

Accessing Case Documents

Most defence lawyers in Myanmar are met with difficulties when accessing case documents and information they need to perform their duties. Legal representatives, judges, and court clerks often deny defense lawyers access to documents, withhold information until trial begins, or even after charges are framed, and may charge money, tips, or unofficial fees to access case documents.

This legal practice brief outlines the relevant legal framework relating to accessing case documents in criminal cases, the rights violated by current practices, and proposes strategies to challenge these unlawful practices.



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

All accused should be entitled to:

Right to a defence,
Right to adequate time and facilities to prepare a defence, and Equality of arms.

Right to a defence

Accused has the right to be defended by a lawyer at every stage of a criminal proceeding. An accused person has the right to free legal aid provided by the State at the start of trial proceedings and during the post-trial stages.



The right to a defence -

requires the accused to have the earliest possible access to counsel after arrest or suspected involvement in a crime and the opportunity to communicate confidentially with counsel.

Changes in practice after 1 February 2021 may affect the right to a defence -

Legal Standards

- The accused should have access to counsel and the opportunity to communicate confidentially with counsel after arrest or suspected involvement in a crime.

Current Legal Reality

- Accused are denied access to counsel after arrest or suspected involvement in a crime. Often, the accused first meets the lawyer in prison or at the court after the case is filed. Lawyer and client are often only able to talk in the court setting without opportunity to communicate confidentially.

Right to adequate time and facilities to prepare a defence



To raise a competent defence on behalf of the accused, lawyers must have relevant information relating to the case and sufficient opportunity to review, analyse, investigate the facts and circumstances of the case to prepare to cross-examine witnesses in advance and advise their clients appropriately of the strengths and weaknesses of the case.

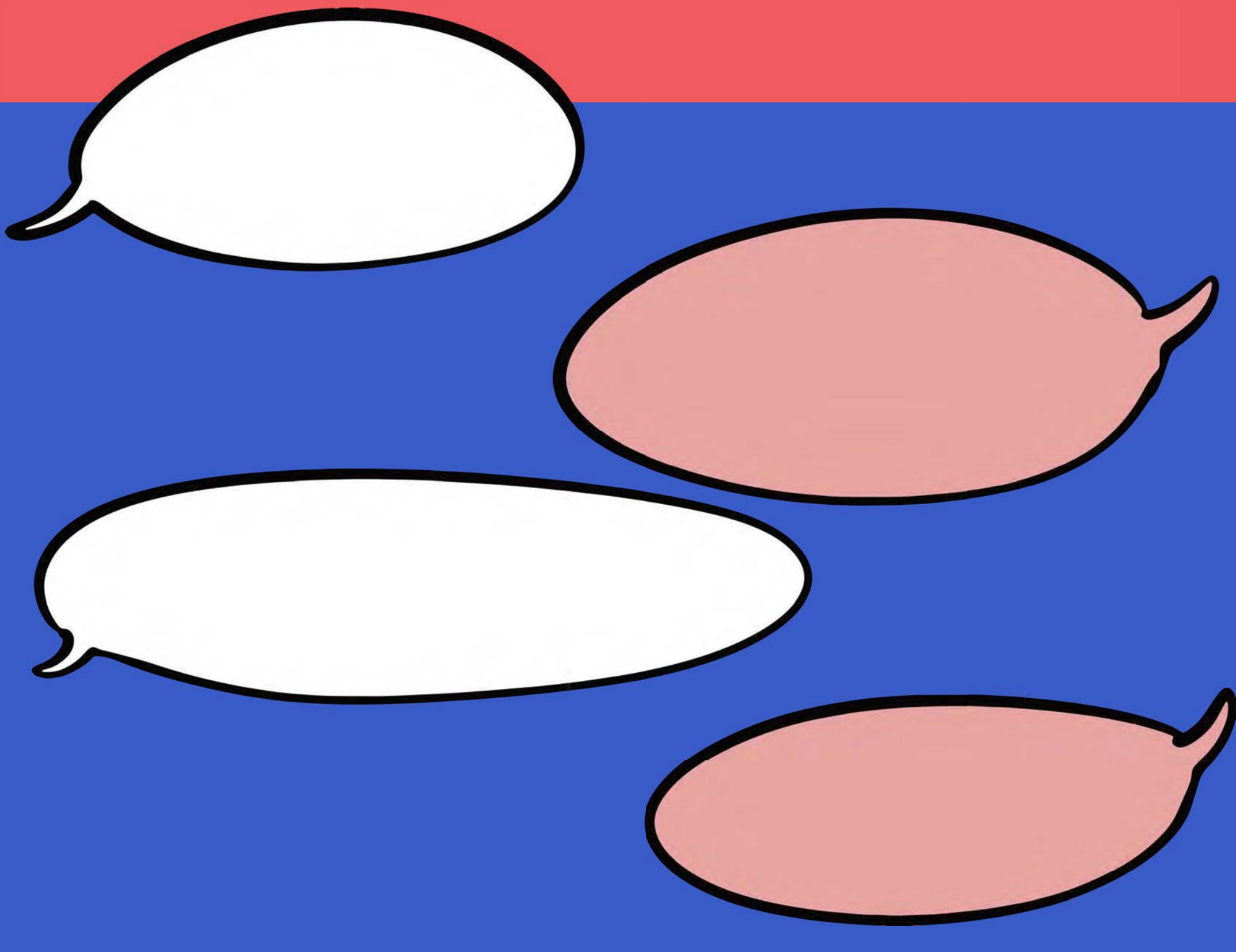
Right to adequate time and facilities to prepare a defence

