

64. See, e.g., T.O. Ojienda & M. Odour, *Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya* 2 INT’L J. CLINICAL LEGAL EDUC. 49, 49 (2002) (clinical legal education “has been defined simply as learning law by doing law . . . a method of instruction in which students engage in varying degrees in the actual practice of the law”) (citation omitted); see also David I.C. Thomson, *Defining Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING 1, 20 (2015) (explaining experiential learning as “methods of instruction that regularly or primarily place students in the role of attorneys, whether through simulations, clinics, or externships . . . integrat[ing] theory and practice by providing numerous opportunities for students to learn and apply lawyering skills as they are used in legal practice (or similar professional settings).” These learning opportunities are also designed to encourage students to begin to form their professional identities as lawyers, through experience or role-playing with guided self-reflection, so that they can become skilled, ethical, and professional life-long learners of the law.” *Id.*

activities led by international and regional experts have been met with “deep appreciation” by faculty, staff, and students.⁶⁵

BABSEACLE’s Myanmar Reform Efforts

Since 2013, BABSEACLE has been promoting CLE—which translates as “Clinical Legal Education,” “Community Legal Education,” both, or neither⁶⁶—as a means to assist in transforming legal education in Myanmar. BABSEACLE has done this, in part, through curriculum design, workshops, conferences, summer schools, moot courts, and other activities conducted with faculty at most of Myanmar’s eighteen university law departments.⁶⁷ The NGO’s approach to development aid has been one of Training-of-Trainers in interactive teaching methods and social justice values.⁶⁸ Law teachers,⁶⁹ in turn, are meant to “contextualize what they had learned in ways more appropriate to their needs and more readily shared with other locals, effectively generating a cascading propagation of increased capacities and technical skills.”⁷⁰

These close engagements with individual law teachers, students, university administrators, and education officials have provided a

65. Liljeblad, *supra* note 32, at 143.

66. At times, the term “CLE” seems to be a slogan that springs to the lips of students or teachers who cannot necessarily provide a definition. In other developing countries, “[l]egal [c]linic’ or ‘interactive teaching’ may be bandied about like buzzwords, understood in name only—particularly in conversation with consultants or reports to funders.” Stephen A. Rosenbaum, *A New Day: Prime Time to Advance Afghan Clinical Education*, 3 ASIAN J. LEGAL EDUC. 1, 5 (2016).

67. *Terms of Reference: Support to Development of Clinical Legal Education (CLE) in Myanmar*, UNDP MYAN. (Mar. 2013). During BABSEACLE’s first three years, over 1189 students, teachers, and others had attended a workshop, training event or other CLE program. MYAN. CLE PROGRAMME CONSORTIUM, *supra* note 34, at 19.

68. BABSEACLE has established a memorandum of understanding (MOU) with sixteen law departments and has conducted scores of workshops and roundtables and embedded international short-term legal clinicians at some of these universities since 2013. The MOU required university partners to focus their CLE activities on social justice and legal empowerment of economically-disadvantaged and vulnerable community members. Another condition was a commitment to make CLE an accredited component of the law course or have a plan to obtain accreditation. Bruce A. Lasky, Wendy Morris, & Stephen A. Rosenbaum, *The Global Path of Myanmar University Teaching Programmes: Strategies, Models and Influences*, in STREET LAW AND PUBLIC LEGAL EDUCATION: A COLLECTION OF BEST PRACTICES FROM AROUND THE WORLD IN HONOUR OF ED O’BRIEN 258 (David McQuoid-Mason, ed. 2019).

69. The terms *law teachers*, *faculty*, and *professors* are used interchangeably here to refer to Myanmar University law department instructors. This is not to be confused with the actual academic rank or title of a particular member of the teaching staff.

70. Liljeblad, *supra* note 32, at 143. Professor Harding refers to the time between the initial legal reforms and the 2015 elections as a critical “Burmese moment’ in law and development.” Harding, *supra* note 31, at 377.

unique opportunity to observe, adapt, and overcome challenges to introducing and integrating educational innovations to the law curriculum. Further efforts, however, require more context and local capacity building, as well as the avoidance of pitfalls common to international legal education reform.⁷¹

In 2018, BABSEACLE transitioned from sponsoring discrete training events led by international clinicians to piloting semester-length clinical courses and extra-curricular activities. These activities were conducted by Myanmar law teachers themselves, together with community-based social justice advocates and attorneys and the support of on-site faculty mentors.

In its application for a grant from MyJustice, BABSEACLE wisely decided to focus on forms of clinical education that were easiest to adopt by educational institutions and teaching staff who had minimal to no background in skills-based, experiential, or applied legal education.⁷² With community teaching and externship preparation, there is no need to build much infrastructure.⁷³ Moreover, from an ethical perspective, these models pose the least liability for the university in terms of advice, counsel, or representation.

Community teaching, also popularly known as “community legal education,” “street law,” or “know your rights,” is a form of legal-awareness-raising in which students go into their communities to both observe and affect law in action.⁷⁴ In externships, a significant part of

71. In his analysis of *in situ* placements, legal education scholar Liljeblad cautions against the “limited duration” or “abbreviated nature” of aid delivery while urging presentation of “global standards of professionalism” as something other than “legal transplants.” Liljeblad, *supra* note 32, at 142-43, 145. The Training-of-Trainers (ToT) strategy “calls upon locals to take control” and “take power and responsibility for the local propagation of foreign aid” and avoid a tendency “to ignore, misinterpret, displace, supplant, or undermine the capacities that people already have.” *Id.* at 143 (citation omitted).

72. The grant made to BABSEACLE was funded by the European Union and “implemented” by the British Council, at a time when the United Kingdom was preparing to exit the EU.

73. That is to say there is no necessary bricks-and-mortar foundation, major curricular reform, or negotiation with bench and bar. Still, one must not underestimate the relationship building needed with community leaders, civil society organizations (CSOs), and prospective attorney supervisors in order to fully pilot community teaching and externship programs.

74. See Lee Arbetman, *Street Law, Inc.: Context, History and Future*, 2 INT’L J. PUB. LEGAL EDUC. 5 (2018). In addition to civic engagement in the education process, community teaching typically includes two other characteristics: teaching practical content (e.g., legal rights, obligations under the rule of law, and international human rights norms) and using interactive teaching strategies (e.g., advocacy, problem solving, critical analysis, and communication). *Id.* For an account of the community teaching experience in the Myanmar setting and the sample curriculum, see Lasky et al., *supra*

the learning relies on performing professional roles in an off-campus field placement under the supervision of a practicing attorney or advocate; the experience can help students develop insights into professional skills and problem-solving expertise.⁷⁵ Eventually, fledgling clinical programs may evolve into centers of in-house consultation or representation by supervised students whose clients may include individuals or groups appearing in administrative or ministerial forums, courtrooms, or legislatures.

BABSEACLE's pre- and inter-semester training workshops conducted in 2018 and 2019 provided a venue for enabling law teachers to exercise greater personal autonomy and skills in team building and collaboration. The NGO's expectation was that exchanges with law department colleagues from other Myanmar universities would lead to future, concerted (telephonic or electronic) networking activities. The workshops were also intended to simulate collaboration and intentional planning by presenting an introduction to curriculum development, course design, and scheduling.⁷⁶

Stakeholder involvement had been building slowly for externship placements and community teaching partnerships. The delay was due in part to the faculty's unfamiliarity with the legal landscape outside the university and how to negotiate extramural relationships. Moreover, not

note 68, at 251-77; Bebs Chorak, *Customary Law Lessons*, in STREET LAW AND PUBLIC LEGAL EDUCATION: A COLLECTION OF BEST PRACTICES FROM AROUND THE WORLD IN HONOUR OF ED O'BRIEN 251-77 (David McQuoid-Mason, ed. 2019); see also *infra* Part III (discussion on implementing community teaching).

75. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 146-52 (2007). In some placements, the extern may be *observing* or *assisting* lawyers, advocates, or judges. The externship should include clear educational objectives to be accomplished through a classroom component with assigned readings and discussions and supervisors who take time to explain and answer questions, and through structured systems, such as journal-writing, that require students to reflect on their experiences. In a real-world context, students can examine the interaction of legal analysis and human behavior, including interpersonal dynamics and communication. *Id.*

76. Some of the training activities valued most by participants at a 2018 ToT session included sequential lesson planning and more collaboration. Expressed challenges were time management, classroom participation, lesson selection and planning, more background course preparation, and student plagiarism. BABSEACLE Survey, MyJustice 2d Quarter Narrative Report 15-17 (Mar.-May 2018) (on file with authors). As for how students demonstrated what they learned, one visiting clinician later commented that "[t]here seems to always be this inclination to 'help out' the fellow student." Email from ICIR Mary Pat Treuthart to Stephen Rosenbaum and David Tushaus, (Dec. 29, 2020) (on file with authors). A specialist in East Asian traditions recently posted in an online exchange with US-based academic colleagues: "It is true that for many East Asians . . . [they may] surviv[e] a challenging new culture . . . by helping each other and that 'helping' has a broad definition." Email from John R. Wallace, Senior Lecturer, Univ. of Cal. Berkeley to Teach Net listserv recipients. (Dec. 17, 2019) (on file with authors).

all prospective supervisors were sure about their obligations in undertaking a student extern. The BABSEACLE team, together with a few international and local faculty members, had made some positive strides in laying the groundwork, with the goal of obtaining commitments from lawyers, social justice organizations, and community leaders. Four different International Clinicians In-Residence (ICIRs) were placed consecutively with Taunggyi University during the June and December semesters (2018-19), and two were placed with Taungoo University in the June semester.⁷⁷ Two clinicians were later placed briefly at East Yangon University,⁷⁸ and one ICIR returned to Taunggyi on a Fulbright Specialist grant in June 2019.⁷⁹

A Soft Launch: Externships and Community Teaching Venues

The law departments had organized two teams of faculty members to teach distinct CLE courses on Externship Preparation and Community Teaching. Student participation in these courses was completely voluntary. As is typical with burgeoning educational experimentation, there was no extra remuneration for faculty and no course credit for students. Among other shortcomings, class sessions were frequently subject to short-notice cancellation and rescheduling. The congested schedule of courses and teachers' other obligations made it difficult to identify common times outside of class when students or faculty could meet. In addition, students often had to miss class or arrive late due to these scheduling conflicts.

Some lessons on the CNA were included in the curricula that the faculty had at their disposal, but they had the ability to select which of the various lessons they would teach in the fifteen-week semester, and in what sequence.⁸⁰ The practice of advance planning and collaboration

77. BABSEACLE Survey, MyJustice 2d & 3d Quarter Narrative Report 15–17 (Mar.-Aug. 2018) (on file with authors).

78. MyJustice 2d & 3d Quarter Narrative Reports (Mar.-Aug. 2018) (on file with authors). The ICIRs came from diverse teaching and practice settings in Australia, China, Ireland, Trinidad & Tobago, United Kingdom, and the United States. *Id.* One of the continuing roadblocks in working with Myanmar legal education institutions, discussed further below, is the ability of a law department head to annul a memorandum of understanding or otherwise stonewall implementation of an agreement. That may leave NGOs scrambling to find an alternative university partner within the geographic or thematic orbit designated by the donor organization. Thus, when the newly installed head professor at Taungoo University decided she could not undertake a second semester of CLE courses, BABSEACLE managed to secure a position at East Yangon for the incoming ICIR but needed to stay clear of other on-campus NGO-implemented innovative educational activities.

79. Co-author Tushaus did his second ICIR stint on a Fulbright award.

80. *See supra* note 76 and accompanying text; *infra* notes 83-85.

in the curriculum tended to be ad hoc, and student attendance was inconsistent.⁸¹ In addition, the curriculum was being piloted for the first time by novice clinicians who were unaccustomed to team teaching.⁸² This made it difficult to assure adequate coverage of CNA materials and preparation by the faculty and students.

In the Introduction to lesson plans for both the Externship Preparation and Community Teaching curricula, faculty were advised:

[T]hat the outcomes are divided between *knowledge, skills and value*. ‘Best’ CLE practice suggests that all three should be considered in each lesson but, of course, it depends on what you want to achieve. Some lessons may focus more on substantive legal knowledge, [whereas] others may be more skills-related or prioritise personal or professional values and ethical concerns. Some lessons may involve more than one or even all three. Once you are clear what it is you are trying to achieve, then tailor the outcomes to fit that. Whatever outcomes are set, remember to make them SMART – Specific, Measurable, Achievable, Relevant and Time-bound/Timely.⁸³

If you follow the material from start to finish, you will have had the experience of taking part in a complete CLE programme. You will see that although this can be done as extra-curricular activity it is also possible to run this as a module that attracts academic credit As you will see from the format of the lesson plans that follow it is of critical importance, in terms of effective learning and teaching, to be clear about exactly what it is the teacher and student will be expected to do to achieve in any given lesson and in the course as a whole.⁸⁴

81. See *infra* notes 97, 111 and accompanying text.

82. See *infra* notes 154-57 and accompanying text.

83. *CLE Externship Preparation Syllabus and Lesson Plans* (2019-20) and *CLE Community Teaching Syllabus and Lesson Plans* (2019-20): “Introduction: The learning outcomes” (on file with authors) (emphasis added).

84. *Id.* at “Introduction: The Content”.

The law teachers were further invited to:

Creat[e] your own materials—adding to the lesson plans here or substituting some of the lessons — [this] is something we highly recommend. You also don't need to include every activity in each lesson plan.⁸⁵

Because the first semester at Taunggyi and Taungoo Universities was subject to some of the typical logistical and planning setbacks, the teachers were not able to complete all of the lesson plans. But, as student interest was so high in an *ex situ* experience, it was decided that a soft launch of externships and community teaching would be appropriate during the latter part of the semester, or during the break, even without the benefit of first completing the full curriculum.

Law student externs were enthusiastic about the subject matter content and looked forward to regular meetings and feedback on their work. They took advantage of opportunities to hone their problem-solving, reading, and research skills. Students made astute observations about the inhospitality of the courtroom, their unfamiliarity with court proceedings, and the limited contact they had with their supervising attorneys. They also noted logistical problems, such as the short duration of the externship and their physical distance from campus during the semester break when they returned to their home communities.⁸⁶

Other concerns were expressed by the legal practitioner supervisors—for example, a lack of supervisory guidelines and the inability to interview students before they were placed in an externship.⁸⁷ Some of these obstacles are logistical or institutional, and some could be overcome with better advance preparation of students and supervisors. Further mentoring, modeling, and training by more experienced educators and attorneys would be useful for teachers, students, and extern supervisors alike.

Before completion of predicate curricular materials, Taungoo University students launched community teachings at student

85. *Id.* at “Introduction: The Lesson Plan Template”.

86. Taungoo University, Minutes, End of Semester Roundtable (July 31, 2018) (on file with BABSEACLE).

87. Comments made to BABSEACLE interviewer on Nov. 13-14, 2018 site visit. Ten Taunggyi students were placed at four legal practitioner offices for a two-month externship, with eight supervisors and three teacher liaisons. Four Taungoo students were likewise placed at two offices for a one-month externship, with two supervisors and two liaisons. One of the Taungoo law lecturers indicated at the roundtable that the faculty wanted more help from ICIRs on how to supervise externs and to exchange ideas about teaching methods. Taungoo University, Minutes, *supra* note 86.

dormitories in 2018 on the subjects of sexual assault and on the law of possession and sale of narcotics.⁸⁸ Taunggyi University students also conducted community teachings at dormitories during semester break in 2018 on sexual and gender-based violence (SGBV) and an additional community teaching in early 2019 near Inle Lake on the very timely topic of pollution and environmental conservation.⁸⁹

Again, student enthusiasm was high, and the legal concerns selected for community teaching were important. Yet, the students might have benefited from the contemporaneous experience of other NGOs. For example, the US Agency for International Development (USAID) was in the midst of a five-year, \$12.1 million ROL project focused in part on increasing legal literacy, access to justice, and participation of marginalized populations in target regions and states through “legal awareness work and building the capacity of civil society organizations.”⁹⁰ Unfortunately, as we discuss below, it is not unusual for law and development projects to operate in separate spheres with only a veneer of collaboration and sharing of resources.

There will likely always be a healthy tension in law and development approaches between careful, cautious, and conscientious preparation and seizing the moment when participant eagerness and excitement are at their height. The success of the soft launch will be

88. Twenty-two law students participated in a presentation to 177 dorm residents. Over half of the respondents described the knowledge shared in an awareness-raising session “as [what] they expected” and one-third said it was “more than [what] they expected.” Only 2.8% of the respondents reported that it did not meet their expectation, and 7.3% said they were unsure. BABSEACLE Survey, MyJustice 3d Quarter Narrative Report 26-28 (June-Aug. 2018) (on file with authors).

89. Inle Lake is a nearby major tourist destination. Two hundred secondary school students attended the environmental law community teaching on Feb. 16, 2019 at Maing Thouk Village, Nyaung Shwe Township, led by 26 law students. However, due to the lack of continuous international residencies and ad hoc scheduling, no clinically-trained instructors were present to oversee the community presentations, and there was no robust guidance of the preparatory legal research, appropriate messaging to the lay public, or post hoc evaluation and reflection. That was rectified in part during the following summer. See discussion *infra* Part III.

90. MALCOLM RUSSELL-EINHORN & AUNG TUN, EVALUATION REPORT: MID-TERM PERFORMANCE EVALUATION OF USAID/BURMA PROMOTING RULE OF LAW PROJECT v (Feb. 2017), https://themimu.info/sites/themimu.info/files/assessment_file_attachments/Mid-term_Evaluation_of_Promoting_Rule_of_Law_in_Myanmar_project.pdf. Almost 500 trainings and workshops were held by Promoting Rule of Law Project (PRLP) grantees over a three-year period ending in 2016, reaching over 15,000 participants, on subjects ranging from LGBT and women’s rights to human rights and legal research, and from paralegal, interviewing, and counseling skills to legal-awareness-raising. *Id.* at 13, 46. These grantee organizations in turn “utilized their own outreach methods to tap community leaders/other ‘influencers’ who could spread information through pamphlets, community meetings, word-of-mouth, and other means.” *Id.* at 13.

measured over time when the rough patches are smoothed over, improvements are incorporated, and the project becomes truly institutionalized.

