



THE RESEARCH OF

LEGAL SYSTEM OF MYANMAR AND LEGAL INFORMATION RELATED TO SOCIETY,
CULTURE, POLITICS AND SECURITY IN MYANMAR

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Contents

Chapter 1	1
Social-Cultural policy and agreement	1
1.1 Social-cultural policy.....	1
1.1.1 Human Development.....	1
1.1.1.1 Situation Analysis	1
1.1.1.2 Education.....	4
1.1.1.3 Health.....	8
1.1.2 Social Welfare and Protection	12
1.1.2.1 Background.....	12
1.1.2.2 Law and Policies related to Social Welfare and Protection	13
1.1.3 Ensuring Environmental Sustainability	15
1.1.3.1 National Policies and agreements related to environment.....	16
1.2 International social-cultural agreements signed between Myanmar and other countries or international organizations	20
1.2.1 Human Development	20
1.2.1.1 Education.....	20
1.2.1.2 Health.....	23
1.2.2 Social Welfare and Protection	26

1.2.2.1 ASEAN Declaration on Strengthening Social Protection.....	26
1.2.3 Environmental sustainability	27
1.2.3.1 Myanmar Agenda 21.....	27
Chapter 2	30
Overview policies and agreements regarding.....	30
Myanmar's politics and securities.....	30
2.1 Overview of Myanmar's politics and securities : policies and international agreements ..	30
2.1.1 Political policies.....	30
2.1.1.1 Democratization in Myanmar	30
2.1.1.2 The Myanmar legal system and the rule of law	49
2.1.1.3 Enhancing good governance.....	55
2.1.2 Security policies.....	63
2.1.2.1 Promotion of peace and stability in region.....	64
2.2 The international and regional cooperation regarding the security.....	105
2.2.1 International legal binding regarding security policy of Myanmar	105
2.2.1.1 Regional legally binding Agreement: the ASEAN level.....	105
2.2.1.2 International legal binding: international level.....	108
Chapter 3 Law relating to society, culture, politics and securities.....	112
3.1 Laws relating to education: The National Education System	112
3.1.1 Basic Education.....	113

3.1.1.1 Definition.....	113
3.1.1.2 The objective of basic education	113
3.1.1.3 The structure of basic education.....	114
3.1.1.4 School	115
3.1.1.5 Curriculum	116
3.1.1.6 Basic Education Supervision	117
3.1.1.7 Educational Duties and Responsibilities.....	118
3.1.1.8 The qualification of teacher	119
3.1.1.9 Quality Assessment and Quality Assurance	119
3.1.1.10 Education Management.....	120
3.1.1.11 Finance.....	120
3.1.2 Higher Education	120
3.1.2.1 The Structure.....	121
3.1.2.2 University Management	122
3.1.2.3 Finance	124
3.1.3 Technical Agricultural and Vocational Education.....	124
3.1.3.1 The objective of Technical, Agricultural and Vocational.....	125
Education.....	125
3.1.3.2 Structure	126
3.1.3.3 Management	126

3.1.3.4 Finance	127
3.1.4 Informal Education.....	127
3.1.5 Self-study education.....	128
3.2 Laws relating to labor protection.....	129
3.2.1 The Workmen's Compensation Act 1923	130
3.2.1.1 Key actors of the law 1923.....	131
3.2.1.2 Employer's liability	134
3.2.1.3 Amount of compensation	136
3.2.1.4 Methods of calculating wages.....	138
3.2.1.5 Compensation distribution process	139
3.2.1.6 Commissioner's powers in the case of fatal accidents	141
3.2.1.7 Additional considerations on the employer's rights and liability.....	142
3.2.1.8 Dispute settlement by the Commissioners	144
3.2.2 The Leave and Holidays Act 1951	146
3.2.2.1 Definitions	147
3.2.2.2 Employee's right to paid holiday and leaves	148
3.2.2.3 Acting as a minimum standard of employee's right to leave	152
3.2.2.4 Inspection officers.....	152
3.2.2.5 Determination of employers in certain cases	153
3.2.2.6 Cognizance of offences	155