Changes after 1 February 2021 may affect the right to adequate time and facilities to prepare a defence -

Legal Standards	Current Legal Reality
<ul style="list-style-type: none">■ Courts Manual Section 457 acknowledged that “lawyers require sufficient time to enable them to receive instructions and to study necessary documents in order to perform their duties well.”	<ul style="list-style-type: none">■ The statement is consistently disregarded and, at times, purposely undermined by delaying file sharing etc.

Equality of arms

All persons accused of crimes must be treated equally and receive a fair trial including the opportunity to raise a defence regardless of the alleged offence or their individual circumstances.



Changes after 1 February 2021 may affect the right to equality of arms -

Legal Standards	Current Legal Reality
<ul style="list-style-type: none">■ Both sides should have the right to access the same information about the case with the exception of particularly sensitive information. This, however, was not always the case.■ Both sides should have the right to an equal and fair opportunity to present their case and cross examine adverse witnesses.■ Both sides should have the right to have the benefit of legal expertise, e.g. all accused have the right to be represented by a competent lawyer.■ Both sides should have the right to be heard by an unbiased judge.	<ul style="list-style-type: none">■ No equal right to access to the same information about the case (with the exception of particularly sensitive information) is denied.■ No equal right to an equal and fair opportunity to present their case and cross examine adverse witnesses.■ No equal right to have the benefit to legal expertise, e.g. all accused have the right to be represented by access to a competent lawyer.■ No equal right to be heard by an unbiased judge.

When copies of case files and evidence relevant to the defence are not provided, this puts both the accused and the defence at a significant disadvantage compared to the prosecution and violates the accused’s right to a defence and equality before the law.