III. PILOTING NEW CURRICULUM: THE COMMUNITY NEEDS ASSESSMENT

One important component of clinical curriculum is the Community Needs Assessment (CNA),⁹¹ which can serve as an educational, integrated service-learning tool for law students.⁹² CNAs have been conducted to provide guidance for a community teaching curriculum.⁹³ They can also be used to inform other kinds of advocacy, including work with communities to identify local problems and remedies, as well as legislative advocacy and participation in informal and customary dispute resolution.

In conducting a traditional CNA, students are given tasks to develop their scholarly research capabilities and skills in interviewing. They are also exposed to values and professional responsibility concepts, including confidentiality and client-centered assistance.⁹⁴ The goal is to encourage Myanmar students to get involved in public interest lawyering and other forms of advocacy.⁹⁵ A clinic or class could

91. See, e.g., COMPASSION CAPITAL FUND NAT'L RES. CTR., CONDUCTING A COMMUNITY NEEDS ASSESSMENT 4-10 (2010), <https://rootcause.org/wp-content/uploads/2019/11/Conducting-a-Community-Assessment.pdf>.

92. For a broader discussion on the value of service learning, see, e.g., JANET EYLER & DWIGHT E. GILES, JR., WHERE'S THE LEARNING IN SERVICE-LEARNING? (1999); Linda F. Smith, *Why Clinical Programs Should Embrace Civic Engagement, Service Learning and Community Based Research*, 10 CLINICAL L. REV. 723 (2004). Among the "modern mentors" of service learning was undergraduate education reformer Ernest Boyer, who deplored the isolation of college campuses and urged greater outreach and community consciousness through field experience, service projects, and volunteerism. *Id.* at 726, 733.

93. Three lesson plans were devoted to the topic of CNA in the BABSEACLE-prepared curriculum. *CLE Externship Preparation Syllabus and Lesson Plans* (2019-20); *CLE Community Teaching Syllabus and Lesson Plans* (2019-20).

94. For a more complete guide to conducting a CNA and insight into how such assessments teach a variety of knowledge, skills, and values, see AM. BAR ASS'N, ACCESS TO JUSTICE ASSESSMENT TOOL: A GUIDE TO ANALYZING ACCESS TO JUSTICE FOR CIVIL SOCIETY ORGANIZATIONS (2012), https://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_access_to_justice_assessment_manual_2012.authcheckdam.pdf.

95. For a discussion of non-litigation and non-case centered clinical models that use community education methods to advance collective mobilization, see, e.g., Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355 (2008); see also Fran Quigley, *Growing Political Will from the Grassroots: How Social Movement Principles Can Reverse the Dismal Legacy of Rule of Law Interventions*, 41 COLUMBIA HUM. RTS. L. REV. 13, 42-57 (2009) (asserting that reliance by law and development actors on collective mobilization and social movements is preferred over formal justice sector, elite-focused rule of law reform).

conceivably devote a whole semester to this project,⁹⁶ which involves a style of research to which many law faculty are unaccustomed.⁹⁷ This activity is perhaps best undertaken by upper level baccalaureate or master's degree students, as they have a greater level of maturity.

Embarking on the CNA was particularly challenging at Taunggyi University. The law library was inadequately stocked, and the few hard copy items in the collection were kept under lock and key. There were no scholarly digital databases to which students or faculty had access, and internet connectivity was unstable.⁹⁸ To address student capability and lack of resources, we enlisted US legal studies students who had the skills, databases, broadband internet, and computer hardware to collaborate remotely with their Taunggyi counterparts.⁹⁹ The stateside team shared its research with Myanmar faculty and students in order to

96. Subsequent presentations and publication of results often take another semester or longer to accomplish. *See, e.g.*, David W. Tushaus, Shailendra Kumar Gupta, & Sumit Kapoor, *India Legal Aid Clinics: Creating Service Learning Research Projects to Study Social Justice*, 2 ASIAN J. LEGAL EDUC. 100, 104-10 (2015) (describing a multi-semester law school applied research project in India, which began with literature review in late 2012, data collection in early 2013, and final conference presentation in late 2013). The Taunggyi University students were keen to present by the end of the semester, even though they were not receiving course credit for the extra work; the faculty team seemed surprised at the suggestion that a community teaching event could be conducted in such short order. *See id.*

97. These law teachers had attended only a one-week Training-of-Trainers on how to implement lesson plans for the upcoming semester, including segments on the CNA. Only one of the six Taunggyi faculty members tasked with teaching the CLE applied learning curriculum had relevant experience with externships, and only one other faculty member had experience with community teaching. None had ever done any team teaching. Neither the lead time for introducing this new curriculum nor duration of training was really adequate.

98. Co-author Rosenbaum observed other Myanmar campuses where library bookshelves, also lined with pristine books, were locked and not easily accessed, and wi-fi was weak or under-utilized. *See generally* Myint Zan, *supra* note 31 (analyzing the structural and instructional deficiencies of the LLB (Bachelor) program). The Myanmar students' inability to engage in the literature review, however, was not a barrier to their participation in other aspects of the CNA, including survey development.

99. Legal Studies student Carly Ardussi of Missouri Western State University (MWSU) and alumnus Nick Ross conducted the literature review for this project. In addition to helping develop surveys in Myanmar, the team—which also included Professor Tushaus, Taunggyi University law teacher Dr. Soe Thiri Win, and student Zwe Pyae Sone Lwin—used the information to present their work in several public forums: a panel at the Tenth Worldwide Global Alliance for Justice Education (GAJE) Conference and a poster session at MWSU's second annual Human Rights Fair. However, as references to the plight of the Rohingya were deemed too sensitive to be included in jointly presented material, Myanmar members of the team asked their Missouri Western colleagues to create a separate poster without reference to the Rohingya. The team's findings are published in a peer reviewed academic journal. *See* Ross et al., *supra* note 36, at 97.

facilitate development of the CNA survey and present and write up the research.¹⁰⁰

Faculty prepared students to conduct surveys in a safe and ethical manner. Students learned to approach prospective interviewees only in a public space and to explain to them that their cooperation is voluntary. The respondents—who receive no direct benefit for this time-consuming process—are assured that their answers will be kept confidential, although these may be aggregated and made public at a later date. Students who interview community members have more of a client-like experience. For students who interview legal practitioners, their interaction is more like an encounter in an office setting with a colleague or opposing party. Both of these interactions provide an educational benefit to the law student surveyor.¹⁰¹

An assessment can help confirm the assumptions of legal professionals and students, open their eyes to unknown needs, and identify ways to meet those needs.¹⁰² CNA results can produce evidence for litigation or provide justification for a clinic or community teaching initiative; programs can use the results as fundraising material.¹⁰³ Surveying legal service providers and community members provides more detailed information about local problems and community legal awareness. Students benefit from developing interview questions based on research, as this process is similar to the skill utilized by a lawyer when handling a case. A lawyer determines the relevant information needed from clients and witnesses—often through questioning at the time of their initial contact.¹⁰⁴

100. By way of contrast, students at India's West Bengal National University of Juridical Sciences have been able to undergo the literature review themselves, having the resources and necessary background. This is preferable insofar as the in-country students learn more about the law and their community by doing their own research. This should not be a prerequisite, however, for undertaking a project. See Shristi Banerjee, Raveena Rao Kallakuru, Yamini Kumar, Maithili Pai, Nirmal Kumar Upreti, & David Tushaus, *Conducting A Community Needs Assessment: A Student-Client Approach to Clinic Research*, 23 INT'L J. CLINICAL LEGAL EDUC. 52, 62-66 (2016).

101. In addition, the professional interviewees may see their role as mentors, encouraging law students to work in the field or do pro bono work upon graduation. They might even assist students in locating field placement opportunities or potential employment.

102. In the earlier Kolkata study, law student volunteers had hypothesized that community members would know about civil orders of protection for survivors of domestic violence (DV). After administering a few surveys, they realized, however, the public was unaware of the Indian law providing for civil orders, but the CNA provides an opportunity to address the knowledge gap. They developed a summary of India's protective legal measures. This information was then provided to each survey respondent. See Banerjee et al., *supra* note 100, at 69-75.

103. See AM. BAR ASS'N, *supra* note 94, at 2.

104. For more on survey methodology, see Ross et al., *supra* note 36, at 105-06.

There are ethical considerations as well. Confidentiality, a fundamental component of professional responsibility in the traditional practice of law, may have a place in conducting a community needs survey. When dealing with issues such as illicit drug trade or gender-based violence, cultural and political sensibilities assume an important role.¹⁰⁵ Permission to study human subjects is also an ethical consideration, especially if the assessment team wants to use any of the results in academic presentations or publication.¹⁰⁶ Lastly, CNAs expose students to rule of law and access to justice issues and help them see the importance of providing services to those in need, not just to those who can afford an attorney.¹⁰⁷

As Myanmar is composed of a variety of historically disputatious ethnic and religious communities, the US team was concerned about asking respondents to identify their ethnicity.¹⁰⁸ Demographic questions that might be routine in the United States, for example, could be

105. The Myanmar participants wanted to learn what the local population knew about the seriousness of illicit drug trade in Myanmar, the transnational methamphetamine crisis, and the penalty for dealing in illegal drugs. See Ross et al., *supra* note 36, at 105-06, 109-10. Uncertain about what a legal clinic might do with the survey results, the U.S. participants were also apprehensive that certain questions could be risky where the drug trade is so prevalent. The questions were nevertheless included in the survey. *Id.* at 105-06. Drug trafficking was also of concern to 39% of the respondents surveyed by Taunggyi students—a higher percentage recorded than for any other problem delineated in the inquiry. *Id.* at 109. The CNA, however, did not help identify how to address this problem. *Id.* at 111-12. Drug education programs are not really within the realm of legal educational objectives, nor are they necessarily successful in other contexts. See, e.g., Steven L. West & Keri K. O'Neal, *Project D.A.R.E. Outcome Effectiveness Revisited*, 94 AM. J. PUB. HEALTH 1027, 1027-28 (2004) (detailing a 2004 meta-analysis confirming conclusions of many previous studies that Drug Abuse Resistance Education is ineffective).

106. Best practice is to obtain approval from an Institutional Review Board (IRB) or Committee on the Use of Human Subjects in Research (CUHSR) for any study that involves surveying individuals or collecting empirical data. This provides a check on a researcher who may overlook ethical considerations and allows for the data to be used in academic conferences or peer-reviewed publications. As many institutions in developing countries lack boards or committees, partnering with academics from developed countries can model the need for approval and open doors for collaboration.

107. "From doing this survey, I got an idea that I want to help the people in need as much as I can with my legal knowledge" is how one Taunggyi student responded in a BABSEACLE Survey. See MyJustice 3d Quarter Narrative Report, Appendix (June-Aug. 2018) (on file with BABSEACLE).

108. The City of Taunggyi is itself populated by diverse ethnic and religious groups. As it grew from a small village to a large city under British rule, it became home to inhabitants from nearby colonial territories, encouraged by authorities to settle in Burma to perform certain administrative or commercial functions. The population includes migrants from India and Nepal. More important, there are ethnic groups that have not yet been fully accepted into Myanmar society. *Rediscovering "Law" in Myanmar*, *supra* note 33, at 557-58.

contentious in another political or cultural milieu or present concerns for student safety. Given this politico-cultural sensitivity, we provided training in interview, survey, and team collaboration skills. As the survey would also involve questions about government institutions and personal matters, our concern was heightened by the fact that Myanmar is still effectively under military rule.¹⁰⁹ We required student surveyors to work in teams for mutual support and to ensure their safety.¹¹⁰

An essential step in conducting an assessment is enlisting student and faculty participation.¹¹¹ Forty students showed up for the first survey training in 2018, exceeding our expectations and needs. We were asking students to do something unlike anything in their typical educational experience, and we asked them to do this without pay or course credit. Although a few students withdrew after the first training session, there was solid participation for a volunteer effort. Likewise, we did not offer faculty incentives, such as a salary supplement or course release time. The lead faculty member, nonetheless, became increasingly enthusiastic and dedicated as the process moved forward. She canceled one of her classes so that the CNA students could conduct the initial NGO surveys, and she developed a proposal for student

109. Students were able to complete 182 community surveys without any notable issue. For insight into how the present situation is shaped by Myanmar's monarchical and colonial past, see EMMA LARKIN, FINDING GEORGE ORWELL IN BURMA 254-58 (2005). For a look at the country from the perspective of outside visitors, shortly after its overture to foreigners, see Anthony Bourdain, *Parts Unknown: Season 1, Episode 1: Myanmar* (CNN television broadcast Apr. 14, 2013), <https://www.cnn.com/videos/bestof/2013/04/15/ab-anthony-bourdain-episode-1-entire.cnn>. See also Max Fisher, *Myanmar, Once a Hope for Democracy, is Now a Study in How it Fails*, N.Y. TIMES (Oct. 19, 2017), <https://www.nytimes.com/2017/10/19/world/asia/myanmar-democracy-rohingya.html>. "[T]he country's once-celebrated transition toward democracy is hardening into something very different from what activists and world leaders had hoped for." *Id.*

110. In Kolkata, the training included practice surveys conducted by students before going into the field. See Banerjee et al., *supra* note 100, at 69-71. Advisories were developed for interview methodology and safety. See *id.* Volunteer law students were trained and supervised remotely for the entire project by Indian Advocate Sumit Kapoor of Delhi and Professor Tushaus of MWSU. See *id.* Real time monitoring was accomplished by communicating with volunteers via email and video-conferencing. See Banerjee et al., *supra* note 100, at 69-74.

111. Having an enthusiastic student leader for the first CNA helped in recruiting other students. There was some uncertainty amongst teachers as to how the CNA lessons fit in with overall CLE program objectives and whether teachers were supposed to carry out externships or community teachings after they had completed the prepared curriculum. The opportunity for a lead teacher and student to be mentored in research, writing, and possibly presenting in academic forums was offered as an incentive in recruitment of project leadership. As BABSEACLE's Myanmar national staff seemed to gain the trust of the Taunggyi faculty in conducting a CNA, one of the law teachers eventually agreed to assume a leadership role.

interviewers to give community member respondents a small gift for completing the survey.¹¹²

Taunggyi University faculty and law students conducted an assessment in the summer of 2018. The students administered one questionnaire to local legal professionals with NGOs and law firms and another to community members. Students reported that over half of the community members who were approached were willing to answer the questions. The data obtained were more critical of the court system than expected but were consistent with the low confidence and informal justice findings noted above and in the survey results.¹¹³

Surveyors found that community members lacked knowledge about the law, which encouraged the students to develop a community teaching program to address sexual- and gender-based violence and other issues.¹¹⁴ The needs assessment was successful enough, and recognized to be of sufficient educational value, to prompt faculty to return the following year to provide content-based clinics focused on mutually agreeable topics. The goal was to challenge students to do more research and be more engaged in the subject matter when more focused assessments would be conducted in 2019.

After proposals were reviewed by Myanmar faculty, an environmental law clinic¹¹⁵ and SGBV clinic¹¹⁶ were inaugurated in the

112. Gift giving is an important part of Myanmar culture, with its own etiquette. *See, e.g., Doing Business in Myanmar (Burma)*, GO-MYANMAR.COM, <https://www.go-myanmar.com/doing-business-in-myanmar> (last visited Aug. 16, 2020). However, if even a small gift is to be offered for completing a survey, this should be included in the IRB or CUHSR human subjects research application.

113. Thirty-five percent of the respondents who identified themselves as being familiar with the court system answered that the courts operate “unsatisfactorily” or “very unsatisfactorily.” *See infra*, Appendix I.

114. *See also* Ross et al., *supra* note 36, at 110-11 (noting reluctance of women to report abuse, dearth of legal protections, and receptiveness of NGOs and legal professionals toward some form of legal assistance). *See* Appendix I for some of the survey results.

115. Socio-legal scholar Liljeblad also reviewed the proposal. Liljeblad, who has served as an ICIR in Myanmar and is an environmental law specialist, has led study-visits by Australian law students to the country and regularly teaches human rights law courses at University of Yangon. Knowledge about environmental degradation and its impact on availability of drinkable water for the poor provides faculty and students with numerous opportunities to design and deliver clinical teaching programs and partner with NGOs to provide potable water, electricity, and other possible projects.

116. The SGBV substantive clinic offered an opportunity to discuss this issue from an international human rights perspective. *See* Kabir et al. *supra* note 45, at 401 (concluding that DV incidents in Myanmar “are increasing alarmingly . . . [which] threatens women empowerment to a great extent”). As noted above, most Myanmar students, faculty, and legal professionals have accepted traditional cultural approaches to this problem. The SGBV clinic provides an opportunity for students to discuss civil orders of protection as a judicial tool, and other legal options aside from the criminal code. *See* Ross et al., *supra*

June 2019 semester, with BABSEACLE support.¹¹⁷ Obtaining advance permission from village leaders to conduct a CNA was key to establishing the environmental clinic. This was particularly important for outsiders—including Myanmar nationals who did not speak the local language. Taunggyi faculty and students were warmly welcomed in the communities, although not every community was receptive to participating in the assessment.¹¹⁸ By the time students and faculty came out to undertake the CNA, the villagers were ready, gathered in community centers, and welcomed the visitors with tea and traditional foods. The trust established with elders most likely enhanced cooperation in taking the survey.¹¹⁹

By contrast, students conducting an SGBV assessment did not do a pre-survey or convene a focus group. They surveyed Taunggyi, a larger community than the Inle Lake villages, on a more sensitive topic and questioned a smaller sample of Taunggyi residents. As with the environmental CNA, the goal was to learn more about the community's needs in order to design relevant community teaching programs, services, and grant proposals. The results were consistent with what other studies have shown.¹²⁰ Moreover, scholars can develop proposals for a sustainable university-affiliated law clinic with continued assessments and adequate resources.¹²¹

Given these findings on criticism of the formal justice system, it is particularly important that Myanmar law schools also develop clinical methodologies outside the courts of law, informed by a community needs assessment, such as working within traditional dispute resolution forums in matters of intimate partner violence.

note 36, at 110-11 (discussing attitude toward sexual abuse and limited legal recourse); see also Mary Pat Treuthart & Stephen A. Rosenbaum, *Engendering a Clinic: Lessons Learned from a Domestic Violence Clinical Course in Qatar*, 2013 J. INT'L REV. L. 1, 14-17 (2013) (discussing how clinic students reviewed model domestic violence laws with provisions for civil protection orders for victims of abuse and criminal prosecution of abusers for possible adaptation in country with weak DV statutory measures).