3.2.3 Law Relating to Overseas Employment (1999)	155
3.2.3.1 Definitions	156
3.2.3.2 Institutional frameworks	158
3.2.4 The Social Security Law 2012	161
3.2.4.1 Definitions and coverage of the law	162
3.2.4.2 Operation of the social security systems	163
3.2.4.3 The Insured's right to insurance system benefits	167
3.2.4.4 Employment Injury Benefit Insurance	173
3.2.4.5 The employer's duties	178
3.2.4.6 Settlement of disputes and appeal	180
3.2.4.7 The right to draw from the relevant Social Security Fund	182
3.2.5 Minimum wage law 2013	184
3.2.5.1 Definitions	185
3.2.5.2 Institutional framework	186
3.2.5.3 Declaration of minimum wage	187
3.2.5.4 The Duties of the Employer	191
3.2.5.5 The Rights of the Workers Relating to the Minimum Wage	193
3.2.5.6 Assigning Duty to the Inspection Officer, Inspection and Taking Legal Action	195
3.2.6 Employment and Skill Development Law 2013	197
3.2.6.1 The employment and labour exchange office	198

3.2.6.2 Employment agreement	200
3.2.6.3 Employment and skill development organisations	202
3.2.6.4 Registration and regulation of a training school and a skill assessment department	204
3.2.6.5 Establishing and using the employee skill development fund	208
3.3 Laws relating to Public Health.....	210
3.3.1 The Eye Donation Law 1996	210
3.3.1.1 Definition.....	210
3.3.1.2 Objectives	210
3.3.1.3 Eye Bank Committee.....	211
3.3.1.4 Eligibility Criteria for Eye Donation	211
3.3.1.5 Eye transplant.....	212
3.3.2 The Body Organ Donation 2004	212
3.3.2.1 Definition.....	213
3.3.2.2 Objectives	213
3.3.2.3 Committee	214
3.3.2.4 Donation of Body Organ	214
3.3.2.5 Organ transplant.....	215
3.3.2.6 The penalty for organ trading	216
3.3.3 The Control of Smoking and Consumption of Tobacco Product Law 2006.....	217

3.3.3.1 Definition.....	217
3.3.3.2 Objectives.....	217
3.3.3.3 The Central Board.....	218
3.3.3.4. Non-Smoking Areas.....	219
3.3.3.5 Other significant prohibitions.....	219
3.4.1 The Child Law 1993.....	223
3.4.1.1 Definition of “Child”	223
3.4.1.2 Objectives.....	223
3.4.1.3 The National Committee on the Rights of the Child	223
3.4.1.4 Rights of the child.....	224
3.5 Laws relating to Promotion of Science, Technology, and Telecommunication	241
3.5.1 The Science and Technology Development.....	241
3.5.1.1 The objectives	242
3.5.1.2 Establishment of the National Council for Science and Technology Development	242
3.5.1.3 Formation of the Myanmar Scientific and Technological Research Department	244
3.5.1.4 Technology Transfer.....	245
3.5.2 Telecommunication of Myanmar.....	247
3.5.2.1 Consumer Protection	251
3.5.2.2 Access and Interconnect	252

3.5.2.3 Prohibition on Anti-Competitive Practice.....	252
3.5.2.4 Dispute Resolution.....	252
3.5.3 The Computer Science Development of Myanmar	256
3.5.3.1 Definition.....	256
3.5.3.3 The Myanmar Computer Federation	258
3.5.3.4 Prior Sanction and License.....	259
3.5.3.5 Offences and Penalties.....	260
3.6 Laws relating to Environmental Protection.....	262
3.6.1 Law on environmental conservation	262
3.6.1.1 State organisations for environmental conversation.....	263
3.6.1.2 Environmental quality standards.....	264
3.6.1.3 Extraction of Forest-Preduce	266
3.6.2 Prevention from Danger of Chemical and Associated Materials Law (2013)	269
3.6.2.1 State organisations.....	269
3.6.2.2 Licensing system	272
3.6.2.3 Registered certificate	275
3.6.2.4 Compliance inspection	276
3.7 Laws relating to culture and historical and archaeology	277
3.7.1 Preservation of Antiquities Law 2015.....	277
3.7.1.1 Definition.....	278