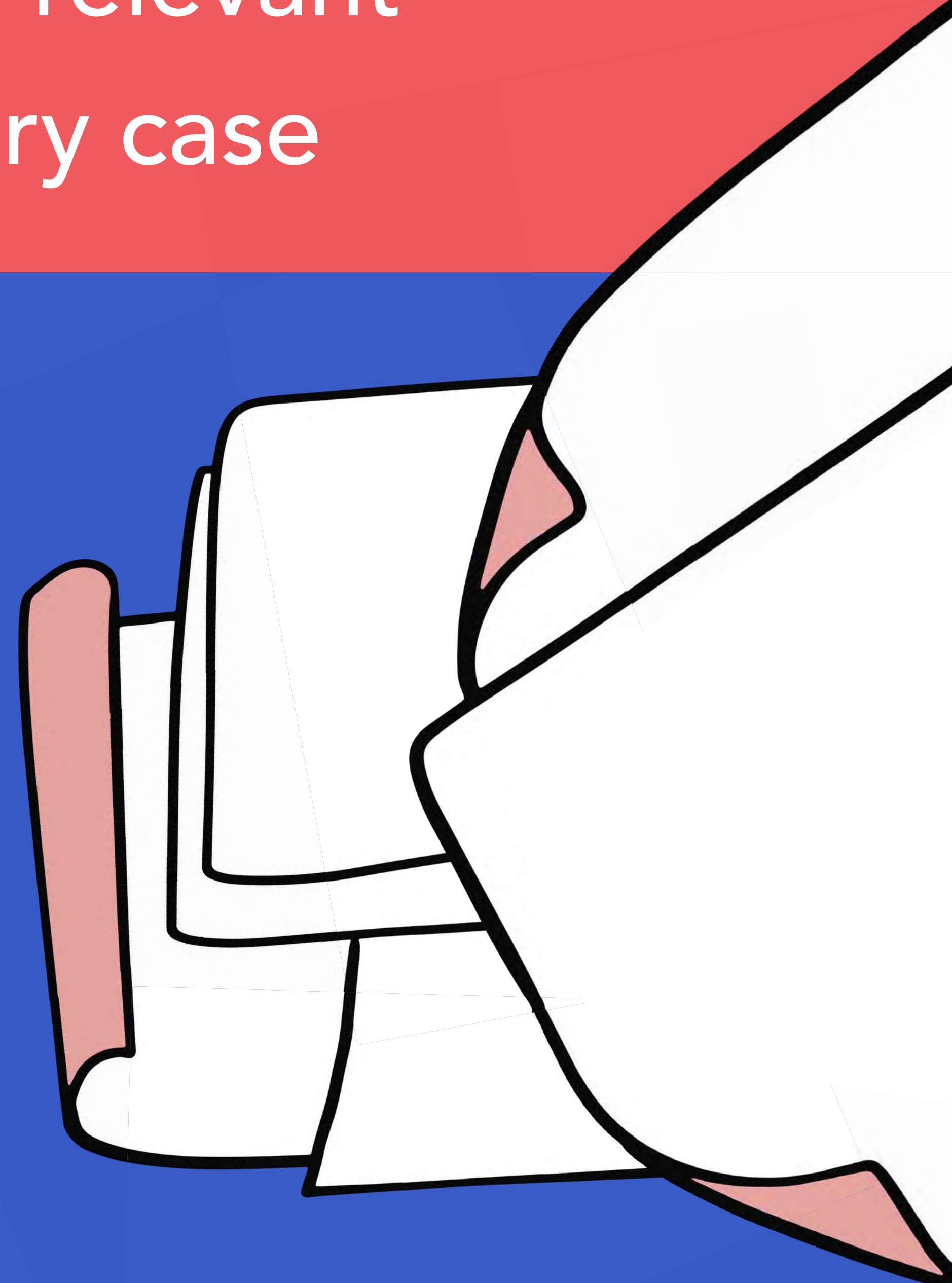
While even before 1 February 2021, compliance with Myanmar law and fair trial standards were problematic, the current practices represent a significant deterioration. The deteriorating rights protection practices, as described above, are particularly more prevalent in cases involving charges filed under Penal Code Section 505 than in other cases. It has become a practice to hold trials in cases involving Penal Code Section 505 inside places of detention.