117. Co-authors Tushaus and Hubbard returned to Myanmar in 2019 to conduct the substantive law clinics.

118. After first meeting with elders, the team conducted informal focus groups on Inle Lake environmental issues. The iconic lake is subject to the effects of deforestation, human waste, and agrochemical practices. Information from community leaders was used to improve the community survey instrument, optimally leading to better design of programs, services, and grant proposals.

119. Some of the results of the Environmental CNA can be found in Appendix II.

120. Some of the results of the SGBV community needs assessment, led by Dr. Soe Thiri Win of Taunggyi University and co-authors Dr. Tushaus and Ms. Hubbard, can be found in Appendix III.

121. See, e.g., Banerjee et al., *supra* note 100, at 53.

IV. PEER-TO-PEER TEACHING: ENGLISH LANGUAGE

Despite confusion among administrators, teachers, and students as to what constitutes CLE, they appear to agree that mastery of the English language should be an important component of clinical education no matter how educators fold it into the overall law department curriculum. The syllabi and lesson plans for CLE English courses taught in 2018 and 2019 were modeled in part on a comprehensive evaluation provided by a former peer English teacher in Myanmar.¹²² Mindful of the country's complex history of higher education, the would-be educators wanted to explore additional teaching methodologies in preparation.

Peer teaching is rooted in the studies of Scottish Enlightenment thinker Andrew Bell.¹²³ Bell's so-called Madras System was a peer teaching practice that paired "tutors" with "pupils" in colonial India to encourage a stable learning environment. After joining with the National Society for the Education of the Poor, upon his 1797 return to the British Isles, Bell instituted one of England's first national education initiatives. His peer teaching reached hundreds of thousands of underserved school children across Europe.¹²⁴ Bell's methods would prove to be the foundation of the peer teaching methodology for future studies of education, influencing many different approaches for enhancement, including the methods used for this educational experiment in Myanmar.

Whether practiced at the middle school or graduate levels, peer teaching has proven to be an effective method of engaging students in

122. Samuel Pitman, *BABSEACLE 2017 Legal Studies Externship Clinic in Myanmar-Externs' Evaluation* (Jan. 28, 2018) (on file with authors). BABSEACLE had instituted a "CLE English" peer teaching program several years earlier, relying largely on Australian law students, who use their semester break to participate in study visits at various Myanmar universities. Pittman, a Queensland University of Technology student, summarized his Legal Studies Clinic experience teaching at East Yangon University in 2017 in a comprehensive overview. His evaluation includes teaching methodology, lesson plans, outcomes, and student feedback.

123. See ANDREW BELL, *AN EXPERIMENT IN EDUCATION, MADE AT THE MALE ASYLUM AT EGMORE, NEAR MADRAS: SUGGESTING A SYSTEM BY WHICH A SCHOOL OR FAMILY MAY TEACH ITSELF UNDER THE SUPERINTENDENCE OF THE MASTER OR PARENT* 24 (Cadell & Davies, 2d ed. 1805). In 1789, the East India Company hired Bell as the first superintendent of the Madras Military Male Orphan Asylum, an institution for the children of fallen British soldiers. See *id.* at 21. Limited resources forced Bell to reinvent the way that education functioned. See *id.* at 20-21. He devised a plan that would later be called the "Madras System." Sina Rahmani, *Dirty Humanities: Lessons from the "Experiment in Education" at the Madras Orphan Asylum*, 40 *ENGLISH STUD. CAN.* 25, 25 (2014).

124. Rahmani, *supra* note 123, at 26.

present-day classrooms. In 2003, George Mason University conducted a comparative study of instructional methodologies that demonstrated peer teaching can be a tool to bridge the gaps in students' academic performance.¹²⁵

Peer taught English immersion classes in Japan have seen positive results in effective student engagement.¹²⁶ One study found that Japanese students, like their Myanmar peers, are likely to have experienced only lecture-driven classes throughout their years in school. Peer teaching gave students the ability to practice their English in a way that encouraged their continued English-speaking throughout the classes.¹²⁷ The additional research allowed for a better understanding of the complexities of the educational system and how to encourage students to employ critical thinking and analytical skills in their everyday lives.

The approach we utilized at Taunggyi University—challenging the structure, obedience, and lecture mode—was meant to give students the chance to experience an alternative learning mechanism (i.e., CLE English).¹²⁸ BABSEACLE's mission to strengthen access to justice and ROL and further buoy enthusiasm has driven peer teacher's use of this learning mechanism.

125. The study of Mid-Atlantic States compared the use of peer-teaching with "guided notes" (i.e., handouts that outline lectures but leave space for students to fill in key concepts). Margo A. Mastropieri, Thomas E. Scruggs, Vicky Spencer, & Judith Fontana, *Promoting Success in High School World History: Peer Tutoring Versus Guided Notes*, 18 LEARNING DISABILITIES RES. & PRAC. 52, 52, 62-63 (2003). Throughout the study, students were taught the same information through either guided notes or peer-teaching activities. *Id.* at 52. In comparing the multiple-choice post-tests and pre-tests, the authors found there were significant gains in the scores of students who participated in the peer-teaching courses. *Id.* at 58-60. In addition, students and teachers, who were later interviewed, overwhelmingly favored the peer-teaching methods. *Id.* at 60-62. Although the study's primary goal was to determine the effects of each teaching method on students with "mild disabilities," *id.* at 52, its findings might also be applicable to learners of English-as-a-Second Language.

126. Paul Mennim, *A Discourse-Based Evaluation of a Classroom Peer Teaching Project*, 71 ENGLISH LANGUAGE TEACHING J. 37, 47 (2017). An exchange of ideas was the main focus driving a study of peer-teaching at a Japanese private university English class. *Id.* at 42. The study measured teaching effectiveness through English language efficiency exams. *Id.* at 47. Researchers found that when given the opportunity to interact with other *students*, the Japanese were more willing to participate and engage with the learning process. *See id.* at 43.

127. *Id.* at 47-48.

128. In writing about Myanmar's governmental transition, novelist Amitav Ghosh described the young person's mindset as follows: "You have to understand . . . that all their lives they've been trained to obey . . . their parents, their teachers, the military . . . this is what their education teaches: the habit of obedience." GHOSH, *supra* note 1, at 509.

Notwithstanding their extensive preparation before departing the United States, the peer English language teachers quickly found that they would need to adapt their lesson plans. First, they were informed upon their arrival in Myanmar that 200 students would be participating in the course. This far exceeded the anticipated thirty-student class size for which the peer educators had developed lessons.¹²⁹ Second, the periodic monitoring and evaluation (M&E) helped them gauge the value of teaching methods encouraged by BABSEACLE and was instrumental in their adjustment of lesson plans.

On three different occasions—the first week of class, midpoint of the course, and last week of class—the teachers distributed blank sheets of paper requesting that students inform them what they liked about the class, what they disliked, or what the teachers could do to make the class more enjoyable. From trial and error and the informal survey responses, the teachers were able to identify other subtle adaptations to prioritize student participation, engagement, and growth. Responses ranged from what students had learned that day to what they enjoyed about the lesson. The most helpful critiques came from students who expressed concern over misunderstanding lecture terms and issues with the teachers' speaking pace. The peer educators were able to make adjustments to their lessons or behavior to better suit the students' learning needs.

The peer educators conducted formal surveys near the end of the course, which were intended to measure effectiveness of the various teaching methods.¹³⁰ In addition to basic demographic questions, students were asked to identify what methods they found were not helpful and if they would recommend the course to others. More than a majority (60.7%) responded that nothing was "unhelpful" in the course, and less than one-third (28.6%) responded that the lecture and playing games were "least helpful."¹³¹ In addition, students generally agreed

129. Attendance in the CLE English classes never exceeded forty students. After the first week of class, several students did not return. Those who remained in the course informed teachers that students often spend time in their home villages during weeks in which there are no exams. Again, it must be acknowledged that classes were not offered for academic credit, and attendance was voluntary.

130. These surveys, written in English, also included demographic information such as age, family size, education level, and ethnicity. See *infra*, Appendix IV for survey results.

131. The authors were surprised that playing games was identified in the final survey as "least helpful," given that the qualitative data collected throughout the course suggested otherwise. However, as noted above, their level of English comprehension may have inhibited their understanding of survey questions. Throughout much of the course, students were unwilling to speak aloud during class. Not until the instructors divided them into groups were they able to understand the concepts and participate in discussion. We attribute this to Myanmar cultural and/or Buddhist tradition insofar as students tend to avoid questioning their teachers. See Han Tin, *Myanmar Education: Challenges*,

that they would recommend this course to others trying to learn CLE English.

The peer educators administered the survey entirely in English to respondents with varying levels of English proficiency. Despite the simple language of the survey, the peer educators determined that many students could not understand the questions well enough to provide accurate feedback, requiring the authors to adjust some responses to match other data collection.¹³²

Both qualitative and quantitative survey data collected throughout the course suggest that lecturing was not a popular teaching method.¹³³ In response, the peer teachers transformed the remaining lectures into small group discussions, enabling students to interact with each other more effectively. This also encouraged a sustained level of student participation throughout the class period and led to a better overall class discussion. Peer teaching in small groups also permitted students with less-developed English language skills to look to more advanced students for guidance. Without this methodology, we likely could not have effectively managed the course in a way that fostered these skills.

The peer teachers also found that being of a similar age and undergraduate level education status as their Myanmar students made them ideal teachers. Peer interaction improved students' English by providing the opportunity to casually speak English among peers, rather than regurgitate information to a lecturer. The key to managing an effective CLE English course is to engage the students in a meaningful, substantive way that bolsters their confidence in their own propensity to speak English by allowing the peer teachers to offer a new outlook on learning.¹³⁴

Prospects and Options, in *DICTATORSHIP, DISORDER AND DECLINE IN MYANMAR* 113, 114 (Monique Skidmore & Trevor Wilson, eds. 2008), <http://doi.org/10.22459/DDDM.12.2008>. "[T]eachers have traditionally been regarded as one of the five 'gems' [in Myanmar society] on the same plane as the Buddha (who himself was a teacher), the Scriptures, monks and parents." *Id.*

132. Students were left confused as to the appropriate number to rate the course on a scale from one to ten. Again, future monitoring should consider whether respondents' level of English language proficiency might yield inaccurate survey results.

133. Their required courses were delivered in a lecture format. Instead, students attending a no-credit course on a volunteer basis were likely looking for a novel learning experience.

134. In his article on learning about law in a second language, La Trobe University's Stephen Price writes: "An engagement with language entails an engagement with the otherness of language, with that which cannot be translated, paraphrased or assimilated into already existing schemata . . . [an] engagement [that] involves a relationship . . . between the self and other." Stephen Price, *Student Writing in Law: Fixed Discourse Boundaries and Hospitable Crossings*, 17 *L. TEXT CULTURE* 143, 147–48 (2013).

V. SYSTEMIC CHALLENGES

Notwithstanding the participants' ardor and enthusiasm for a relatively new approach to teaching and learning law, there are hurdles in the Myanmar legal education system and justice sector that must be overcome for the new methods and mindset to take hold. Some challenges can be addressed in the short-term, and some will take longer.

University Autonomy: Innovation through Decentralization

Myanmar's five-year strategic education plan articulates twelve goals, including development of "a world-class higher education system, where universities have autonomy over their own curriculum and governance and the ability to conduct independent research."¹³⁵

The National Education Law and its 2015 amendment also call for "greater decentralization of the education system."¹³⁶ Policy makers are clearly seeking a change in the higher education institution (HEI) model of governance and management.¹³⁷

The Board of Legal Studies, comprised of all law department heads and deputy department heads, is a key player in determining matters such as the national legal curriculum, textbooks, faculty qualifications, academic course and credit requirements, and methods of grading and assessment. As powerful and dominant as this body is, its operations are not very transparent. The Board is not staffed, and its meetings are infrequently held and attended by only a select number of HEI administrators. There is also no apparent channel for law faculty, students, or outside experts to offer input to the Board on the many items on its agenda. The centralized Ministry of Education (MoE), the umbrella agency over the Department of Higher Education, also plays a

135. MYAN. MINISTRY OF EDUC., *supra* note 11, at 33. The strategic plan, which focuses in large part on basic (K-12) education, following a Comprehensive Sector Education Review, is already into its fifth year. *See id.* at 10. The implementation strategy is to establish a national institute "to improve higher education governance and management, build individual skills and strengthen institutional capabilities." *Id.* at 190.

136. *Id.* at 35.

137. The *Pyithu Hluttaw* (lower house of Parliament) rejected an earlier draft higher education bill after speakers "blamed [longstanding] government control of university management for the 'degeneration' of tertiary education standards in Myanmar." WELCH & HAYDEN, *supra* note 37, at 18 n.40. In the words of one Parliamentarian, universities should be "autonomous bodies . . . free of the government's control . . . If higher education, which is crucial to build the capacity of the younger generation, remains under the shadow of the old system of government, it may pose a danger to political and economic stability." *Id.*

large programmatic and managerial role, albeit perhaps more ceremonial than pragmatic.

In many countries across the globe—democratic and authoritarian—centrally devised curricula and national educational protocols are the norm. But, in Myanmar, the hierarchy and bureaucracy are particularly intense. Universities cannot offer new courses for credit or modify graduation requirements unless higher-level authorities approve the changes. In addition, faculty cannot attend conferences, workshops, or other professional events outside the university without advance notice to the MoE.¹³⁸ Similarly, the MoE's requirement of forty-five day notice before a foreigner¹³⁹ is permitted to venture onto university grounds has for some years been an irritant, if not a deterrent, to bringing non-Myanmar nationals and other guest speakers into classrooms or lecture halls.¹⁴⁰ This procedure not only reinforces the divide between academia and the outside world, but necessitates an extra layer of advanced planning in an environment where planning is already a challenge. A potential visit by an international clinician to a classroom or on-campus event can be thwarted if the university does not timely submit the appropriate paperwork.

There is no timeline attached to the national reform goals, only a 2021 “end outcome” of “[s]trengthened governance and management by officials from the MoE and line ministries and managers of HEI.”¹⁴¹ The National Education Law leaves much to the National Education Commission to oversee, including “the implementation of national education objectives and principles,” such as forming policies, giving guidance, and securing funds.¹⁴²

Restoring quality legal education will require relaxation of the hierarchical and bureaucratic hurdles. Over time, the new legislation and national strategic and development plans can provide universities with autonomy. At present, however, individual universities—much less law departments—have virtually no control in setting admission

138. Although the MoE has the principal role in overseeing secondary education, the Government is in the process of consolidating multiple ministries currently responsible for governing 171 higher education institutions (HEIs). See MYAN. MINISTRY OF EDUC., *supra* note 11, at 35; WELCH & HAYDEN, *supra* note 37, at 16.

139. *Foreigner*, the statutory term of art for non-Myanmar nationals, is as alienating as *alien*, its United States legal equivalent.

140. In actuality, communication with MoE is more of a formalized *notice* than request for *permission* to visit. It is doubtful that any Ministry official actually reads the curriculum vitae or agenda of each visitor, much less vets foreign agents or suspected campus agitators.

141. MYAN. MINISTRY OF EDUC., *supra* note 11, at 197.

142. National Education Law, *supra* note 10, ¶ 6(a).

requirements, teaching standards, curriculum development, research support, management, or shared governance.

Training and Ongoing Mentorship

One of the nation's sustainable development goals is to improve the quality of higher education through "improved teacher training and academic administration."¹⁴³ However, offsetting the ingrained features of the educational system and creating a new academic culture requires more than a weeklong Training-of-Trainers, hastily convening ceremonial stakeholder roundtables, or publicly signing a memorandum of understanding with the university rector.¹⁴⁴ Teacher training must be continuous—accomplished both "on-the-job" and through periodic workshops.¹⁴⁵

The international clinician residency is one of BABSEACLE's signature programs, with its intensive on-site mentoring and modeling for local faculty members.¹⁴⁶ This "development-as-autonomy" principle is one that "respects, fosters and sustains" the autonomy of the universities and the faculty in their capacity to contribute to Myanmar's educational and economic development.¹⁴⁷ These clinicians can guest teach or co-teach classes with local faculty. They can also offer workshops or one-on-one support in research skills, clinical methodology, or other forms of interactive teaching or classroom management techniques. As past participants can attest, this is perhaps the most significant form of development aid.¹⁴⁸ Clarifying CLE program

143. MINISTRY OF PLANNING AND FIN., *supra* note 8, at 43 (discussing improvements for equitable access to high quality lifelong educational opportunities).

144. See e.g., Rosenbaum, *supra* note 66, at 13 (asserting faculty and university leadership involvement "must go beyond periodic courtesy visits over cups of *chai* and congratulatory speeches at formal receptions.").

145. An Asian Development Bank consultant has cited "[e]vidence suggesting that even teachers exposed to more inquiry-based and child-centred forms of pedagogy often revert to rote forms of instruction after a time." WELCH & HAYDEN, *supra* note 37, at 24. Although the comment was directed at *basic* education teachers, the observation is equally apt for *law* teachers. In both instances, it "suggests the need for *ongoing* professional development." *Id.* (emphasis added).

146. Liljeblad concludes that development strategies that "enable the agency of aid recipients . . . [and] include direct, immersive, sustained programs that place foreign aid providers alongside Myanmar faculty and staff doing the same tasks of research and teaching in the law schools." Liljeblad, *supra* note 32, at 153-54.

147. *Id.* at 143.

148. The ICIRs' weekly notes and verbal debriefings are often far more valuable for gauging project strengths and weaknesses than the "pre- and post-test" formulaic surveys and minutes that typically accompany every activity. One ICIR reported at the end of the semester: "What we have at this stage is a hugely enthused student cohort that will most

objectives and the students and professors' deeper understanding of these objectives can improve the pedagogical approach.¹⁴⁹

In its ICIR recruitment process, BABSEACLE has sought clinicians who recognize that building clinical capacity in the Global South¹⁵⁰ may be as modest as mentoring a moot arbitration competition team, collaborating with community-based organizations to host legal-awareness-raising events, or sending students to local NGOs and law offices to apprentice with practitioners—without having all the best practices firmly in place.¹⁵¹ In the words of a veteran justice educator and clinician: “One of the recurring themes within the global clinical movement is that clinical legal education programs need to be relevant to their communities.”¹⁵² Moreover, we must always be mindful of the

likely remember the CLE input for a long time to come – hopefully as long as it takes some of them to become teachers.” The visiting clinician went on to say: “It shows clearly the attention to detail that the teachers are focused on, the extent to which they have ‘bought into’ and understand the concept of CLE and the creativity involved in adapting materials for use in their own situation.”