3.7.1.2 The Duties and responsibilities of the Ministry of Culture	279
3.7.1.3 Inspection of antiquity	279
3.7.1.4 Reporting the discovery of antiquity.....	279
3.7.1.5 Application for Permit with regard to antiquity	280
3.7.1.6 Offences and Penalties	280
3.7.2 University of Culture Law 1993	282
3.8 Laws relating to Enhancement of Public Administration Efficiency	283
3.8.1 The Region or State Government Law 2010	283
3.8.1.1 People in the Region or State Government	283
3.8.1.2 Appointment and Assigning Duty to the Chief Justice of the High Court of the Region or State	285
3.8.1.3 Appointment and Assigning Duty to the Judges of the High Court of the Region or State.....	286
3.8.1.4 Appointment and Assigning Duty to the Auditor-General of the Region or State	286
3.8.1.5 Duties and Powers of the Chief Minister Matters Relating to the Promulgation as Law.....	287
3.8.1.6 Duties and Powers of the Members of the Government of the Region or State Executive Power of the Region or State Government	288
3.8.2 The Union Government Law.....	289
3.8.2.1 Formation, Appointment and Assignment of Duty of the Head of State	289

3.8.2.2 Duties and Powers of the President of the Union and the Vice-Presidents and International, Regional or Bilateral Treaties Matters.....	293
3.8.2.3 Duties and Powers of the Union Government Executive Power of the Union Government	296
3.8.2.4 Duties and Powers of the Union Ministers and the Deputy Ministers	298
3.8.2.5 Term of Office, Resignation from Office, Termination from Duties, Impeachment and Filling and Appointment in the Vacancy	299
3.8.2.6 Declaration of a State of Emergency	302
3.8.2.7 Miscellaneous	303
3.8.3 The Municipal or Village Tract Administration Law.....	303
3.8.3.1 Formation of Municipals or Village Tracts	303
3.8.3.2 Qualifications to be fulfilled in the Municipal or Village Tract Administrator.....	304
3.8.3.3 Appointing and Assigning the Municipal or Village Tract Administrator	304
3.8.3.4 Ethics to be obeyed and upheld	305
3.8.3.5 Basic Principles of Function	305
3.8.3.6 Chapter VII: Functions and Duties of the Municipal or Village tract Administrator	305
3.8.3.7 Chapter VIII: Permit to resign, temporary suspension from office or termination of office and appointment in substitution	306
3.8.3.8 Duties of the Person residing in the Municipal or Village Tract	307
3.8.3.9 Rights of persons residing in the Municipal or Village Tract	307

3.8.3.10 Offences and Penalties.....	308
3.8.3.11 Subsidy.....	308
3.8.3.12 Expenditures of Office	308
3.8.3.13 Municipal or Village Tract Clerk.....	308
3.8.3.14 Miscellaneous.....	309
3.8.4 The Self-Administered Division or Self-Administered Zone Leading Body Law.....	310
3.8.4.1 Formation, Appointment and Assignment of Duties	310
3.8.4.2 Election of the Chairperson of the Leading Body and Arranging to Elect the Chairperson of the Leading Body	312
3.8.4.3 Election of the National Races Representative Leading Body Members	313
3.8.4.4 Election and Appointment to attain the Stipulated Number of the Members of the Leading Body	313
3.8.4.5 Duties and Powers of the Chairperson of the Leading Body Submission and Declaration of the Bill.....	314
3.8.4.6 Duties and Powers of the Leading Body and Executive Committee of the Leading Body.....	314
3.8.4.7 Term of the Office, Resigning from Office, Termination from Office and Taking Action, Impeachment and Filling the Vacant Office.....	316
3.8.4.8 The Provision relating to Emergency Period and the Leading Body	317
3.9.1 The public servants inquiries	319
3.9.2 Law of Writ	323

