

Remand

A prisoner is said to be remanded when s/he is sent back into custody to await trial. Police, law officers and courts need to ensure proper consideration of the legal basis when they detain the accused during remand. If not, this violates the fundamental rights of the accused.



Lawyers can prevent unlawful arrest and detention by providing legal advice and representation from the time of arrest and during remand.

Changes after 1 February 2021 may extend the remand period prior to remand hearings -

Legal Standards

- The maximum remand period allowable under law is 24 hours

Current Legal Reality

- Accused are now remaining on remand longer than 24 hours



Do current practices comply with Myanmar law and fair trial standards?

Existing practices at remand violate fundamental and fair trial rights protected by Myanmar Law, including:

Right to life and personal freedom

At any stage in the proceedings, where the court finds insufficient evidence to justify the arrest and continue the accused's detention, the court is empowered by the Code of Criminal Procedure to release the accused on bail or with surety.

Defence lawyers must become involved in the early stages of the case, from the time of arrest onward, so that they are able to effectively challenge the legal basis of the accused's arrest and detention and protect the accused from further violations of his/her right to liberty.



Right to a defence

An accused person has the right to be defended by a lawyer at every stage of a criminal proceeding.

The earlier a lawyer is engaged following a client's arrest, the greater opportunity the lawyer will have to advocate for release, challenge the legality of the arrest and other police actions, familiarise herself with the circumstances of the case, and properly advise the client as to the strength of the case and options at trial.



Right to be presumed innocent until proven guilty

An accused person must be treated as innocent until proven guilty at trial. Legal representation during remand, to challenge the legal basis for continued detention, can serve to guard against the negative consequences of prolonged detention for people not yet convicted of the alleged offence.



Strategies for Protecting Fundamental Rights by Ensuring Early Access to Counsel

Represent detainees as soon as possible after arrest

■ Request access to detainees in police custody

Lawyers can request access to police lockups, prisons and court lockups to meet detainees in order to ascertain whether they have or need legal representation, to obtain a power of attorney, and to advise the accused.

Changes after 1 February 2021 may affect access to detainees -

Legal Standards

- Lawyers can request access to detainees in police custody.
- When a lawyer is meeting with detainees, the police or prison sentry should provide a setting in which communications between the lawyer and the detainee remain confidential.