149. Lessons that go awry are also worthy of examination and reflection. After observing a class at Taunggyi University, taught by a new teacher, one ICIR commented: “[P]art of my difficulty with ‘best practices’ [is that], much like the bad interviewing exercise in the Externship [class], some good learning experiences do result from times that involve struggle.” An ICIR at Taungoo University wrote in a weekly report:

[S]ome of the activities are, at best, mundane and unnecessary (for example, some of the games that require shouting, running, ropes, etc.). Several of the teachers said to me that doing so detracts from the seriousness of the tasks involved and a short ice-breaker on the topic is time much better spent.

Similarly, one student commented to another ICIR after the first semester: “The whole one-hour class period consisted of playing games or role playing. I am not clear what the message was. I have not gotten the point by the end of the class.”

150. On the usage of “Global South” as a descriptor for developing countries, see, e.g., Nour Dados & Raewyn Connell, *Jargon: The Global South*, 11 CONTEXTS 12-13 (2012), <https://journals.sagepub.com/doi/pdf/10.1177/1536504212436479>.

151. It is important to recognize the political, bureaucratic, and competency hurdles that may delay development of full-fledged or optimal clinical programs. See, e.g., Rosenbaum, *supra* note 66, at 19-20 (discussing how early stage clinical cocurricular and extra-curricular activities can be implemented at Afghan law and shari’a faculties while more robust programming and administrative infrastructure are being developed).

152. Helen Yandell, Comment, *Volunteering in Southeast Asia*, 37 ALTERNATIVE L.J. 46, 47 (2012). Yandell is a former BABSEACLE International Clinician In-Residence and former director of Springvale Monash Legal Service and Monash University Adjunct Senior Lecturer. *Id.* at 46. See also Stephen A. Rosenbaum, *The Legal Clinic is More Than a Sign on the Door: Transforming Law School Education in Revolutionary Egypt*, 5 BERKELEY J. MIDDLE EASTERN & ISLAMIC L. 39, 53 (2012) (urging that schools adopt model that is compatible with national legal institutions and practices and the national educational system).

mantra that clinics evolve organically, and there is more than one path to follow in their creation, organization, and implementation.¹⁵³

Creating a Culture of Academic Collegiality: Within and Without

To the extent individual faculty members currently work in *groups* on course preparation and execution, it may consist of just one or two teachers who exercise a dominant role in making decisions and follow-through.¹⁵⁴ In some instances, the teacher who is senior in age or rank, or the one who is most proficient in English, assumes the dominant role. Not surprisingly, this form of group “support” (including submission of identical written responses to surveys or workshop assignments)¹⁵⁵ is due in part to a long history of top-down decision-making and risk aversion by lower-ranked faculty.¹⁵⁶

Department heads, rectors, and the MoE carefully manage all matters related to university teaching and administration—allowing little opportunity for intra- or inter-departmental collegiality. Faculty

153. See generally, Richard J. Wilson, Ten Practical Steps to Organization and Operation of a Law School Clinic (Feb. 2004) (discussing ten steps any law school could take toward organizing and operating a legal clinic) (on file with authors). Professor Wilson urges that the program design “be consistent with the overall pedagogical goals of a law school.” *Id.* at 2. Professor Frank Bloch, a leading figure in global justice education, has asserted that “the global clinical movement must not head toward some sort of ‘clinical imperialism’ by championing one national model, or even a globally modified national model, over all others.” Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 WASH. U. J.L. & POL’Y 111, 131 (2008). After years of sustained work in Haiti, U.S. law professor Richard Boswell counsels in favor of the “slow law” approach to developing legal aid clinics. Stephen A. Rosenbaum, *Clinique ToGo: Changing Legal Practice in One African Nation in Six Days*, 17 INT’L J. CLINICAL LEGAL EDUC. 59, 90 n.157 (2012).

154. One ICIR noted in a weekly report that a particularly invested teacher indicated her annoyance with colleagues “not pulling their weight.”

155. In our haste to label an act as plagiarism—by students *and* teachers—we may have overlooked how “the ‘absolute’ distinction very often insisted on between ‘paraphrase’ and ‘plagiarism’ fails to acknowledge the process of engagement students undergo.” Price, *supra* note 134, at 143. “The boundaries dividing what is and is not permissible become uncertain and reinvented.” *Id.* at 161. Moreover, “[i]t is true that for many East Asians, copying from a source is considered learning from, as well as respecting, the source.” Email from John R. Wallace, *supra* note 76.

156. The Myanmar CLE Programme Consortium described the decision-making processes as “authority figures operat[ing] via decrees made with uni-directional, top-down flows of information, with subordinates expected to await orders from their superiors before acting and expected to defer to senior preferences.” MYAN. CLE PROGRAMME CONSORTIUM, *supra* note 34, at 36. Law faculty “look to senior university leadership for approval not just to authorize development of CLE Programmes but also to authorize details regarding design, resources, integration into curricula, teaching materials, and services.” *Id.*

members have no real tradition of engagement as educators, managers, or scholars, and they are extremely deferential to the law department's head professor.¹⁵⁷

After a university signs a memorandum of understanding (MOU) with a donor or non-governmental organization partner, the law school head (also known as head professor or "P1") might still insist on controlling all communications, handpicking the students, or selecting the teachers who will be allowed—or assigned—to experiment with new pedagogy.¹⁵⁸ The department head might even reverse course in the middle of the academic year and withdraw from MOU obligations.

Traditional deference to elders or authoritative figures and a reluctance to "stand out" amongst peers may also explain the behavior of law teachers vis-à-vis the P1.¹⁵⁹ Moreover, "[i]n addition to the legacies of military indispensability, military rule in Myanmar also created institutions that fostered conformity, mistrust, and an atmosphere of scrutiny."¹⁶⁰ These communication and coordination challenges may be compounded "in Southeast Asian societies, where people exhibit a reluctance to engage in conversations involving unclear or unpredictable outcomes with others deemed as superior."¹⁶¹ The dominating role played by the P1 cannot be overstated and can be problematic for accomplishing positive change. One of our BABSEACLE local colleagues surmised that the department head's refusal to enter into a MOU may not stem from philosophical resistance or indifference,

157. Where law faculty members—who are overwhelmingly women—are at their most deferential and, arguably, collegial, is in the preparation and hosting of the elaborate luncheons that are a feature of campus roundtables, workshops, and/or end-of-semester presentations.

158. One peer English teacher observed during the December 2018 semester that "encouragement" from a superior is more an order than a request" by the department head to participate in CLE activities. Joshua Cade Smith, Swinburne University, "An Evaluation of the Extent to Which Aid is Provided to Myanmar Law Schools in the BABSEACLE Program" 5 (Feb. 2019) (on file with authors).

159. Professor Liljeblad concludes that "Western models of aid pursue liberal ideals of individualism and autonomy that are not always relevant to group-oriented Asian societies." Liljeblad, *supra* note 32, at 153.

160. Menager, *supra* note 24, at 50. "In this atmosphere of conformity, unequal gender relations and roles were reinforced by Buddhist beliefs After 2010, the military, pervasive mistrust, and gender hierarchies remained important cornerstones." *Id.*

161. Liljeblad, *supra* note 32, at 153 (citations omitted). "This requires investing in relationships that build social capital in the form of trust sufficient to provide a sense of a safe learning environment, translation that phrases foreign concepts in local modes of understanding, and familiarity that foster understanding of cultural cues in communication." *Id.* On the question of trust, one young university graduate recited a Burmese proverb to co-author Rosenbaum: "Trust?? You can't even trust your knee. It can be broken at any time." ("ကိုယ့် က်းကိုယ့်အုံ့ကိုတော့ မယုံရဘူး") Interview with Phyo Wai Oo. (Feb. 10, 2019).

but from the fear of not meeting donor expectations. This passive refusal is perhaps a variation of “doing everything to signal [not being] interested short of actually saying ‘no’ to the donor’s face.”¹⁶²

In short, legal education reform in Myanmar involves a risk-averse or “structure-agency” dynamic insofar as faculty, staff, and students are “attempting to exercise agency” within a historic and continuing authoritarian structure “that determine[s] their capacities for choice.”¹⁶³

Academia-Justice Sector Gap

The National Education Strategic Plan recognizes that “[h]igher education is fundamental to a country’s social and economic development,” and to that end, one of Myanmar’s Transitional Shifts is to make HEIs “responsible for nurturing skilled human capital needed in government, business and industry.”¹⁶⁴

Many, if not most, legal educators in Myanmar have never had the opportunity to practice law.¹⁶⁵ As civil servants, they are prohibited from maintaining a practice and teaching at the same time, with very

162. Sarah Han, *Guest Blog: Working in Aid: Donor Rule, Funding Flows and Awkward No’s*, AFG. ANALYSTS NETWORK (Apr. 18, 2012), <https://www.afghanistan-analysts.org/guest-blog-working-in-aid-donor-rule-funding-flows-and-awkward-nos/>. Development operative Han explains:

Why didn’t we just say ‘no’? First, we wanted a relationship with that donor and worried that we’d risk never getting support from them in the future if we refused the project in question. Second, we didn’t want to admit our simple lack of capacity to take on another project. And third, culturally, saying ‘no’ does not come easy to many Afghans; even if they know they will not be able to produce what the donor wants. In any case, a straight, ‘no’ might not have even gotten through – the donor seemed determined to have us run the project whether we wanted to or not.

Id. Although Han was describing the relationship between the donor organization and the implementing partner NGO, the observation is equally apt in describing the rapport between an international NGO and local university partners. *Development in Practice* editor Deborah Eade has written: “Not even the best-intentioned NGOs are exempt from the tendency of the Development Industry to ignore, misinterpret, displace, supplant, or undermine the capacities that people already have.” Deborah Eade, *Capacity Building: Who Builds Whose Capacity?*, 17 DEV. IN PRAC. 630, 633 (2007).

163. Liljeblad, *supra* note 32, at 151. According to Liljeblad, this structure is framed by historic and sociocultural forces that seek to suppress university unrest and limit the discourse among “disparate, competing political voices” as well as “a patron-client system that interprets reform efforts within a framework of hierarchical relationships, vertical power structures, centralized top-down decision-making, limited transparency, and unidirectional flows of information and resources.” *Id.*

164. MYAN. MINISTRY OF EDUC., *supra* note 11, at 188.

165. In his weekly notes, one ICIR wrote that one of the teachers piloting a CLE course “has no actual experience of legal practice and thus no independent experience to draw on in imagining how one might actually run a meeting.”

limited exceptions.¹⁶⁶ They also have had little to no contact with the outside legal sector. Law teachers themselves are removed from the realities of justice issues, and are often unable to train future graduates with the skills needed to effectively address ROL and access to justice issues.¹⁶⁷ At the same time, social justice organizations and law firms engaged in providing pro bono services have been unable to find enough adequately trained law graduates to assist their clients and inform target communities about the law. Justice sector organizations¹⁶⁸ and law faculty¹⁶⁹ also recognize the value of community teaching. This model “can significantly improve interactive teaching and reflective practise methodologies, while at the same time connect students and universities to communities in need.”¹⁷⁰

Focus on Informal Justice

As indicated above, recent surveys show that the public’s low confidence in Myanmar’s judicial institutions remains a serious problem.¹⁷¹ Most people identify the ward or village tract administrator as the primary actor for justice functions. These functions are preferably

166. We learned through communications with Myanmar law teachers that there is a belief among them that the Myanmar Bar Council Act prohibits full-time law instructors from also being licensed as advocates in the various courts, although part-time adjunct instructors are permitted to practice law. To our knowledge, there is no available English translation of the act imposing this restriction.

167. One ICIR describes the limitations of even modified curriculum for faculty who go directly from law school into teaching: “[T]he syllabus becomes a kind of authoritative text in the classroom (a bit like the lecture notes from which they teach), and it contains the ‘right answers,’ as opposed to a series of prompts to begin useful dialogue [or to take] a moment to reflect on the role and tasks of the attorney. That said, the teachers had an overall positive impression of the week’s teaching and thought the class was useful and relevant for their students.”

168. One ICIR wrote in his weekly report after a visit to a local Rule of Law Centre: “[T]he [community teaching] work in which they engage might most accurately be described as civic education and thus the conceptual complexities are less relevant. They are encouraging people to talk about issues, and to make demands of the institution of their government. In this sense, the [Centre is] contributing to a much broader agenda than legal reform and might claim to be giving the population the language in which to engage on that conversation.”

169. In surveys distributed to Myanmar law teachers during BABSEACLE’s early CLE workshops, the head professor at Mandalay University of Distance Education responded that “misunderstanding of law is the key social problem,” and the former law department head at Taungoo University noted that the local community’s main social problems were “poverty and lack of legal knowledge.” Lasky et al., *supra* note 68, at 255 (citations omitted).

170. *Id.* at 257-58.

171. *See supra* notes 43-50 and accompanying text.

effectuated through mediation and resolution of a dispute or crime, but these are not necessarily bias-free processes.

Notwithstanding the importance of preparing Myanmar students to operate in the formal justice system, lawyers may yet be “reluctan[t] to directly confront the inequities of formal judicial and administrative bodies” as they “fit themselves into the existing legal culture and power structures to ameliorate injustices.”¹⁷²

A recent MyJustice Policy Brief cautions against a preference for the formal justice sector and concludes: “Aside from there being significant value in reconciliatory justice, it is also the reality for much dispute resolution in Myanmar. This reality should be worked *with*, not *against*.”¹⁷³ Attorneys who litigate in “hybrid regimes . . . in which elements of authoritarianism and democracy commingle” may be prone to complacency with the status quo and practices which will simply delay changes in Myanmar legal culture.¹⁷⁴ Therefore, the legal reform

172. Batesmith & Stevens, *supra* note 22 at 590 (citations omitted). This view is indirectly echoed by another scholar familiar with the Myanmar ROL sector: International consultants must avoid the mistake made by “reformers [who] are focusing on the expected result – the formalist rule of law – rather than the new institutions’ interaction with the social context.” Kristina Simion, *Translating Rule of Law to Myanmar: Intermediaries’ Power and Influence* 42 (Apr. 2018) (Ph.D. thesis, Australian National University), <https://openresearch-repository.anu.edu.au/bitstream/1885/147747/1/Simion%20Thesis%202018.pdf>. “[T]he prevailing assumption that laws and the government are important is missing the mark in terms of conducting reform processes that take into account *local level* processes, actors, and legal plurality.” *Id.* at 42-43 (citation omitted) (emphasis added). Simion’s analysis is based more on a wariness of transplanting western liberal traditions and the reality of public utilization of informal justice facilitators than on failure of the courts to have met significant outcomes under the previous judicial strategic plan.

173. DENNEY, BENNET & KHIN THET SAN, *supra* note 45, at 4 (emphasis added). “In this way, the desire for social harmony can be harnessed in positive ways, while working towards greater non-discrimination and rights protection.” *Id.* See also Quigley, *supra* note 95, at 36-42 (criticizing dominance of top-down, transplanted judiciary-centered approach to rule of law reform in developing countries).

174. Batesmith & Stevens, *supra* note 22, at 574 (citations omitted). Prominent Taunggyi lawyer U Sein Win Chan confided in one ICIR: “There are problems with some lawyers in Myanmar who are corrupt and that undermines public confidence—but Myanmar people also frequently flout the laws, even those that are clear.” Interview with Sein Win Chan, *supra* note 13. On the other hand, after meeting with an international criminal defense NGO, one ICIR wrote in his log: “[F]rom what we saw of the [International Law Foundation’s] lawyers, they seem to be very effective in developing a cohesive group, who are really engaging and cooperating with one another... really struggling to develop a model of effective representation, *in a system that doesn’t reward the model of work that they champion*.” (ICIR Weekly Report, Feb. 8, 2019) (emphasis added) (on file with authors). See also Cheesman & Kyaw Min San, *supra* note 22, at 712 (today’s lawyers’ insistence on formal legality represents an attempt to “restore something of the substance and spirit of the law itself” to a legal system lost after Ne Win’s 1962 coup).

process needs to begin in the university law departments, where *future* members of the bar and bench are trained.¹⁷⁵ Ultimately, legal practice is not about the triumph of one justice sector over the other, but about the need for practitioners to be familiar with a mixed system and a weighing of the strengths and weaknesses of the different approaches to dispute resolution. To that end, clinical education needs to make room for introducing students to the practice of customary law and other alternative forms of dispute resolution, with an emphasis on offsetting historic inequities in the process.

Burgeoning Scholarship

“[T]here is a dearth of critical legal scholarship.”¹⁷⁶ While under the educational strategic plan HEIs “have a key role to play in undertaking research and incubating the innovative and creative thinking needed for [a] globally and economically competitive society.”¹⁷⁷ There is no timeline or even a strategy beyond “improv[ing] the quality and relevance of higher education.”¹⁷⁸

Currently, no law journal is published by any Myanmar university, and there are “distinct disincentives to publish generally, given the previous level of censorship.”¹⁷⁹ During successive military regimes, the Myanmar “political climate led to the decline of whole areas of [critical

175. A different approach was adopted by USAID to promote ROL and access to justice as a means of supporting the country’s democratic transition. The agency’s focus has been in large part on “justice system apex institutions” such as the Myanmar Supreme Court, powerful Union Attorney General’s Office, Parliament, and the Constitutional Tribunal. RUSSELL-EINHORN & AUNG TUN, *supra* note 90 at 1. At the same time, agency evaluators have urged the Project “to be attentive to informal and customary dispute resolution mechanisms and referral pathways.” *Id.* at 16. This “came up as an important issue deserving of more attention from PRLP in meetings with several CSO representatives and legal aid lawyers and paralegals, who noted how provision of better information and representation can improve outcomes in such processes, especially for women.” *Id.* (discussing alternatives to traditional dispute resolution modes in SGBV cases).

176. CROUCH, *supra* note 14, at 22.

177. MYAN. MINISTRY OF EDUC., *supra* note 11, at 11.

178. *Id.* at 24, 192, 197. The only two research “programme components” associated with this strategy are: (1) establishing a National Research and Innovation Fund and HEI Research and Development Centres and (2) developing “a policy and strategy for world-class national universities and comprehensive universities.” *Id.* at 194.