3.9.2.1 Types and definition of writs.....	323
3.9.2.2 Submission of petition and screening	325
3.9.3 Decision Making body.....	325
3.9.4 Duties and rights of the Defendant	326
3.10.1 The Constitution of the Republic of the Union of Myanmar (2008).....	327
3.10.2 The Law to Safeguard the State against the Dangers of Those Desiring to Cause Subversive Acts.....	330
3.10.2.1 Definition	330
3.10.2.2 The duties and responsibilities of the State Council	330
3.10.2.3 Authority of the cabinet	331
3.10.2.4 The restriction fundamental rights of citizens	331
3.10.2.5 The duties and responsibilities of the Central Board	332
3.10.2.6 The person's detention.....	333
3.10.2.7 Appeal.....	334
3.10.2.8 Offences and Penalties.....	334
3.11.1 The Burma Penal Code (1861)	336
3.11.1.1 Receipt of bribe.....	336
3.11.1.2 Facilitating corruption	336
3.11.1.3 Presumption of corruption	338
3.11.1.4 Criminal breach of trust.....	339

3.11.2 The Anti-Corruption law	339
3.11.2.1 Bribery under the Anti-Corruption law	339
3.11.2.2 Institutional framework of anti-corruption regime	340
3.11.2.3 Procedure under the Anti-Corruption law	342
3.11.2.4 Property due to becoming rich by bribery	343
3.11.3 Extractive Industries Transparency Initiative (EITI)	345
3.11.3.1 Historical background of the EITI in Myanmar	345
3.11.3.2 Aims and functions of the EITI	347
3.11.3.3 Interaction between the EITI and the existing criminal-based regime	348

Chapter 1

Social-Cultural policy and agreement

1.1 Social-cultural policy

1.1.1 Human Development

1.1.1.1 Situation Analysis

Republic of the Union of Myanmar, former known as Burma, is a low income developing country in Asia. Most of population lives in rural area and works in the agriculture. Therefore, there is a wide gap between rural and urban human development, particularly with respect to access to health care services and education as well as employment opportunities. According to Human Development Report 2014 of United Nations Development Programme (UNDP), Myanmar's Human Development ranked 150 out of 187 countries,¹ which is very low.

Myanmar has been governed by military government for several decades. Therefore, Myanmar's army-dominated government has absolute control over politics and public policies. The significant impact suffered by Myanmar people under this politic is that human capital is underdeveloped. At the present time, the country is now open for business and foreign investment; therefore; developing human development, especially education and health, places more emphasis. As seen, one of the main national social objectives is "to uplift the health, fitness and education standards of the entire nation".²

Therefore, this part will focus on two main particular areas: education and health. We will start with the general problem of education, health and social welfare in Myanmar. Next we will summary the national policies and development plan.

¹ United Nations Development Programme (UNDP), Human Development Report 2014 Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience, available at <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf>

² "New Light of Myanmar Thursday 31 March 2011," p.1, from <http://www.burmalibrary.org/docs11/NLM2011-03-31.pdf>, Retrieved October 10, 2015

(1) Education

Education in Myanmar is underdeveloped. There are two main problems in education which are insufficient funding and inequitable access. Firstly, the government allocated insufficient funding for education system. Since the military government had the power over 50 years, the education system in Myanmar was very poor. The military government didn't want to promote and support education because they believed that the Myanmar administration may be obstructed by educated people. The well educated people protested the military government and demanded their right; therefore; it was dangerous to maintain their power and difficult to control. As seen, the 8888 uprising crisis was started by the student. University and young students were one of the groups who demonstrated against the military regime. During that time, schools, colleges and universities were shut down for many years; and reopened again in 1990. The curriculum was controlled by the government. Education system was disrupted by politic. The government did not want to investment in education; therefore; the education system was very weak.