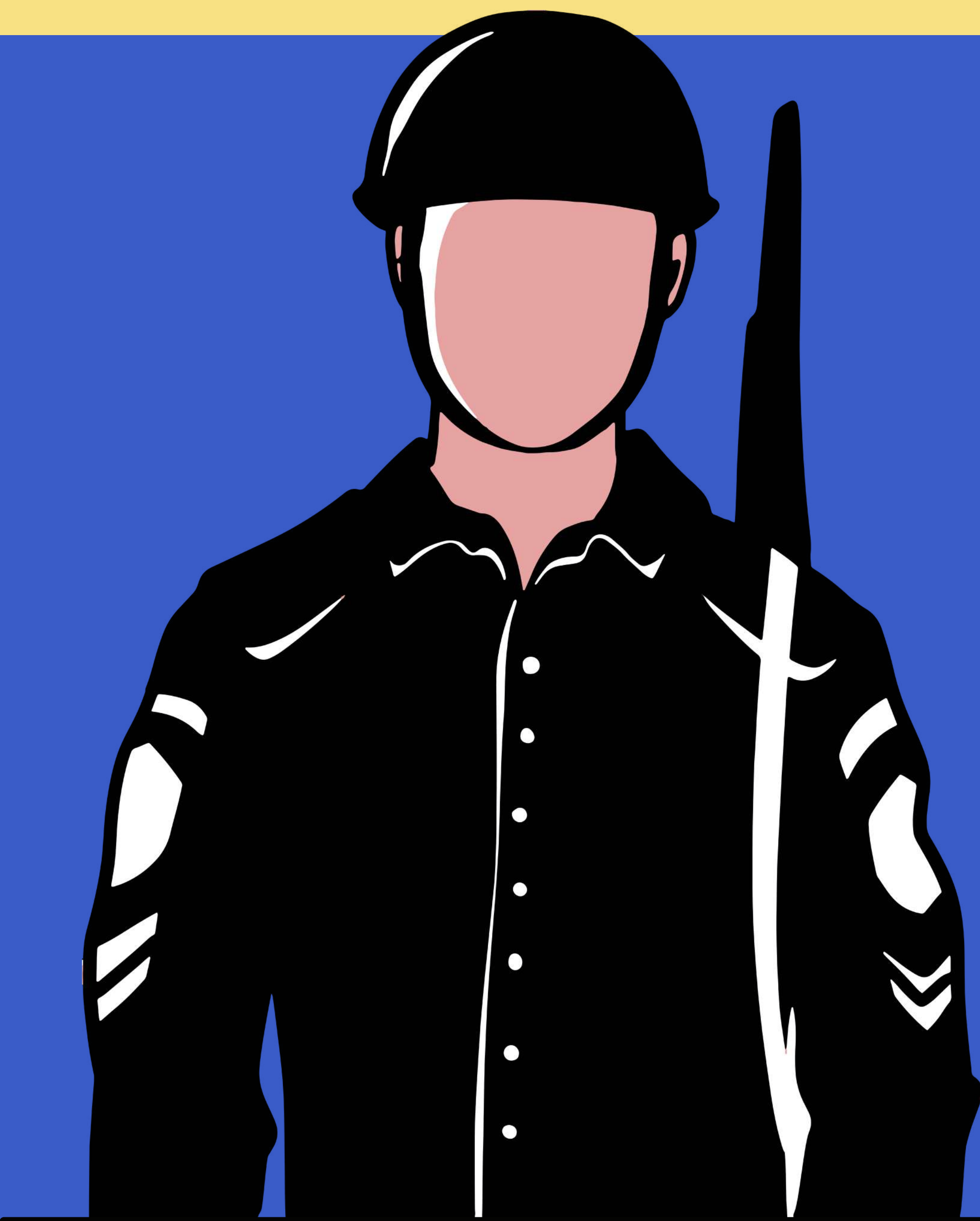
Current Legal Reality

- If the accused is taken to a military detention centre, lawyers cannot access the accused. Lawyers have severely limited and restricted access to the accused in police custody.
- Currently, there is no confidentiality possible when lawyers and the accused meet in prisons.

■ Request Police Bail

If the accused is able to post bail, the defence lawyer should insist that the police release the accused, noting that “bail is a right and not a favour”.

Even if the offence is non-bailable an officer in charge of the police station may release an accused on bail, or take the accused to the nearest police station that can accept bail. Accused persons charged with non-bailable offences are entitled bail if under 16 years of age,





Represent detainees at remand hearings

Defence lawyers should strive to be present at the first hearing at which the client's detention is reviewed. If the court refuses to permit the lawyer to provide representation, the lawyer can argue that all detainees have a right to legal representation at remand.



■ Argue for the accused to be present at remand hearings

Lawyers must also argue that the accused must be present in order to guarantee a fair hearing. When the accused is not present during a remand hearing, he/she is deprived of his/her right to a defence, and the court is in breach of the requirements of the Code of Criminal Procedure, the Courts Manual and the Police Manual which require the presence of the accused at remand hearings.