179. CROUCH, *supra* note 14, at 22. At present, law professors may only publish within Myanmar in interdisciplinary journals such as the English language *Mandalay University Journal* or *Myitkyina University Journal*. *Id.* Purportedly, there is a Supreme Court judicial journal and a bilingual law journal of the Office of the Attorney General. “[O]ccasionally some law professors are required to publish in these journals,” but these articles tend to be “more descriptive than analytical, and they are not widely distributed.” *Id.*

legal] scholarship that were considered too sensitive.”¹⁸⁰ Because there were few publication outlets, legal academics were not expected to publish and the main criterion for promotion has been the number of years of teaching experience.¹⁸¹ This, however, is changing. The strategic plan calls for establishment of a National Research and Innovation Fund to benefit university teaching and learning, and the undertaking of faculty professional development.¹⁸²

Faculty Transfer Ritual

The frequent transfer of faculty members from one campus to another is also a fact of higher education life in Myanmar.¹⁸³ The MoE semiannually redistributes a certain number of teaching staff, ostensibly to under-resourced universities, but the longstanding practice has all the hallmarks of imperial- or Soviet-style appointments in which favoritism or capriciousness trumps qualification and need. This system is “unpopular but viewed as necessary to ensure that smaller Universities and those in more rural or remote locations are able to operate with a good staff complement.”¹⁸⁴

There is no indication that the MoE makes reassignments with regard to substantive expertise or personal circumstances, and with no certainty that any of the transferees will actually be able to apply any of their skills and knowledge at the relocated campus.¹⁸⁵ Instead,

180. *Id.* at 21. “Many academics left the country or academia, while [those] who remained have had few obligations, outlets or incentives to publish, and censorship of publications in general has been a significant deterrent.” *Id.* One ICIR wrote in his weekly report: “One teacher went as far as to tell me that there is no academic freedom in Myanmar.”

181. *Cf. id.* at 22 (noting that in the past, incentive to publish for promotion purposes was nonexistent). One ICIR wrote in his weekly report that when he asked a teacher “a little bit about her research . . . I was struck by how formal her approach is. Her research is entirely focused on law on the books as opposed to law in action.”

182. MYAN. MINISTRY OF EDUC., *supra* note 11, at 49.

183. “This phenomenon is known and understood to Myanmar faculty and staff, but was identified as a regular discovery to foreign entities working with Myanmar universities.” Liljeblad, *supra* note 32, at 147-48.

184. Jon Gregson, Andy Lane, & Matthew Foster, *Adaptive Project Design: Early Insights from Working on the Transformation of the Distance Education System in Myanmar*, PAN COMMONWEALTH FORUM 9 (PCF9) 1, 4 (2019), <http://oasis.col.org/handle/11599/3328>.

185. *See* MYAN. CLE PROGRAMME CONSORTIUM, *supra* note 34, at 38. Even before the new curriculum was piloted, some of the teachers from university partners were reassigned to other institutions, creating a human resource shortage, “leaving less teachers tasked with the same amount of work.” *Id.* Moreover, when a teacher who has been part of a university’s “CLE Champion Core Group” is transferred, this creates a potential “brain drain” due to the amount of training and exposure to CLE concepts. *Id.*

instructors are treated as fungible commodities, as teachers must move from one location to another mid-year or mid-semester, with little notice. These moves reduce the corps of those already trained in a new methodology, disrupt instructors' bonds with fellow faculty or students, and create an ever-shifting environment in which new ideas and approaches cannot take root.¹⁸⁶

Curriculum Planning and Competing Obligations

Law teachers have worked under difficult conditions and have tried to do their best with limited resources.¹⁸⁷ They maintain a heavy teaching load¹⁸⁸ and faculty members seemingly do not benefit from release time, allowing them to forego other obligations to take on new assignments. Teachers have hardly any administrative support staff, with law departments entirely dependent on faculty members to handle all clerical and even janitorial duties. It is also unclear what impact their participation in CLE programs has on their prospects for promotion, or whether it "might constitute a distraction from pursuing their professional ambitions."¹⁸⁹

There is no clear evidence that transferred teachers are, in fact, able to use their newly-acquired CLE teaching methodologies in courses in their new academic home. *See id.*

186. Furthermore, this system does not encourage long term faculty commitment to universities, and academic staff find it difficult to develop their research. Gregson et al., *supra* note 184, at 4. "The notice of reassignments can be as short as two days and at most two weeks, and frequently involve faculty being removed in the midst of teaching during a semester. For development aid programs, this poses a regular risk of aid recipients being relocated, effectively undermining aspirations of building department capacity." Liljeblad, *supra* note 32, at 147 (emphasis added).

187. From infrastructure to staffing to academic materials, universities are in need of substantial upgrading and updating. INST. OF INT'L EDUC., *supra* note 14, at 18-23.

188. In a CLE Programme Consortium survey, participants indicated that they taught up to four classes per semester, with classroom sessions meeting four times per week for each class. MYAN. CLE PROGRAMME CONSORTIUM, *supra* note 34, at 37. Unwieldy teaching loads are not unique to Myanmar. *See* Rosenbaum, *supra* note 16, at 403 (arguing that legal education reform should address "unmanageable quantity of course requirements [and] haphazard selection of courses"). The better practice is for faculty to identify professions that law graduates are likely to enter so that "necessary competencies can be determined and factored in to [sic] the courses of instruction." *Id.* at 404-05.

189. MYAN. CLE PROGRAMME CONSORTIUM, *supra* note 34, at 37. Even if participation in a CLE program is not a detour to promotion, some otherwise reluctant or disinterested law faculty may be "volunteered" to sign up for teaching CLE courses. *See id.* One ICIR wrote charitably at the end of the semester: "One slightly disappointing development was that [the teacher] did not play an active role in the class and actually sat and graded papers at one point. I am not sure whether this is a sign that she feels her work is done or whether it is just a particularly busy moment in the academic cycle."

In addition to teaching, faculty at one university reported to one of the authors that they are frequently called upon to assist the government in drafting legislation, to mark entrance examinations for the judiciary or the Union Attorney General's Office, teach law in military colleges, or consult on miscellaneous matters. They might also be summoned to meetings in the capital, asked to grade high school exams, conduct crash courses ("tutorials") for distance education students, or chaperone at weekend intercollegiate athletic events.¹⁹⁰

As already noted, Myanmar law professors inhabit an educational system where they are not encouraged to take initiative or work collaboratively, and where there is almost no transparent decision-making before the semester begins on such matters as class meeting times, teaching assignments, preparation sessions, or student selection. And, virtually every decision is subject to P1 approval or directive.

Fostering Student Engagement

Promotion of higher education "student support programmes" is among the "Transitional Shift" components briefly mentioned in the country's educational strategic plan.¹⁹¹ This terse objective could be met by guidance and financial support for initiatives which allow law students to be more engaged in campus academic life and in community-based activities. These initiatives can enhance students' legal knowledge, skills, and values and also contribute to the larger society's social and legal welfare. Moreover, student engagement can help stimulate curriculum reform "from the ground up," for example, through law student associations and moot court programs.¹⁹²

After many years of a ban on student organizations, law students have established associations at Myanmar universities, which are affiliated with an active Asian Law Students' Association (ALSA). With chapters in sixteen countries, ALSA sponsors training workshops, study visits, career panels, and an annual moot court competition. It also enjoys a number of law firm sponsors and organizational partners.¹⁹³

190. Yet, when personally interviewed by co-author Rosenbaum about time constraints at another university, law teachers who piloted CLE courses in the June 2018 semester stated that they actually *did* have sufficient time for class preparation.

191. MYAN. MINISTRY OF EDUC., *supra* note 11, at 196.

192. Harding, *supra* note 31, at 391.

193. *About: All About ALSA*, ASIAN L. STUDENTS' ASS'N, <https://alsainternational.org/about/> (last visited Oct. 9, 2020). An international consortium of approximately 14,000 law students and alumni countries, ALSA is a merger of the ASEAN and East Asian law student associations, whose goals were to "foster[] stronger ties and greater understanding of the different legal systems among its member Asian countries." *Id.*

Persistence of Distance Education

Introduced by the military regime in 1975, distance education was meant to address university overcrowding and allow students in remote areas to earn a postsecondary education degree. Typically, students enrolled in this off-site program have been issued textbooks, study guides, and other printed materials each semester and attend an intensive ten-day tutorial on campus, followed by a written final examination.¹⁹⁴

Officially, the MoE, together with the two large oversight universities, is transitioning to advanced technologies. On paper and “on screen,” there are the ingredients of a legal studies curriculum, an instructional staff and website links to videotaped lectures, e-TV programming and a course schedule.¹⁹⁵ It is difficult, however, to gauge the efficacy of this mode of instruction, availability of internet access, level of English language proficiency, and the degree of actual student participation. In today’s COVID-19 world, there is a renewed interest in the effectiveness, equity, and pedagogically innovative potential of distance education for the present and even after the end of the pandemic.¹⁹⁶

However, the International Commission of Jurists has heavily criticized the current distance education scheme because enrollment qualifications are minimal, students are fed exam questions in their intensive courses, and “lawyers and legal faculty hold it in very low

194. Hla Tint, *Present Situation of Distance Education in Myanmar*, INTERNATIONAL COUNCIL FOR OPEN AND DISTANCE EDUCATION 4 (2014), <https://www.icde.org/knowledge-hub/distance-education-in-myanmar>. See also Myint Zan, *supra* note 30, at 14. What was originally labeled “correspondence courses” had the added advantage of preempting student protest gatherings on campus. Law students in particular were key protagonists in the pro-democracy movement, resulting in *Tatmadaw* armed forces killings and long-term school closures. *Id.* Overall, there are almost twice as many students enrolled in distance education programs than in bricks-and-mortar HEIs. MYAN. MINISTRY OF EDUC., *supra* note 11, at 35.

195. Yangon University Distance Education (YUDE) recently introduced a ten-month “Online Diploma in Law,” including weekly evening discussions. The purpose of the course, according to then-Acting Rector Hla Tint, was “to develop a lifelong learning society and to enhance the quality of legal education . . . through electronic media in Myanmar.” Hla Tint, *supra* note 194, at 5. See also *Department of Law*, YANGON UNIV. DISTANCE EDUC., <http://www.yude.edu.mm/public/mod/page/view.php?id=86> (last visited Dec. 22, 2020). A more recent partnership was formed with several British universities, with a focus on digital technologies and lifelong learning, as part of an international development project working with at least 30 Myanmar universities. See generally Gregson et al., *supra* note 184.

196. See, e.g., Penelope Moon, *Shift to Remote Learning: The Human Element*, U. WASH. BOTHELL (Mar. 25, 2020), <https://www.uwb.edu/news/march-2020/remote-learning-penelope-moon> (last visited Dec. 22, 2020).

regard.”¹⁹⁷ The suitability of online or other forms of distance learning for development of professional skills training or any kind of clinical legal education remains questionable.¹⁹⁸

VI. MOVING FORWARD: REMEDIATING THE CHALLENGES THROUGH PRACTICE AND POLICY

Some of the challenges outlined above can be met through good will, training, and mentoring that is ardent and sustained, and through conscientious evaluation and reflection. Other obstacles are subject to institutional constraints that require changes in policy, law, or culture. These constraints do not necessarily fall neatly into discrete categories of short-term and long-term, but for purposes of advancing what has been built to date, we suggest thinking about next steps in practice and policy under these two rubrics.¹⁹⁹

Short-Term Changes in Practice

Faculty Collegiality

Peer exchange can increase law teachers' skills, which leads to better educational outcomes and improved international standing for university faculties. Fostering university autonomy and more inter-university teacher training and staff development also helps promote collegiality, without waiting for action from the Board of Legal Studies, National Education Commission, or MoE. This effort would include designating lead teachers on academic and extra-curricular matters, experimenting with best practices in university autonomy, and receiving support from ICIRs and other international resident visitors.

An informal, bilingual, online Myanmar Law Teachers Network was launched on Facebook in December 2018 for faculty members and their professional partners to share ideas about teaching methodologies, curriculum, research, and related activities. These exchanges might include sample lesson plans and syllabi; readings on CLE or community teaching; externship forms and possible placements; strategies for interactive teaching or classroom management; titles of books or articles on Myanmar law, international law or comparative law; topics for research or publication; sample forms for evaluating student work in

197. INT'L COMM'N OF JURISTS, *supra* note 43, at 32.

198. For an example of an interactive teaching lesson plan to be applied in the Myanmar distance education context, see Chorak, *supra* note 74, at 271-77.

199. See *infra* Appendix V for a summary of recommendations for improving law teaching and learning capacity going forward.

non-traditional classes; or workshop or conference materials.²⁰⁰ The Myanmar Law Teachers Network is also available for private messages to law faculty at other universities.

Mentors: Visitors and Faculty In-Residence

Notwithstanding its challenges, the practice of inviting international clinicians in-residence can continue without a change in Myanmar law or policy. Partnerships with international universities should continue to be cultivated, to expand the ICIR model to embed clinicians for longer and more seamless periods—and to reach out to academics who have expertise in research, problem-based learning, or new areas of substantive and procedural law. For example, cyber law, intellectual property, international organizations, environmental protection, corporate responsibility, consumer law, legal ethics, and alternative dispute resolution are prime areas for in-depth study. The ICIR (*in situ*) model is most effective when it is run over a substantial period of time and there is pre- and post-semester (*ex situ*) engagement by the international experts. The latter can be effected through regular video-conferencing and exchanges by email and the online Myanmar Law Teacher Network. Along with the compensation and costs associated with maintaining a faculty member in residence, one must also consider duration, flexibility, and continuity. It is not necessarily easy to recruit a succession of international academics or practitioners who have the finances, interest, cultural competence, and ability to stay beyond a few months—particularly in the Global South—and on a schedule that is in sync with the host country's.²⁰¹

200. The Network was established as a “closed group” Facebook page, making it affordable, culturally appropriate, and technologically accessible to Myanmar teaching staff. To date, however, most of the engagement by Myanmar law faculty amounts to posting workshop photos and clicking the “like” icon. With faculty sheltering-in-place and/or social distancing until there is a widely available COVID-19 vaccine or therapy, a Facebook page or listserv becomes even more important as a means of pedagogical exchange.

201. Where long-term sequential faculty residencies are not viable, Myanmar universities would do well to foster relations with counterpart law schools in the United States, United Kingdom, Australia, Europe, Singapore or India. Also, shorter term visitors can conduct intensive workshops, evaluate, guest teach and/or co-teach with their Myanmar counterparts. See, e.g., *About*, ACADEMICS WITHOUT BORDERS | UNIVERSITAIRES SANS FRONTIÈRES, <https://www.awb-usf.org/about> (last visited Oct. 10, 2020); *About*, FULBRIGHT SPECIALIST PROGRAM, <https://fulbrightspecialist.worldlearning.org/the-fulbright-specialist-program> (last visited Oct. 10, 2020). Even if the visits are not seamless, there is still value, as noted above, and this engagement can be enhanced with pre- and post-visit exchanges online or via videoconferencing.

Visits from new and returning ICIRs to conduct workshops, as well as their engagement from abroad in online “bilateral” communication, can help Myanmar law faculty receive continuous mentoring in clinical methodology. The trainer-trainee partnership is a delicate one. While striving to provide genuine support, the visiting clinician may encounter great disparity in teaching style, attitude, and language between herself and her local counterpart.²⁰² At its worst, the relationship is imbued with neocolonial tendencies.²⁰³

Moreover, with support from the department head or head professor, the ICIR can bolster efforts to keep CLE methodologies from being siloed, and instead be “infused” throughout law department curricula. CLE syllabi and lesson plans²⁰⁴ can be supplemented, and resources produced by legal advocacy organizations can be used as reading materials for CLE and other courses.

Although anchored to a core group of designated faculty members and a set curriculum, the expert visitors could encourage other faculty to employ some of the same instructional techniques in their traditional classes and enlist them to observe and experiment as well. Rectors and department heads should permit faculty to apply for the CLE or other innovative teaching positions and designate lead faculty for developing CLE, research, course materials, workshops, justice sector liaisons, library services, other curricular innovations, student relations, and

202. According to one Myanmar ICIR’s weekly report: “Both [teachers] seemed extremely self-conscious and brought very little energy to their exercises. It made me appreciate [that] I need to be engaging with the teachers to make sure they understand the point of the lesson: they have no background of experience with this stuff, and I can’t expect them to just pick it up from doing the reading in the book.”

203. International aid workers in Myanmar assuming positions of privilege vis-à-vis local faculty risk “replicat[ing] colonial patterns of foreigners holding hegemonic positions over locals.” Liljeblad, *supra* note 32, at 150 (citing sociologist Carlos Palacios Obregón’s study of “volun-tourism education programs”). In developing countries, the “expatriate accommodations and dominant positions within recipient universities . . . usually cater to Western sensibilities and foster isolated social networks of foreigners interacting in relationships removed from the faculty, staff, students, and communities meant to be the beneficiaries of development aid.” *Id.* For a candid exchange on perceived and real inequities in cross-border relationships between legal academics, see Daniel Bonilla, *Legal Clinics in the Global North and South: Between Equality and Subordination—An Essay*, 16 YALE HUM. RTS. & DEV. L.J. 1 (2013); James J. Silk, *From Empire to Empathy? Clinical Collaborations Between the Global North and the Global South—An Essay in Conversation with Daniel Bonilla*, 16 YALE HUM. RTS. & DEV. L.J. 41 (2013).

204. Twenty-seven lesson plans for courses on Externship Preparation and Community Teaching, together with background readings, were piloted in the June 2018 semester. They were then streamlined and modified by ICIR Richard Grimes and edited pro bono for readability by GJB members of the Herbert Smith Freehills law firm before being sent out for translation. Additional comments on the curriculum made by law faculty and ICIRs were recorded in interview notes and written surveys.

other program and administrative concerns. While many international NGO initiatives have focused primarily on Yangon and Mandalay Universities, they should also extend assistance to the country's less-resourced universities.²⁰⁵

Course Materials Repository

Universities, the MoE, and/or the Board of Legal Studies should collect and review lesson plans, course readings, and other resources produced by Myanmar justice sector partners—not necessarily designed as instructional materials—in order to augment standard texts, specially-prepared curriculum, and community teaching media. These materials should include BABSEACLE's community teaching and mock trial scenarios, the Rule of Law Centres' training materials, International Bridges for Justice criminal defense manual,²⁰⁶ and MyJustice awareness-raising media.²⁰⁷ Donor organizations, implementing NGOs, and universities could easily improve the coordination of their capacity-building or advocacy objectives and partnership outreach if they were to move beyond their grant parameters and coveted turf.²⁰⁸

205. On the other hand, there is the perception that the students' skill levels, capabilities, and English language proficiency is higher at the two HEIs where matriculation is based on more rigorous academic admissions criteria.