When SPDC came in to the power, the SPDC had set the objective to improve the education by implementing

“an education system which is equitable with the cultural, the traditional, the social values and in keeping with the economic system which will facilitate national development.”³

To support education, SPDC also allocated the expenditure on education; however; the budget was small. As seen, the government spent only one-third of amount on health, education and welfare.⁴ Education expenditure was reduced from 2.6 GDP% in 1990-1991 to 1.1.GDP% in 1995-1996.⁵ Owing to a lacking budget, this led to the problems of insufficient teachers and lack of proper schools, low teacher motivation, low salaries, outdated and inadequate academic resources, and poor quality of education. Consequently, the education system was underdeveloped and ineffective.

³ John V. Dennis, “A review of national social policies Myanmar,” p.7, from <http://www.mekonginfo.org/assets/midocs/0002993-society-a-review-of-national-social-policies-myanmar.pdf>, Retrieved October 11, 2015.

⁴ Ibid.

⁵ Ibid, p.8.

Another significant problem of the Myanmar education is inequitable access to education because of poverty. Myanmar is one of the poorest countries in South-East Asia,⁶GDP US\$ 74 billion (2015 estimate).⁷ According to Myanmar under military regime, many people in Myanmar still live in extreme poverty and low levels of social welfare. Due to poverty, the parents do not want to send their children to school. The children have responsibility to earning income for their families. There is no choice that the children need to work instead of going to school. As a result, there is no doubt that many children from the poor family and rural area fail to receive the basic education compulsory.

(2) Health

Health care in Myanmar is poor. There are important problem of inequities and ineffective health service and in access to affordable health care, especially most population who live in rural areas. Moreover, Myanmar suffers from high maternal and child mortality. It is estimated that there are 2,400 pregnant women and 70,000 children die each year.⁸ The country faces the unnecessary deaths and has high rates of malaria, tuberculosis and HIV AIDS. Ten percent of population suffers from malaria, tuberculosis and HIV.⁹

Government on health expenditures has increased; however; the total of health expenditure in 2014-2015, 0.99% of GDP,¹⁰ is still very low compared to the demand for health care. The impact of insufficient finance leads to lack of skilled and qualified health workers (doctors, nurses and midwives), inappropriate incentive and support to engender motivation.

⁶ World Bank, “overview,” Retrieved October 11, 2015, from <http://www.worldbank.org/en/country/myanmar/overview>.

⁷ Global Finance, “Myanmar GDP and Economic Data,” from <https://www.gfmag.com/global-data/country-data/myanmar-gdp-country-report>, Retrieved October 12, 2015.

⁸ The Three Millennium Development Goal Fund, “Working together to save lives and improve health for all in Myanmar,” from <http://www.3mdg.org/about-the-3mdg-fund>, Retrieved October 12, 2015.

⁹ United Nations Development Programmes, Combat HIV/AIDS, malaria and other diseases, available at <http://www.mm.undp.org/content/myanmar/en/home/mdgoverview/overview/mdg6.html>

¹⁰ World Health Organization, “Global Health Observatory (GHO) data,” from http://www.who.int/gho/health_financing/total_expenditure/en/, Retrieved October 12, 2015

1.1.1.2 Education

(1) Education governance: A brief overview

Ministry of Education (MOE) is the main agencies to operate national education. MOE is responsible to set the educational policies, implement educational programs, fiscal planning and administration of the public education sectors, and regulate nongovernment educational institutions. MOE consists of six core departments as follows¹¹

1. Office Staff
2. Department of Higher Education
3. Department of Basic Education
4. Department of Myanmar Language Commission
5. Department of Myanmar Board of Examinations and
6. Myanmar Educational Research Bureau (MERB)