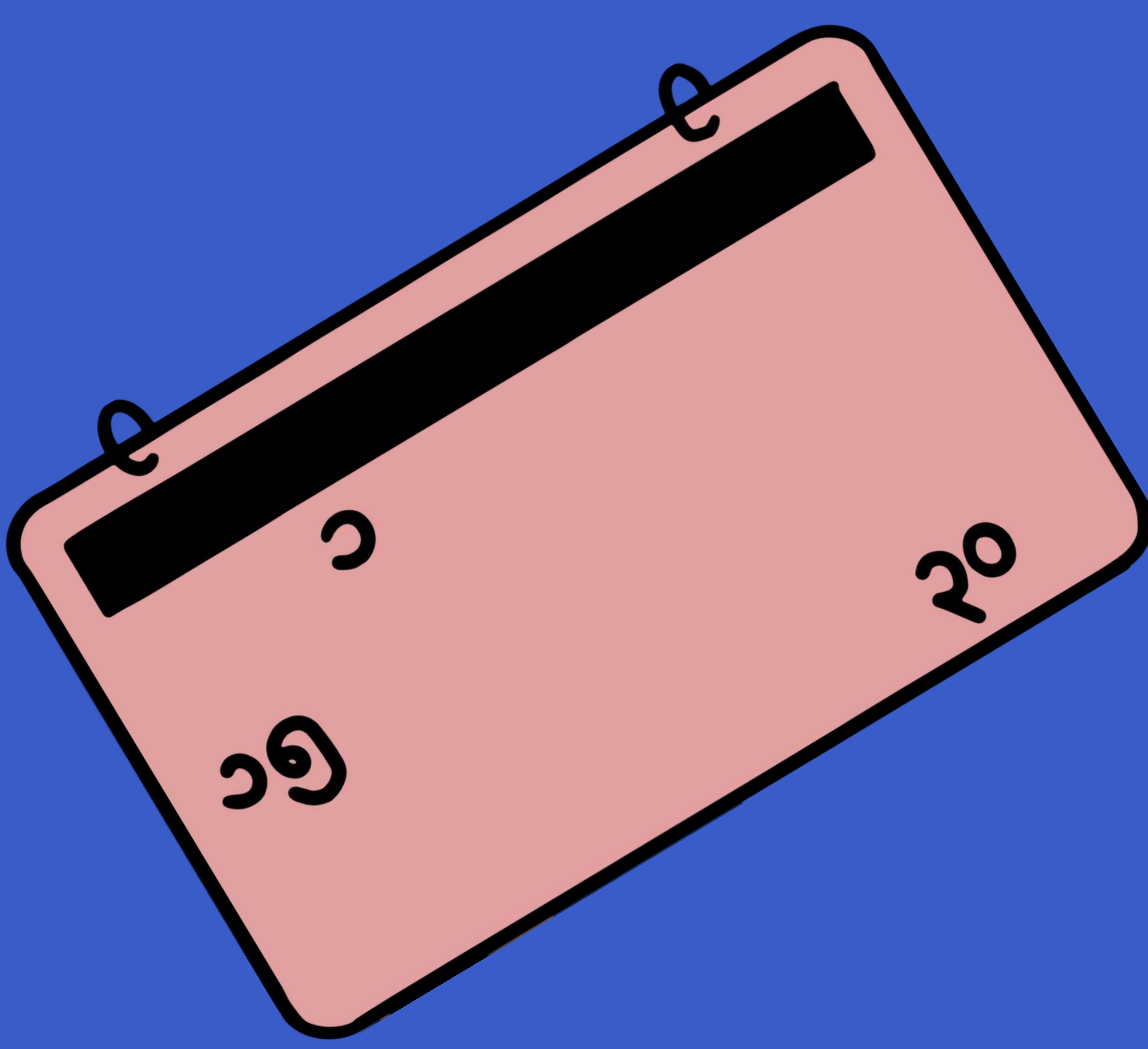
Changes after 1 February 2021 may affect arguing for the accused to be present at remand hearings -

Legal Standards

- If the accused has not been brought before the court for the 24-hour remand hearing, and will not be brought before the end of the 24-hour period, the lawyer should argue for the judge to order the accused to be released on bail immediately, on the basis that the right to personal freedom has been violated, as any period of detention after 24 hours will be unlawful.

Current Legal Reality

- Currently, lawyers are not able to use this argument despite accused persons remaining on remand longer than 24 hours.



■ Challenge the length of time necessary for remand

Defence lawyers can ask the court to impose a shorter period of remand to minimise the deprivation of the accused's liberty on the basis that:

- The additional specific avenues of investigation planned by police do not require the maximum period of days for remand available under the law.
- Deprivation of liberty for the full 15 or 30 days is excessive and disproportionate to the alleged offence.



■ Request release early and often

Defence lawyers should request release on bail or surety as soon as possible after beginning representation of the accused and continuously throughout the remainder of the case.