206. See generally, *Foundations Course Curriculum Modules*, MYAN. RULE L. CTRS., <https://www.rolcmyanmar.org/en/foundations-course-curriculum-modules> (last visited Oct. 9, 2020) (providing modules for foundation courses); JAKE STEVENS, MYANMAR CRIMINAL DEFENSE PRACTICE MANUAL (U Hla Ko ed., 1st ed. 2018) (providing guidelines on criminal defense practice in Myanmar). These materials are all in English and the Myanmar language.

207. The *Lann Pya* access to justice mobile app and *Pyaw Kyai Mal* access to justice media campaign are two examples of MyJustice's "very effective portfolio of engagement with media and public opinion makers to ensure that justice is a talking point." *Communications and Engagement Manager – MyJustice II*, MYJUSTICE, <https://www.myjusticemyanmar.org/blog/communications-and-engagement-manager-%E2%80%93-myjustice-ii> (last visited Oct. 9, 2020). "The 'growing soft power of media, artists and influencers' has been acknowledged at the highest levels of government, with an assertion that 'creative industries have a huge role to play in promoting peace and resolving the pressing problems of today' . . . [and] have taught the programme valuable lessons on how to push the boundaries on what is possible in the public domain and engage audiences on a complex issue such as justice." *Id.*

208. As alluded to above, the MyJustice and BABSEACLE university community teaching initiatives could benefit from the experience of other NGOs or intergovernmental organizations (IGOs) conducting legal-awareness-raising in the same ethnic or geopolitical environment or with similar knowledge content. Other than recitations at periodic NGO gatherings or swapping stories over a Mandalay rum sour, we saw little evidence of concrete, informed collaboration between donors or grantees.

Legal Practitioners at the University

Where no obstacles are posed by civil service rules, the Board of Legal Studies, or the MoE, universities should hire legal practitioners as guest lecturers or to teach professional skills-based courses, much as Myanmar higher-grade pleaders did in an earlier era.²⁰⁹ These practitioners would include attorneys and jurists drawn from the ranks of NGOs, justice centers, corporate law firms, prosecutorial law officers, the judiciary, criminal defense bar, and lawyers engaged in pro bono service.²¹⁰ As excellent lawyering does not necessarily translate into excellent teaching, these practitioners must also receive some capacity building in appropriate methodology.

Collaboration with the bar and bench will also help grow the Externship Preparation, Community Teaching, and other CLE courses and field work. Local and international NGOs may still need to prompt and support university partners to augment the number of externship and community teaching stakeholders and fully implement objectives of the two CLE courses. Extern supervisors, law professors, and legal practitioners should coordinate on curriculum design and implementation and collaborate on court and office study visits, externship planning, and career placement. There is also a need to create professional development opportunities for law teachers who may seek to expand their expertise in emerging areas of law—in both the government and private sectors.

Scholarship and Research

Efforts should continue to enrich legal scholarship. The CNA project detailed above afforded the opportunity for students and faculty at Taunggyi University to develop their research skills and collaborate with international scholars, culminating in a transnational conference poster presentation and publication. At a 2019 workshop at Taunggyi

209. “A [higher-grade] pleader is entitled to practise in all [c]ivil and [c]riminal [c]ourts [that are] subordinate to the [h]igh [c]ourts.” *Regulation Directory Project-Myanmar*, INT’L BAR ASS’N, https://www.ibanet.org/Regulation_Directory_project_Myanmar.aspx (last visited Oct. 9, 2020).

210. There are a myriad of ways in which law schools can augment the teaching staff—by recruiting local practitioners as guest lecturers, adjunct instructors or co-instructors, and/or by offering practicum courses. *See, e.g.*, Rosenbaum, *supra* note 16, at 412-17. Adjuncts’ “special contribution is that they are able to think ‘transactionally,’ which combines the theory and the practice in a strategic way.” *Id.* at 412-13 (citations omitted). “They also provide supplemental perspectives and insights on legal reasoning, critical thinking, crafting legal arguments, and on the subject matter of [a] particular course, and can serve as professional role models.” *Id.* at 413.

University on scholarship methodology and publication, the suggestion was made for the University to initiate an online research paper series. This could include publication of faculty research already in progress.²¹¹ Facebook is also available for an online research paper series—including papers written in the Myanmar language.

More workshops on research methodology can be scheduled, relying on the support of international faculty in residence. Opportunities should be sought for joint publication with regional and international scholars. The department head could delegate to one or more faculty members the task of fostering research opportunities, including collaboration with teachers at other Myanmar law departments and abroad, and in the planning and execution of research skills workshops.

English Language Instruction

One legal studies scholar has posed the question: “[W]hat is the real priority, legal education or language training?”²¹² As English comprehension is necessary for cross-border communication, there is value in promoting English proficiency in a law school setting, but with the recognition that the language course and CLE methodology courses have distinct, albeit complementary, objectives. Rectors, department heads, and teachers do not necessarily understand this because everything may be lumped under the heading of “CLE.”²¹³

211. In responding to a written survey, most of the law teachers who attended the workshop led by Australia National University professors Vivien Holmes and Anne Macduff stated that university promotion was one of their incentives for pursuing research. By way of follow-up, Professor Marsha Garrison of Brooklyn Law School, who has visited at Yangon University as a Fulbright scholar and conducted BABSEACLE teacher training, is collaborating with Professor Liljeblad on conducting scholarly writing workshops. Hampered in part by the pandemic, Garrison nevertheless reported slow but steady progress in building up law faculty foundational research skills through short-term internet assignments. Email from Marsha Garrison to Stephen Rosenbaum (Dec. 30, 2020) (on file with authors).

212. Harding, *supra* note 31, at 392. In his critique of CLE English classes, one peer teacher wrote:

For the students the program was an optional addition to their study schedule, and so at times there were some timetabling issues that prevented them from attending or forced them to choose between the CLE program and their regular classes. For the teachers, similar scheduling issues were used, whether as an excuse or not, to prevent them from attending.

Smith, *supra* note 158, at 5.

213. One ICIR observed:

Many of the teachers struggled to articulate what they understood the goals of the CLE programme to be and the lawyering skills that students could be expected to acquire from participation in the programme. Both students and teachers threw out buzz words such as

Law departments should continue to promote English language proficiency among students and faculty where curricular content is delivered by peer teachers and is grounded in CLE or other experientially-based vocabulary and activities. The instruction should be regularly scheduled and informed by sound English-as-a-Second-Language practices—neither ad hoc nor as a substitute for in-house training in innovative teaching methodologies.

English immersion, when skillfully taught, can be beneficial for second language competence, including familiarity with a (social) justice vocabulary. In the interim, investing in interpreters and translators will be necessary to ensure that less proficient teachers and students master new learning techniques without relying on peer “support” or sacrificing nuanced understanding.

Law Student Participation

A modest step toward improved law student engagement would be for university administrators to acknowledge and foster existing law student associations and help found new chapters. Development of funding or in-kind support for these organizations would be optimal. Other support priorities would include off-campus transportation, meals, and lodging during semester break externships for those living a substantial distance away from the university, or operation of dormitories during the semester breaks.

A bolder step would be for Myanmar universities to study models for student involvement in law program planning. A forum for students could range from a faculty committee with observer status to membership on an advisory committee to an elected student government body. Areas of participation could include developing curriculum and a greater array of electives. Students could also play a role in evaluating courses, teaching, and student assessment tools. This level of involvement would likely require approval by the Board of Legal Studies, MoE, and/or National Education Commission.

A wealth of piloted moot case materials have been developed by BABSEACLE over time, in addition to scenario and instructional guides for mock trials, oral argument, arbitration, and negotiation prepared by various regional and international moot advocacy competitions.²¹⁴ Law

“providing knowledge to the people” and “interviewing skills” but did not fully seem to understand.

214. Participation in the Willem C. Vis (East) International Commercial Arbitration has been popular in recent years along with increased technical and/or financial support from Myanmar lawyers and firms and international donors. Myanmar held its first Philip C. Jessup International Law Moot Court in 2019, largely coordinated by ALSA members. The

departments can help promote student moot advocacy events and engage technical support from local practitioners.

Longer-Term Changes in Law and Policy

University Autonomy

The recently approved National Education Law and Amendment Law can provide universities with autonomy in areas including admission requirements, teaching standards, curriculum development, research support, management, or governance on the condition that they are able to develop university charters that are approved by the National Education Policy Commission. The call for reform in university governance, strengthening institutional capability, and professional development can also lead to greater intra- and inter-university collaboration with other Myanmar HEIs and international institutions.²¹⁵

Adopting a realistic timeline for implementing the transition is key. Pending official devolution, university administrators nonetheless should plan and develop skills and practices among their faculty that will enhance their capacity in such matters as leadership, consensus building, course design, piloting informal assessment, conflict management, student interaction, and community relations. Rectors and department heads who sit on the Board of Legal Studies might solicit programmatic and administrative input from their law faculty colleagues. They could also seek partial devolution of the Board's mandate (for example, curriculum and assessment methods) or urge law departments to adopt open meetings and more transparent procedures.

Jessup competition has continued with student participants, notably from universities in Yangon and Mandalay, with technical legal support from international volunteer lawyers and moral support from law teachers. BABSEACLE also conducts regular mock trial events, which have enjoyed ALSA law student participation. Experts differ in their opinions about the competitive aspect of moot advocacy activities. Anecdotal evidence suggests, however, that competition incentivizes student involvement.

215. The ASEAN Law Association (ALA) is a NGO bringing together judges, practitioners, government lawyers, and law teachers for over four decades. *About ALA*, ASEAN L. INST., <https://www.aseanlawassociation.org/> (last visited Oct. 24, 2020). Indonesian law professor Hikmahanto Juwana has proposed establishment of a permanent regional association of law schools, developing common standards for legal education and recognition of law degrees and allowing freer movement of lawyers across ASEAN borders. See generally Juwana, *supra* note 57 (assessing the state of legal education in Indonesia and discussing the steps that should be taken to improve it).

In short, the “[f]aculty need to be unencumbered to teach more than an assigned [centrally designed] curriculum.”²¹⁶

Intra-Departmental Collegiality

Other interim measures, which would also foster faculty collegiality, include designating lead teachers on academic and extra-curricular matters, experimenting with best practices in university autonomy, and getting support from ICIRs and other international resident visitors. ICIRs and other international consultants can help promote good governance and administrative practices—in addition to classroom teaching—at the law department level. Experts should also be embedded to assist university councils, the Board of Legal Studies, the MoE, or the National Education Commission in hastening the long-term reform.

Competing Obligations

Faculty release time will depend in part on the disposition of individual law department heads and rectors, and in part on the will of national legal education agencies to redistribute auxiliary duties that historically have been assigned to law faculty or to the department head. Centralized institutions can accomplish some of this by reducing the teaching course load and granting release time for CLE or other curricular innovation, research, or other professional development and the myriad extra-curricular tasks. Including teaching a CLE course as a criterion for promotion might even encourage faculty to get involved.

It is not enough to say that “time management” is the answer for faculty members saddled with a number of obligations. Adding additional staff for clerical, administrative, and janitorial tasks requires an infusion of funds. Ultimately, however, nothing short of a genuine transition to autonomous HEIs and accompanying mentoring and leadership will be needed to resolve many of the problems associated with an abundance of duties.

Transfer Protocol

The MoE or National Education Commission should conduct a study to modify the transfer protocol in order to stabilize the university teaching and learning process. The study should consider ways to preserve a corps of teachers with shared, newly developed capacities for

216. INST. OF INT’L EDUC., *supra* note 14, at 19.

a set period of time and to make transfer decisions based on individual teacher expertise and request for relocation. Transferred teachers should also be assured that they can continue to apply their expertise at their new university. Better yet, universities should find a less disruptive means for assuring quality legal instruction and educational programming across the country. Where instructors seek transfers voluntarily, because of financial or other incentives, they share experience and expertise, thereby benefitting all parties. Building a culture that favors collegiality and consideration of teachers' subject matter or other assignment preferences would also create more disincentives to reassignment.

Distance Education

The National Education Law simply states that "[i]mplementation of higher education shall include a distance education system," but does not provide further guidance.²¹⁷ Notwithstanding, one of the educational strategic plan program components for "[i]mprov[ing] the quality and relevance of [h]igher [e]ducation" is to "[i]mprove the effectiveness of the distance education system," and another is to "[e]nhance the status of e-learning centres and e-libraries in HEIs."²¹⁸

There is some promise of improvement with the very recent international partnerships,²¹⁹ but we remain skeptical that instruction is actually conducted in English, that online technologies are accessible and being utilized by students and teachers, and that teachers are employing innovative instructional methods.

The Board of Legal Studies, MoE, or the National Education Commission should conduct a study to improve how universities integrate distance education law students—including contacts with other students and contact between teachers and students—and to improve teaching methods that will genuinely increase CLE and other experiential education opportunities, and not simply serve as showpieces for international donors. The study should also focus on the feasibility of employing technology to aid these improvements. There is scant justification for continuing an instructional mode that continues

217. National Education Law, *supra* note 10, at ¶ 29.

218. MYAN. MINISTRY OF EDUC., *supra* note 11, at 200-01.

219. See Andy Lane & Jon Gregson, *Fostering Innovations in Pedagogical Practices: Transforming Distance Education Through a Professional Development Programme Using OERs*, PAN COMMONWEALTH FORUM 9 (PCF9) 9, 9, <http://oasis.col.org/handle/11599/3387>; INT'L COUNCIL FOR DISTANCE & OPEN EDUC., STRATEGIC PLAN 2017-2020 (2016), <https://static1.squarespace.com/static/5b99664675f9eea7a3ecee82/t/5ba7b18df9619abf16881f01/1537716633936/icde+strategic+plan+2017-2020+formatted+cs.pdf>.

to isolate students and relies on recitation and response to teach knowledge, skills, and values to future generations.²²⁰

Recognizing Informal Justice and Customary Law Practices

Considering the population's deep suspicion of the court system and current state of the judiciary, preparing law students for court-centric practice is not an optimal educational strategy. Scholars and survey analysts have urged a "focus on finding ways to expand or renegotiate existing justice options" within a system of plural providers.²²¹ Given popular reliance on informal justice mechanisms, the inaccessibility of the formal justice sector,²²² and general lack of trust in the latter, the law school curriculum must also address the informal system of justice and alternative dispute resolution.²²³

Law professors should join with jurists, ward and village tract administrators, and civil society organizations to explore ways to incorporate the study of informal justice mechanisms in the law curriculum, including judicial and extra-judicial alternative dispute

220. Much of the innovation depends on teachers and students having reliable internet access and large enough platforms for video-conferencing. *See, e.g.*, CTR. FOR COMPUTER-ASSISTED LEGAL INSTRUCTION (CALI), www.cali.org (last visited Oct. 24, 2020). Where laptops are unavailable, smaller platforms such as tablet computers or smartphones may suffice. And, when the technology is altogether lacking, there are low-tech instructional methods not dependent on outdated textbooks, on-campus crash courses, or exams for which students are fed the answers in advance. *See, e.g.*, City Univ. N.Y., *Low Technology Distance Learning*, BMCC COURSE CONTINUITY, <https://sites.google.com/bmcc.cuny.edu/emergency-preparedness/low-tech>. (last visited Oct. 24, 2020). *See also* Sean Michael Morris, *Love Letters and Pen Pals: Community Through Correspondence*, SEANMICHAELMORRIS.COM (May 4, 2020), <https://www.seanmichaelmorris.com/love-letters-and-pen-pals-community-through-correspondence/>.

221. DENNEY, BENNETT & THET SAN, *supra* note 45. In a sophisticated analysis, Professor Prasse-Freeman describes how the opaque formal justice system co-existed with the informal system during the succession of autocratic Myanmar military regimes, the vestiges of that system, the advent of western liberal "rule of law" reforms, and how the Myanmar people access justice today. *See* Prasse-Freeman, *supra* note 20, at 89-108.

222. Lawyers and citizens consider litigation "too costly and unreliable to settle everyday disputes." Dominic J. Nardi & Lwin Moe, *Understanding the Myanmar Supreme Court's Docket: An Analysis of Case Topics from 2007 to 2011*, in *LAW, SOCIETY & TRANSITION IN MYANMAR* 95, 99 (Melissa Crouch & Timothy Lindsey eds., 2014). Legal scholar Andrew Harding concurs: "Going to law is both expensive and hazardous, and despite an increase in legal-aid and pro-bono activity the emphasis is not so much on litigation as on finding alternative means of dispute resolution." Harding, *supra* note 9, at 12 (citation omitted).

223. Professor Harding proposes that future legal practitioners focus on a range of forums for community dispute resolution over reliance on judges and lawyers. Harding, *supra* note 31, at 392-93.

resolution.²²⁴ This can include courses with a theoretical simulation or other experiential component or off-campus activities, for example, study visits, externships, and community teaching. But, again, Myanmar should not rely on "old guard" or "collaborationist" local administrators where that reliance is disempowering and/or contrary to contemporary human rights norms.²²⁵

This approach would also complement initiatives referenced in the current Judicial Strategic Plan: promoting court-community awareness programs and access to justice, improving substantive justice for vulnerable groups, and developing effective mediation or other court dispute resolution systems.²²⁶

VII. CROSS-BORDER COLLABORATION

Much has been written about teaching legal concepts outside of a Western, post-industrial, neoliberal setting. Some of the guidance is by now conventional, for example, the importance of effective intercultural communication and acknowledging that cultural assumptions may result in student or teacher misunderstandings, both inside and outside the classroom.²²⁷ In many ways, the process of second language learning is one of "crossing boundaries."²²⁸

We should maximize opportunities for cross-cultural dialogue and for international students or academics to provide learning

224. See DENNEY, BENNETT & THET SAN, *supra* note 45. These facilitators include elders, household heads, and community-based organizations. *Id.* "Judicial independence is rightly encouraged as part of the development of a competent and rule-of-law oriented judiciary." *Id.*

225. One former ICIR and Street Law, Inc. consultant has designed a clinical customary law curriculum that allows Myanmar law students to analyze a client's options from socio-economic, administrative, and strategic perspectives, once taking on a potential divorce case. Students learn to prepare for a visit to the Ward Office and decide between a civil or criminal court proceeding. Ultimately, they hold a mock judicial hearing in the classroom. Chorak, *supra* note 74, at 271-77.