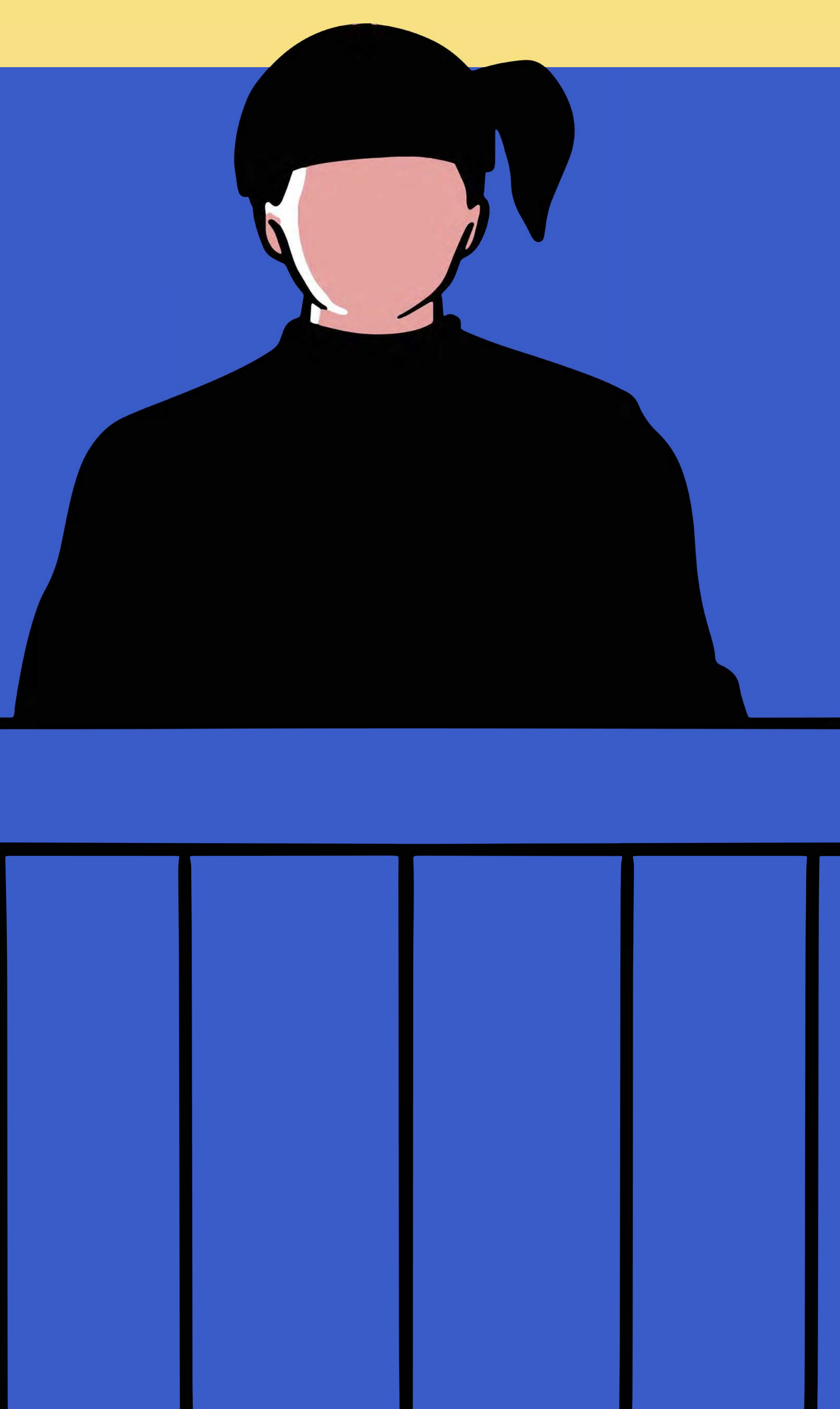
Strategies for obtaining key case documents

Submit an application for all relevant files at the beginning of every case

It is the lawyer's responsibility to request copies of court documents at the beginning of every case to review and prepare for the defence. This can be done by submitting Judicial Public Form 16 to request copies of the case file as early as possible after submitting the power of attorney to represent a client.



In *Maung Shein v. The King*, 1941 RLR 590, the court declared that the accused is entitled to access witness statements made to the police during an investigation under Section 202, as well as the report itself.



According to Section 207 of India's Code of Criminal Procedure, an accused whose proceeding was instituted by a police report has the right to access these documents:

- Police report and documents attached to First Information Report
- Statements made by prosecution witnesses
- Confessions and statements made to the judge during the course of the investigation

Apply for an adjournment until all case documents are provided

Though it is currently possible for lawyers to cross-examine prosecutor's witnesses, they are not given sufficient time to prepare for it. Judges tend to hold court hearings every day to resolve cases quickly. As a result, this does not provide enough time for lawyers to review the case.

When access to case files is denied until the last minute, just before cross examination of prosecution's witnesses, the defence lawyer should seek an adjournment until they have had enough time to obtain and review the files they need.

Note:

- Decision to request an adjournment should be made after consulting with the client as it may be dangerous for those in detention.
- Having access to case files as early as possible in criminal proceedings reduces the need for adjournment.



Know which documents are free of charge

Lawyers should calculate appropriate rates before requesting copies from the court, obtain copies of both application forms, with fee amounts listed and proof of payment if the clerk asks for additional fees.