In 30 March 2011, President U Thein Sein addressed the first regular session of “Pyidaungsu Hluttaw” (Parliament) relating to the national education by stating that

*“We need more and more human resources of intellectuals and intelligentsia in building a modern, developed democratic nation. In this regard, a fundamental requirement is development of human resources including new generations who will take over States duties. Therefore, we will promote the nation’s education standard to meet the international level and encourage human resource development.”*¹²

The vision statement of education is *“to create an education system that will generate a learning society capable of facing the challenges of the Knowledge Age”*. The Educational Motto is *“building a modern developed nation through education”*.

¹¹ “Myanmar Online Data Information Network Solutions, Government and Policy,”, from <http://www.modins.net/myanmarinfo/ministry/education.htm>, Retrieved October 12, 2015.

¹² “New Light of Myanmar Thursday 31 March 2011,”, from <http://www.burmalibrary.org/docs11/NLM2011-03-31.pdf>, at p.5, Retrieved October 12, 2015.

(2) Myanmar's policies and agreements related to education

Main education policies are set out in the Constitution of the Republic of the Union of Myanmar (2008) and the guidance of the Head of State, as well as two main laws which are the Basic Education Law of 1973 and the University Education Law of 1973 (amended in 1998).

(2.1) The Constitution of the Republic of the Union of Myanmar (2008)

Article 28 and Article 366 of Constitution set out the duties of state on education by stipulating that

“Article 28: The Union shall

- (a) earnestly strive to improve education and health of the people;*
- (b) enact the necessary law to enable National people to participate in matters of their education and health*
- (c) implement free, compulsory primary education system*
- (d) implement a modern education system that will promote all-around correct thinking and a good moral character contributing towards the building of the Nation.*

Article 366: Every citizen, in accord with the educational policy laid down by the Union

- (a) has the right to education*
- (b) shall be given basic education which the Union prescribes by law as compulsory*
- (c) have the right to conduct scientific research explore science, work with creativity and write to develop the arts and conduct research freely in other branches of culture.”*

(2.2) The Guidance of the Head State

To promote the nation's education standard to the international level, President U Thein Sein, the Head of State of Myanmar, gave a speech and provided a guidance for the formal education sector as follows¹³

1. To practice free compulsory primary education system;
2. To improve the standards of present universities, colleges, and high, middles and primary school
3. To provide more teaching aids, sharpen the abilities and improve the socio-economic status of educational staff
4. To increase the enrolment rates in middle and high Schools
5. To cooperate with international organizations including the UN, INGOs and NGOs.
6. To promulgate necessary laws for private education schools.
7. To provide stipends for higher education abroad and stipends for outstanding students at home.

(2.3) Major Strategies of Education

Many major education policies have been launched by the governments and international organizations to develop human resources and promote the nation's education standard to the international level.

1. Special Four-Year Plan for Education (2000-01 FY to 2003-04 FY)

To strive for development of highly qualified human resource and to introduce regional human resource development programs, the Ministry of Education has launched the Special Four-Year Plan for Education. There were 6 programs for the basic education sub-sectors and 21 programs for the development of higher education for the Higher Education Sub-sector. The 21 programs focused on five main areas

¹³ Ibid.

- (1) Promotion of the quality of education
- (2) Introduction of ICT in education
- (3) Development of a lifelong learning society, and
- (4) Enhancement of international collaborations
- (5) Advancement of research

2. Thirty-Year Long-Term Education Development Plan (2001-02FY to 2030-31FY)

This plan was initiated by the Ministry of Education. The main focus of this plan is to reduce barriers for low income people to access education. The plan has 10 programs for the Basic Education Sub-sectors and 36 programs for the higher education sub-sector. The 36 programs focus on six areas: (1) Development of human resource; (2) Utilization of technology; (3) Expansion of research; (4) Development of a lifelong learning society; (5) Promotion of the quality of education; and (6) Preservation of national identity and national levels.