226. THE SUPREME COURT OF THE UNION OF MYAN., *supra* note 9, at 6, 9, 16, 22 (focusing on strategic objectives 2.1, 2.2, 5.2, & 5.3).

227. See, e.g., Kimberly D. Ambrose, William H. D. Fernholz, Catherine F. Klein, Dana Raigrodski, Stephen A. Rosenbaum, & Leah Wortham, *Cross-Border Teaching and Collaboration*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 148-61 (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas, & Antoinette Sedillo López, eds., 2015) (setting out eight commonsensical principles that guide the teaching of international students and collaboration with international faculty). Included with these eight commonsensical principles are a good dose of cultural competency, humility, and self-awareness. See *id.* It is also important to recognize the ultimate utility of a legal education in another country and the need for sustainable, long-term collaboration. *Id.* at 151.

228. Price, *supra* note 134, at 160-61.

opportunities by sharing with us perspectives from their “home” countries. Dialogue helps both teachers and students critically examine their own culture and legal system. In an approach sometimes known as “designing backward,” clinicians and other collaborators must also take into account the ways international teachers or students are likely to use the training in future practice or legal education contexts, which may be different from our own.

As teachers plan their courses and programs, they should be mindful of their students’ prior experience and education. Furthermore, US collaborators must recognize and validate the expertise of our colleagues educated outside the United States. “Effective collaboration requires trust, respect, and mutual understanding, which only can be gained [after more than a single visit] when all parties take the time to know each other beyond [the academic program or] the professional task at hand” and recognize the comparative advantage of the participants.²²⁹

The law and development world is filled with partnerships between local academics or practitioners and their international peers. Given the disparity in background, teaching style, and language between visiting clinicians and their Myanmar counterparts, however, the relationship must be carefully negotiated. A Training-of-Trainers is a good introductory vehicle or refresher for prospective local partners, but no substitute for a semester or more of in-house faculty mentorship or apprenticeship with an international clinician.²³⁰ A well-run, ongoing working group is also preferable to a one-off formal roundtable—replete with photo ops, awarding of certificates, or the signing of a MOU—against the backdrop of logo-laden vinyl banners.

Donors / Law and Development: Some Caveats

Getting Out of Project World

Donor agencies have their own recipes for reform, usually well-intentioned and well-informed, but their financial and organizational support may be influenced more by what is trending than what is warranted in the long haul. Likewise, grantees can become captive to donors’ formulaic RFPs (Request for Proposals) and grant application components, with the requisite roundtables, workshops, policy briefings,

229. Ambrose et al., *supra* note 227, at 151. Programs in which teachers or students move to an unfamiliar culture “should provide support for their comfort, safety and mental well-being,” including housing, transportation, food access, and other services. *Id.* at 150.

230. Yet, the successful embedded clinician must guard against introducing a neocolonialist power imbalance. See Liljeblad, *supra* note 32, at 150-51.

and standard menu of outputs and activities.²³¹ Those engaged in capacity building would do well to follow the advice of one development expert to “get[] out of [the] Project World” theme park, which is a fixture of the “Development Industry.”²³²

With its long history of leadership in Southeast Asian legal education innovation, BABSEACLE “talks the talk” of support, partnership, and cultural competency. In-country team members are counseled to speak in terms of “strengthening” ongoing initiatives, rather than working on projects, campaigns, or grants. “Walking the walk” is more difficult. It is too easy for NGOs to gravitate toward generic monitoring and evaluation templates and quantifiable outputs when qualitative data-gathering would actually make more sense.²³³ Grantees can spend an inordinate amount of time ticking boxes and adhering to off-the-shelf benchmarks, rather than allowing projects to develop more organically.

Visiting faculty need more than an orientation packet on arrival to be effective in building capacity. Providing history and context ahead of the visit is important to prepare educators. As alluded to above, the very elements of the CLE program that are appealing, namely interactive teaching and learning methodologies, remain at a superficial level for many participants—a flirtation with sloganeering and acronym branding, hampered by limited English proficiency and decades of isolation from new pedagogical strategies, academic freedom, and critical thinking. NGOs must do more than showcase their past achievements or rely on student and teacher goodwill and enthusiasm. Instead, innovative workshops and game-playing exercises must

231. Transitional justice specialist Elena Baylis coined the term “post-conflict justice junkies” to describe the international attorneys, legal officers, advisors, and other professionals who “hop[] from one post-conflict setting and institution to another.” Elena A. Baylis, *Function and Dysfunction in Post-Conflict Judicial Networks and Communities*, 47 VAND. J. TRANSNAT’L L. 625, 689 (2014). This is not to suggest the field is dominated by a mercenary mentality. In describing the donor-NGO relationship, development aid specialist Eade writes: “We saw our [donor] role as twofold: on the one hand to provide critical accompaniment to our counterparts, and on the other to marry th[is] to the NGO’s values and criteria in a way that allowed everyone to feel comfortable in the relationship.” Eade, *supra* note 162, at 631.

232. Eade, *supra* note 162, at 633.

233. The European Union-funded and British Council-directed MyJustice staff are savvy in their use of multi-media and outreach materials and have access to a number of sophisticated survey and evaluation tools. Yet, when conducting program evaluation, grantee NGOs tend to rely on untrained M&E operatives and a checklist of generic multiple choice pre- and post-test templates, attendee lists, and group photos. On a related matter, Development specialist Eade has criticized the standard practice of “having to meet reporting requirements that bore no relation to the needs and rhythms of the project.” *Id.* at 631.

eventually give way to deeper training of technique, for those previously initiated, and to developing sustainable policies and practices that will outlive support from intergovernmental organizations (IGOs) and NGOs.

Monitoring and Evaluation

Projected outcomes may need to be revisited on a regular basis. While donors such as MyJustice seek candor in periodic narrative reports and an accounting of difficulties in meeting deliverables,²³⁴ they still may erect bureaucratic barriers to recalibrating objectives or outputs in the midst of a grant cycle. These barriers do little to help a grantee readjust thematic or geographic targets when challenges arise in carrying out a project or initiative. They also raise questions about the viability of a donor organization rigidly pre-selecting activities, institutions, or regions of the country where its funds will be applied.²³⁵ Our quarrel is not necessarily with donor selections so long as the distribution of resources and personnel decisions are informed by careful in-country assessment, experience, and pragmatism.

Indeed, there is room for debating the advisability of assisting universities that receive fewer international resources or those that may be deemed less prestigious, underserved, or are situated in more remote locations. Nevertheless, when funding the latter, there must be consideration that English language accessibility, academic rigor, and abundance of civil society organizations will not be on the same level as at larger universities such as Yangon University or Mandalay University. It is worth asking whether it might be better to first fully develop staff capacity, programming, and blueprints at more resourced universities, with their controlled admissions standards and longstanding international contacts. In turn, these more established institutions can meaningfully collaborate with, and mentor, their peers at other universities in adapting the model elsewhere.

234. MyJustice program officers made it clear to the BABSEACLE team that they wanted to know about obstacles in fulfilling grant deliverables. However, NGO partners are not necessarily incentivized to be candid or self-critical, even amongst team members; they may be prone to adopt an “it’s all good” attitude in the face of shortcomings.

235. Veteran development specialist Eade is brutally frank in reflecting on her own experience within a donor organization:

Though at pains to establish relationships that were not predicated only on money, we and our “partners” were under no illusions about the fact that it was our job to decide who should be funded to do what, for how long, and on what conditions; and to defend these decisions within our own regional team and to our managers and oversight committees in the UK.

Eade, *supra* note 162, at 631.

It is also worth considering a less formidable list of objectives for those universities that pilot a program, for example, designing one course instead of two, allowing a longer period of incubation so that teachers may undergo training for more than a week, or reflecting on the scope and scale of the pilot before going into full-fledged program mode. Before launching courses, community teaching, and externship placements, time should be spent cultivating relationships with local village leaders, CSOs, and members of the bar and bench.

Finally, legal consultant expertise and donor aid should privilege the funding of law schools over the formal justice sector in developing a new cadre of legal advocates and promoting ROL. As one leading Myanmar development specialist has written:

Sequencing [legal sector interventions and initiatives] becomes of enormous importance. What may be effective and desirable at one stage may not be so at a different stage. Although since 2011 much effort has been expended on the judiciary, as is usual in [law and development], it is not actually clear why this should be an overriding strategy for improving the rule of law.²³⁶

Rather than “claim spectacular campaigning achievements,” NGOs and donors should “translat[e] these successes into sustainable changes;” that means long-term commitments rather than “support for this or that organisation or activity in a fragmented or insular fashion.”²³⁷ When the on-site IGOs and NGOs adequately document and identify serious bureaucratic or cultural barriers, donors and grant applicants must ask whether the timing is propitious to support a particular project. If so, they must brief international consultants and staff well in advance to avoid their “parachuting in” to undertake an overly ambitious, amorphous, or inopportune task.

International donor organizations and country-registered NGOs must also use their influence to actively and genuinely promote long-

236. Harding, *supra* note 9, at 13. Harding continues: “In the meantime no doubt[,] assistance in some forms to the judiciary as it is, and to the court system as a whole, will be beneficial. But deep rule-of-law reform requires concentration on these longer-term issues.” *Id.* at 15. Support for this position has also been expressed by Myanmar civil society. See, e.g., Email from Tharthi Myay Foundation Senior Advisor Zunetta Herbert to Stephen Rosenbaum (June 1, 2019) (developing well-trained and independent judiciary for establishing ROL in Myanmar is a key concern of Foundation) (on file with authors).

237. Eade, *supra* note 162, at 633. “Because funding is often granted in short cycles . . . with the expectation of particular outputs, implementing organizations [are obliged] to demonstrate tangible short-term outcomes to donors . . . to justify their use of funds, but also in anticipation of future funding.” Baylis, *supra* note 231, at 667.

term institutionalized autonomy, collegiality, collaboration, and networking. Myanmar legal education scholar Jonathan Liljeblad prescribes a “transformation of the structure around them” by enabling the agency of faculty, staff, and students themselves to “alter their status.”²³⁸

In short, the “lessons learnt” or “understandings,” in MyJustice-speak, must be placed front and center so that consultants and team members on the ground can benefit from the years of law and development in the legal education and justice sectors. The training and mentoring must be informed more by pragmatism and reflection than by project deliverables, with full recognition that the work will be performed in the context of an authoritarian regime or one grounded in patronage, risk adversity, and distrust of foreigners.

Local Intermediaries

International consultants should also be mindful of the critical role played by local intermediaries who facilitate the placement of technical experts within community-based and national institutions, whether they are members of the university faculty or NGO implementation team. In her ethnographic investigation of Myanmar, one Asian Studies scholar found that these consultants “are able to access spaces that would otherwise be hard to gain entry to for foreigners.”²³⁹ The personal relationships between “internationals” and “locals” may be a key determinant of successful development work.

It is equally important, however, to make the right match of capabilities—beyond bilingual interpretation or translation competency or knowing how to “work the system.” NGOs and donors may be too quick to assume that a local staff member who has some level of bilingual/bicultural proficiency makes for a suitable intermediary. Without adequate preparation, training, and genuine understanding of a program’s concept and methodology, Myanmar nationals are at risk of being perceived as token hires or expert colleagues, both of which are institutional liabilities. Instead, they should be recognized for their value as interpreters or translators—or as apprentices, when they have the interest, long-term commitment, and capacity.

238. Liljeblad, *supra* note 32, at 151. Development aid programs should therefore “serve to facilitate the capacities of aid recipients to function as autonomous actors with the ability to find or develop, possess and understand, implement or exercise decisions and actions affecting their welfare.” *Id.*

239. Simion, *supra* note 172, at 82. “By being . . . at a national or local institution they thus provided a channel and linking function, that carried different values and understandings, from the ‘international’ to the ‘inside.’” *Id.*

Coordination

Lastly, all the talk about coordination and partnership with donor agencies and other NGOs must evolve from lip service to concrete steps and genuine cooperation.²⁴⁰ For example, upwards of twenty donors, implementers, and CSO representatives, engaged in ROL and access to justice work, have been gathering over the years for semi-formal monthly meetings in Yangon, under the auspices of the UN Development Programme, to share accounts of their respective activities. However, this forum, attended regularly by BABSEACLE team members, is “not used for systematic information-sharing, brainstorming/problem-solving, or forward planning.”²⁴¹ Observations gleaned from interviewees in other transitional justice settings ring true in large part for the Myanmar ROL network, leaving one to question the utility of these meetings:

[E]very organization was repeating the work of lots of other organizations There was no institutional memory, there was no coordination or no effective coordination between the various different funding bodies like the UN, the US, the EU and other organizations . . . I went to a lot of coordination

240. See Baylis, *supra* note 231, at 664-65.

241. RUSSELL-EINHORN & AUNG TUN, *supra* note 90, at 21. On the other hand, representatives at the *leadership level* from MyJustice, Promoting Rule of Law Project, UNDP (and sometimes the Japan International Cooperation Agency) do attend bimonthly or quarterly informal meetings where they supposedly discuss challenges, share forward-thinking and “avoid unnecessary program duplication or misunderstanding.” *Id.* at 21. The BABSEACLE team, however, was not privy to any trickle-down discussions or outcomes during our partnership with MyJustice. The US foreign aid agency both commended and criticized the ROL Project in its mid-term evaluation. It found that the PRLP was:

[D]oing a good job of coordinating and sharing information with other donors and implementers. An “inner circle” of the main ROL project implementers . . . ensures that big picture coordination is clear and accessible, although this mechanism might be viewed as fragile given the extent to which it relies on the strong personal relationships among the first three [implementing partner] representatives.

Id. at 22 (emphasis in original). But, elsewhere in its evaluation, USAID recommended that the Project “encourage more open discussion and problem-solving relating to common issues faced in the justice system at [UNDP] monthly rule of law sessions . . . [and] consider hosting or co-hosting such sessions to obtain more influence over the agenda and make such meetings more useful and interactive.” *Id.* at ix.

meetings, but I didn't notice any actual coordination going on.²⁴²

CONCLUSION

This article has reviewed our experiences with teaching innovations and obstacles, through the lens of clinical legal education methods, with special attention to Community Needs Assessments and peer-to-peer teaching, but capacity building does not operate in a vacuum. Its architects, planners, and funders must be mindful of history, culture, personal relations, and political and bureaucratic obstacles. Some of our "take-aways" can be applied in other venues around the globe, whether the players face similar challenges to Myanmar or already have a clinical legal education system that can be further developed.

The "trust, respect, and mutual understanding" between teachers, which is a guiding principle in transnational collaboration,²⁴³ can eventually overcome the structural barriers that otherwise stand in the way of real transformation. "[I]t is incumbent on law faculties to 'own' the curriculum and the attendant clinics or externships, and not simply 'contract out' the educational mission to NGOs or ad hoc field placement[] [supervisors]."²⁴⁴

Developing rapport between Myanmar faculty and their peers abroad is one important component, along with the pursuit of ongoing pedagogical exchanges. Equally important is the need for international

242. Baylis, *supra* note 231, at 665 (citation omitted). *But see* RUSSELL-EINHORN & AUNG TUN, *supra* note 90, at 22 (noting that the midterm evaluation of ROL project expressed overall satisfaction with level of inter-organizational coordination). This conclusion is seemingly at odds with the above-stated recommendation, encouraging more open discussion and problem-solving and more useful and interactive meetings. Instead, this rationalization is put forth: "While more forward-looking strategic planning with implementers (both from USAID and other donors) would be ideal, this is usually a luxury in fast-paced development work where daily and weekly cost-benefit calculations are continually made about time management. Ultimately, there must be mutual interest present for these mechanisms to work." *Id.* at 23.

243. Ambrose et al., *supra* note 227, at 151.

244. Rosenbaum, *supra* note 16, at 398. With regard to clinic design and implementation, an outside promoter of clinical legal education "is not nearly as persuasive or persistent as an ally within the law school academic community" Wilson, *supra* note 153, at 3. While that ally is typically a senior professor or dean, *id.*, our own experience has shown that status alone is not enough to demonstrate effective leadership or genuine program commitment. Describing Afghanistan's crowded NGO and IGO scene, where "[t]here has been more money dumped into rule of law over the last few years than could ever have been effectively absorbed and used . . .," policy analyst Sarah Han wrote: "I wonder . . . if the donor ever asks – 'who wants this more, us or them?'" Han, *supra* note 162.

donors and in-country NGOs to share information and techniques; to strategically pool their personnel and material resources; and to engage in genuine, regularized dialogue about their mutually beneficial activities.

Notwithstanding the historic legacy and temporary detours, there are signs of hope. Students and faculty are embracing the new curriculum and interactive teaching with enthusiasm. A new generation is eager to engage with a world long closed-off, where individual initiative was either culturally frowned upon or politically perilous. This is also about building confidence—in oneself, one's colleagues and students, and in the nation's future.

APPENDICES

Appendix I: Community Needs Assessment: Justice System

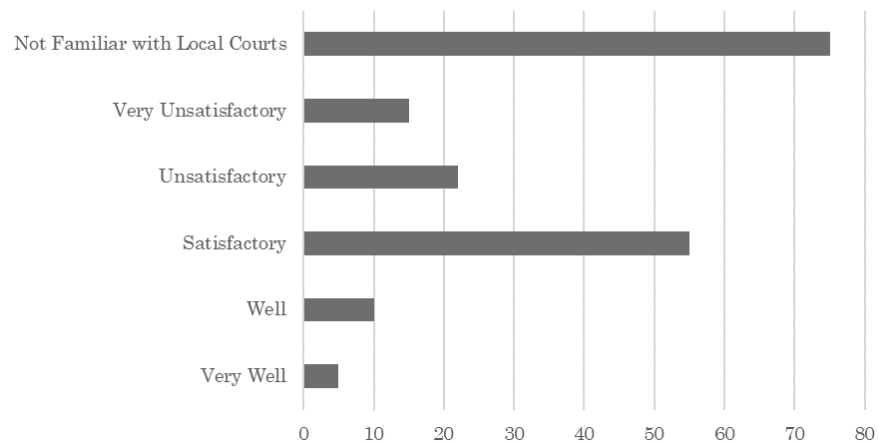
The graphs below show some of the results of the first Community Needs Assessment on public attitudes toward the justice system in Taunggyi, Summer 2018.