The aim of the plan is

- (a) to generate qualitative development of higher education.
- (b) to contribute to national development endeavors.
- (c) to preserve national identity and culture.

3. The National Education for All (EFA) National Action Plan (2013-2015) and Myanmar EFA Goals

In the Long-Term Education Plan, the MOE has implemented the National EFA Goals and policies in education sector. The National EFA activities has focused on six areas, namely: 1) Early Childhood Care and Education (ECCE), 2) Universalization of Primary education (UPE), 3) Learning and Life Skills (LS) for Young People and Adults , 4)Adult Literacy(AL), 5) Gender Parity and Equality (GPE) and 6) Quality of Education (QE). The target will plan to achieve by 2015. There are six goals as follows¹⁴

¹⁴ Bo Win, "Access to and Quality of Education: Education for All in Myanmar," from <http://yangon.sites.unicnetwork.org/files/2013/05/Final-UBW-presentation-12-2-12-UBW.pdf>, Retrieved October 12, 2015.

- (1) Ensure that significant progress is achieved so that all school-age children have access to and complete free and compulsory basic education of good quality
- (2) Improving all aspects of the quality of basic education: teachers, education personnel and curriculum
- (3) Achieving significant improvement in the levels of functional literacy and continuing education for all
- (4) Ensuring that the learning needs of the young people and adults are met through non-formal education, life skills and preventive education
- (5) Expanding and improving comprehensive early childhood care and education
- (6) Strengthening Education Management Information System-EMIS

1.1.1.3 Health

(1) Health System: Brief Overview

Most of population in Myanmar is living in upcountry whereby the health care service focuses on the largest urban areas. It can be seen that the health services in Myanmar are lack of medical equipment, professional support and medicine.¹⁵

To solve these problems, the Ministry of Health is an important player in Myanmar to promote and maintain the health sector by taking a comprehensive health system for uplifting the health status of the entire nation. The Ministry of Health, who is taking care of this concerned health care system, has the two main objectives as follows:

- 1) To enable the life expectancy in every people in Myanmar are longer and higher and
- 2) To enable every people are prevented from diseases.

To achieve the objective of the Myanmar's health status, the Ministry of Health's activities are not only to promote the health, prevent the diseases but also to provide the effectiveness of treatment and rehabilitation. To support the Ministry of

¹⁵ Ministry of Health, Government & Policy, from www.modins.net/myanmarinfo/ministry/health.htm, Retrieved October 12, 2015.

Health's function, some social and voluntary organizations such as The World Health Organization (WHO) spent some time to collaborate with the Health section for establishment of more effectively in health activities.

(2) The National Health Policies, Strategy and Plans

Myanmar faces challenges in improving the health situation. To overcome major health problem and improve the national health system, the government has enacted national health policies in the National Constitution (2008). Also policy guidelines relating to health services and health development plans have been drawn up and implemented aiming towards Health for All Goal.

(2.1) The Constitution of the Republic of the Union of Myanmar 2008

The provisions for health services are set out in Article 28, 32 and 367 of the Constitution of the Republic of the Union of Myanmar 2008, it stipulates that

“Article 28 The Union shall

(a) Earnestly strive to improve education and health of the people

(b) Enact the necessary law to enable National people to participate in matters of their education and health.

Article 32 The Union shall

(a) Care for mothers and children, orphans, fallen Defence Services personnel's children, the aged and the disabled...

Article 367 Every citizen shall, in accord with the health policy laid down by the Union, have the right to health care.”

(2.2) The Guidance of the Head State:

Regarding uplifting the health standards, President U Thein Sein, the Head of State of Myanmar, gave a speech and provided a guidance as well as set a plan for the health sector as follows

(1) To improve quality of the hospitals opened over past two decades and skills of medical staff.

(2) To improve the quality of rural health centres and medical staffs.