Do you know someone who has used the court system in the past year?

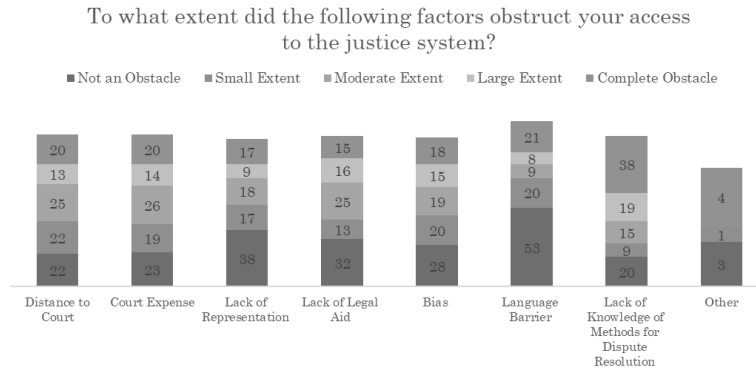
56% 
of respondents answered “yes.”

8 respondents who answered “yes” said their acquaintance was imprisoned.

Rate how well you think the courts operate



Respondents were not only willing to state that the courts were not satisfactory, but also the reasons why. Some even identified court bias as a reason.

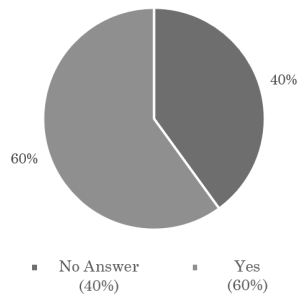


A higher number of respondents identified “Lack of Knowledge of Methods for Dispute Resolution” as the reason for obstructing access to justice. This knowledge gap can be addressed through a Community Teaching program.

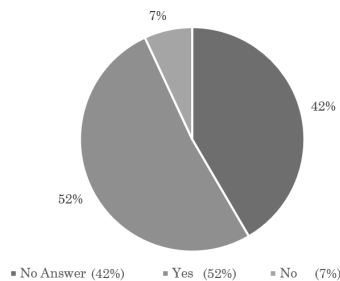
Appendix II: Community Needs Assessment: Environment

The charts below show the results of the more focused Environmental Community Needs Assessment at Inle Lake in Summer 2019. Farmers were surveyed by law students and faculty in the lakeside villages of Ywa Gyi, Thapyay Pin, and Yay Thar.

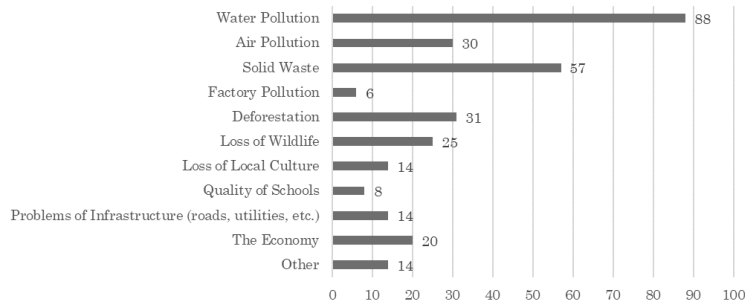
Do you use fertilizer to make your crops grow better?



Do you use chemicals on your crops to kill insects?

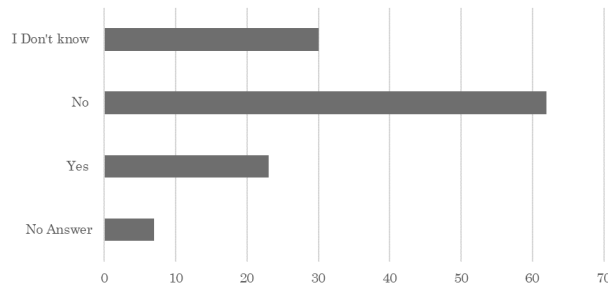


What are the most important issues facing the Inle Lake area? Check all that apply:



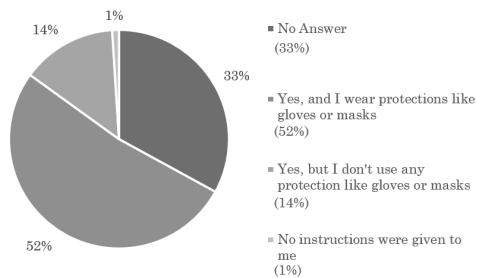
Most respondents admitted to using fertilizers and chemicals on their own crops grown on and around the lake, despite environmentalists' attempts to reduce usage. Yet, water pollution is viewed as the most important problem facing the Inle Lake area.

Do you believe that you are using fertilizer correctly?



Many respondents recognized they were not using chemicals correctly or did not know if they were (or did not answer the question). The responses suggest possible community teaching events on water pollution and remediation of the problem.

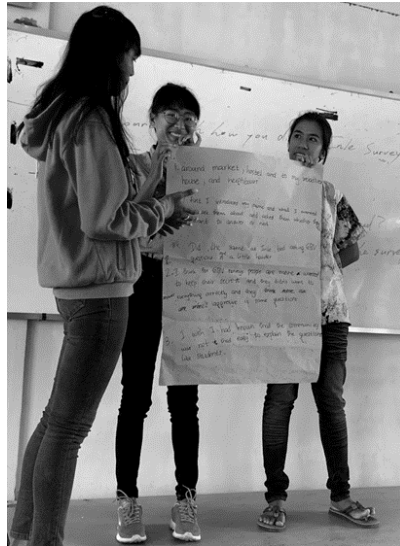
Were you given any instructions on how to use the chemicals in a language you understand?



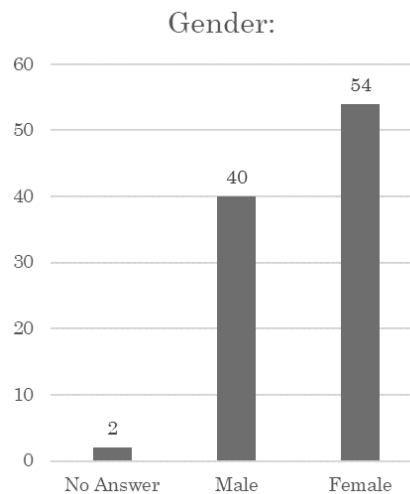
The question about correct fertilizer use received about the same responses as the question about chemical usage. As pictured above, some farmers do not wear any protection when using chemicals, notwithstanding instructions they received on safe practices.

Appendix III: Community Needs Assessment: Sexual and Gender-Based Violence

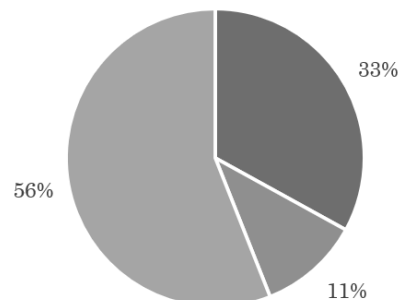
The charts below show the results of the more focused Sexual and Gender-Based Violence (“SGBV”) Community Needs Assessment, Taunggyi, Summer 2019.



The students pictured here reflect on their experience in conducting the SGBV survey.

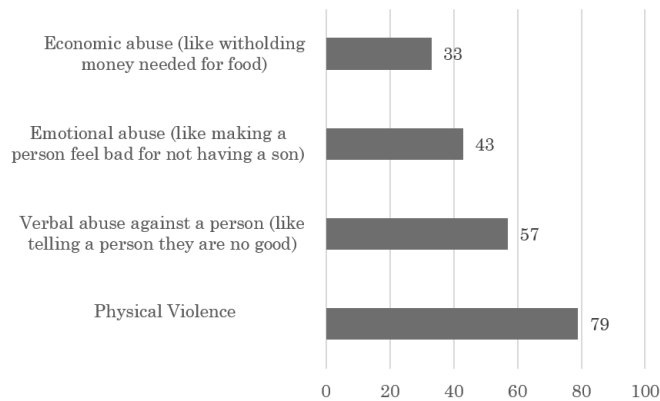


Check any and all that apply:



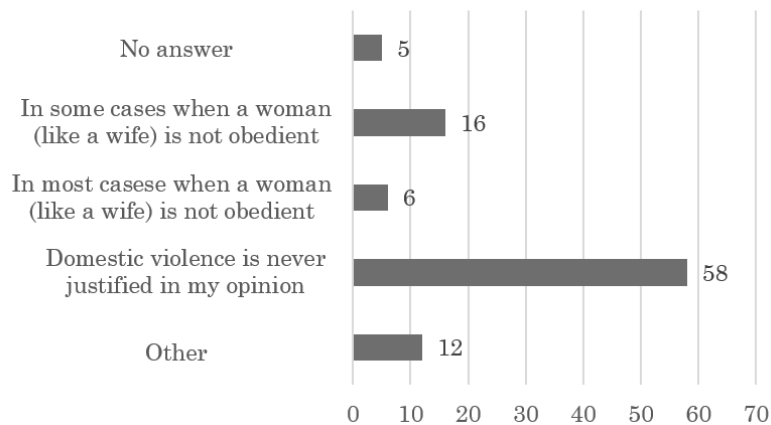
- I know someone that has been a victim of physical domestic violence (33%)
- I have also been a victim of physical domestic violence (11%)
- I do not know anyone who has experienced physical domestic violence (56%)

I think domestic violence may include the following:



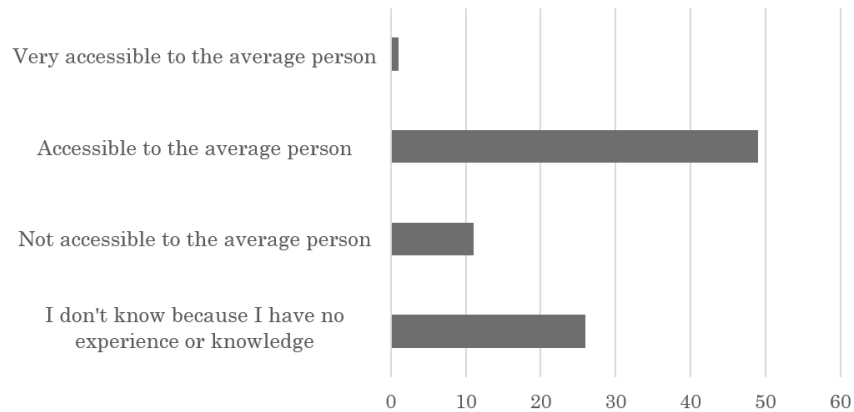
Physical violence was identified as the most common type of domestic violence, but a significant number of respondents also associated domestic violence with verbal and emotional abuse.

I think domestic violence is justified:

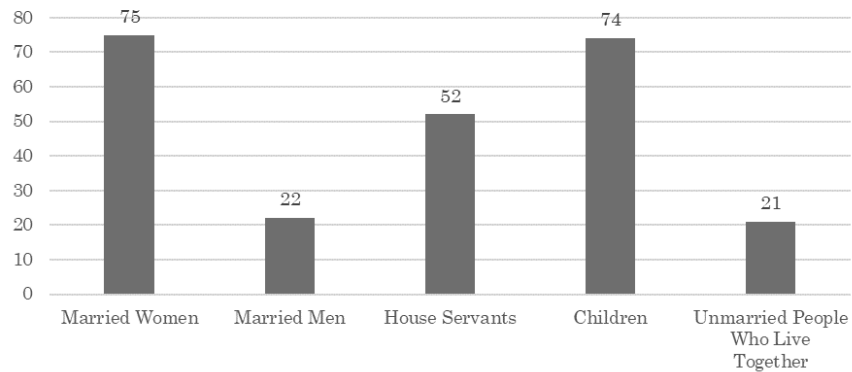


Most people responded that domestic violence is never justified.

I think court proceedings in Myanmar are (circle only one)



Should a domestic violence civil law that provides for orders of protection for the victims cover the following types of victims? Check all that apply:

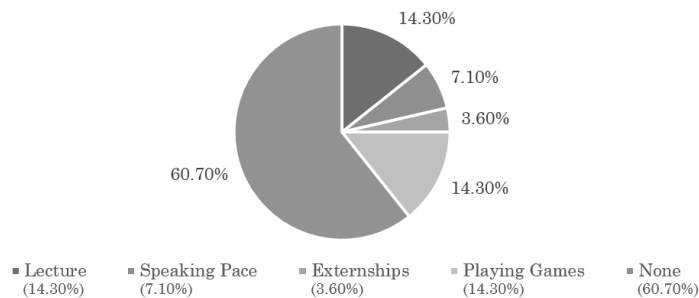


Most people would support adoption of a law providing civil orders of protection in circumstances of domestic violence toward married women, children, and servants.

Appendix IV: Peer English Survey

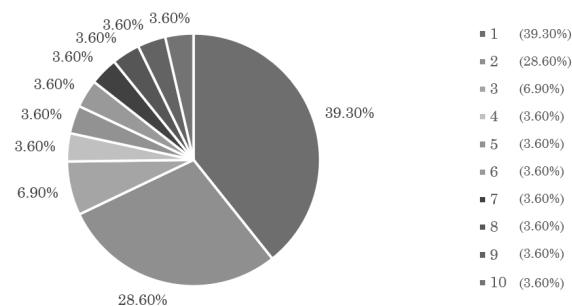
The pie charts below show the results of surveys taken by students in peer English language classes about their impressions at Taunggyi University, Summer 2018.

What are the things about this course and your instructors', Britane and Kaylee, teaching that were least helpful to learning in this course?



Despite poor comprehension experienced by students in lecture-based classes, only 14.3% of respondents said lecture was the "least helpful" part of the English language course. Data from this portion of the survey indicate the students' unwillingness to admit what they did not like about the course.

I would recommend this course to another law student (rate on a scale of 1 to 10, with 1 meaning you strongly agree that you would recommend this course to another law student to 10 being that you strongly disagree that you would recommend this course to



With a rudimentary understanding of English, some students gave the course a poor rating, yet they wrote comments about how much they had enjoyed and learned from the course.

Appendix V: Summary of Recommendations

1. Continue to embed international and regional experts at Universities, but for longer periods and with greater *ex situ* involvement before and after the residency, shorter gaps between residencies and minimized notifications to Ministry of Education. Embed international or regional experts at the Board of Legal Studies, National Commission on Education or Department of Higher Education or elsewhere in the Ministry of Education.

2. Institutionalize inter-departmental and inter-university communication, as in the launch of the Myanmar Law Teacher Network, video-conferencing, and periodic intensive training workshops, international conferences, study and in-house residencies at universities elsewhere in Myanmar and (where linguistically proficient), in Asia and elsewhere.

3. Use lesson plans, course readings, and other resources produced by Myanmar justice sector partners, not necessarily designed as instructional materials, in order to augment standard texts, specially-prepared curricula, and community teaching media.

4. Promote student moot advocacy events, including mock trials, oral argument, and arbitration in course and campus settings, as well as national, regional, and international competitions.

5. Restore faculty research capacity and scholarship in alignment with international university standards and adopt a timeline for developing research skills for students, through courses, and extra-curricular activities, including publication. This can be accomplished through co-authorship or research partnerships with international faculty, institutions, and other learning exchange opportunities.

6. Create models for lawyer engagement with law department faculty in order to bring more lawyers (from private and public sector) onto campus as guest lecturers; and to assist in curriculum planning and career placement.

7. Infuse law department curricula with CLE and other innovative methodologies; do not silo new teaching strategies.

8. Improve faculty competency in planning in such areas as regularized course scheduling, student selection, co-teaching preparation, in-service training, methods of assessment and evaluation, common “free periods” for faculty and students, faculty release time, and relief from excessive auxiliary duties.

9. Create a culture of *intra*-departmental collaboration and autonomy and designate lead teachers on curricular innovations such as development of CLE courses and activities and promotion of

scholarship. Dismantle legal, methodological, and cultural barriers to teacher independence and collaboration inside and outside the university.

10. Design a transparent and feasible path to promotion and tenure for teachers that accounts for release time for in-service training and professional development in areas such as research, experiential skills, legal knowledge, and pedagogy.

11. Modify the teacher transfer protocol to avoid mid-semester disruption in teaching, collegiality, and family integrity. Study ways to preserve quality instruction and a corps of teachers with shared newly developed capacities for a set period of time, and make transfer decisions based exclusively on individual teacher expertise and/or request for relocation.

12. Reduce the number of courses required for graduation. This would allow more depth per course and greater flexibility in overall scheduling. It would also permit a more manageable course load for students and teachers, freeing up time for extra-curricular activities, course preparation, and common meeting times.

13. Restore the tradition of offering courses taught by higher-grade pleaders and initiate courses taught by other jurists drawn from the ranks of law officers, the judiciary, criminal defense, civil society organizations, and attorneys engaged in pro bono service.

14. Create models for participation by students in law department programs in areas of curriculum development and course planning; methods of student assessment and course/teaching evaluation; course scheduling; and selection of students for elective courses. Foster law student associations, including funding or in-kind support.

15. Explore ways to incorporate the study of ethics and professional responsibility and informal justice mechanisms and customary law practices in the clinical law curriculum. This can include courses with a theoretical and experiential component, taught by law department faculty and practicing lawyers, and/or off-campus activities, including simulations, study visits, externships, and community teaching.

16. Use alternative methods of assessment to supplement or supplant in-class written examinations in measuring student achievement, especially for CLE and other experiential classes; and minimize reliance on tutorials as method of exam review and preparation. Periodically recognize individual students' academic and extra-curricular achievements.

17. Award academic credit for CLE courses and other experientially based courses.

18. Promote English language proficiency amongst law students and faculty, where curricular content is delivered by peer teachers and is

grounded in CLE or other experientially-based vocabulary and activities. Instruction should not be offered ad hoc or substituted for in-house training and education in CLE or other innovative teaching methodologies. The teaching should also be informed by sound English-as-a-Second-Language practices.

19. Conduct a study to improve the integration of distance education law students and the university, including contacts with other students and contact between teachers and students. Improve teaching methods that will increase CLE and other experiential education opportunities, including the use of technology and minimized reliance on intensive on-campus tutorials. Discontinue an instructional mode which perpetuates the isolation of students and relies on recitation and response for the future generation's acquisition of knowledge, skills, and values.

20. Confer and plan in detail with intergovernmental and non-governmental organizations before formalizing grants, memoranda of understanding, and other agreements on cooperation and assistance.