(3) To promulgate necessary laws to standardize the health care services of private health centres.

(4) To set up a health care system covering the participation of the State, the people and altruistic organizations to beef up community health care.

(2.3) National Health Policy 1993

At the national level, the National Health Committee (NHC) provided guidance in implementing the National Health Policy in 1993. The first priority objective is to achieve “the Health For All” goal and to promote equity by ensuring that all people can access to basic health services. The National Health Policy was formulated with the following fifteen goals¹⁶

(1) To raise the level of health of the country and promote the physical and mental well-being of the people with the objective of achieving “Health for All” goal, using primary health care approach.

(2) To follow the guidelines of the population policy formulated in the country.

(3) To produce sufficient as well as efficient human resource for health resource for health locally in the context of broad frame work of long term health development plan.

(4) To strictly abide by the rules and regulations mentioned in the drug laws and by laws which are promulgated in the country.

(5) To augment the role of co-operative, joint ventures, private sectors and non-governmental organizations in delivering of health care in view of the changing economic system.

(6) To explore and develop alternative health care financing system.

(7) To implement health activities in close collaboration and also in an integrated manner with related ministries.

(8) To promulgate new rules and regulations in accord with the prevailing health and health related conditions as and when necessary.

¹⁶ Ministry of Health, “Health policy, Legislation and Plans,” from <http://www.moh.gov.mm/file/HEALTH%20POLICY,%20LEGISLATION%20AND%20PLANS.pdf>, Retrieved October 12, 2015

(9) To intensify and expand environmental health activities including prevention and control of air and water pollution.

(10) To promote national physical fitness through the expansion of sports and physical education activities by encouraging community participation, supporting outstanding athletes and reviving traditional sports.

(11) To encourage conduct of medical research activities not only on prevailing health problems but also giving due attention in conducting health system research.

(12) To expand the health service activities not only to rural but also to border areas so as to meet the overall health needs of the country.

(13) To foresee any emerging health problem that poses a threat to the health and well-being of the people of Myanmar, so that preventive and curative measures can be initiated.

(14) To reinforce the service and research activities of indigenous medicine to international level and to involve in community health care activities.

(15) To strengthen collaboration with other countries for national health development.

(2.4) National Health Plan (2011 to 2016)

The government has formulated a medium-term health development plan-National Health Plan- covering a five year period from 2011 to 2016. It took into account prevailing health problems in the country, the need to realize the health-related targets articulated in the UN Millennium Declaration, significance of strengthening the health systems and the growing important of social, economic and environmental determinants of health. To achieve “health for All” goal, the plan focuses on 11 programmes:¹⁷ Controlling communicable diseases; preventing, control and care of non-communicable Diseases and Conditions; Improving Health for Mothers, Neonates, Children, Adolescent and Elderly as a Life Cycle Approach; Improving Hospital Care; Development of Traditional Medicine; Development of Human Resources for Health; Promoting Health Research; determinants of Health; Nutrition Promotion; Strengthening Health System; and

¹⁷ Ministry of Health, supra note 15.

Expanding Health Care Coverage in Rural, Peri-Urban and Border Areas. According to the plan, the objectives are following:-¹⁸

- (1) To ensure quality health services are accessible equitably to all citizens.
- (2) To enable the people to be aware and follow behaviors conducive to health.
- (3) To prevent and alleviate public health problems through measures encompassing preparedness and control activities.
- (4) To ensure quality health care for citizens by improving quality of curative services as a priority measure and strengthening measures for disability prevention and rehabilitation.
- (5) To provide valid and complete health information to end users using modern information and communication technologies.
- (6) To plan and train human resources for health as required according to types of health care services, in such a way to ensure balance and harmony between production and utilization.
- (7) To intensify measures for development of traditional medicine.
- (8) To make quality basic/essential medicines, vaccines and traditional medicine available adequately.
- (9) To take supervisory and control measures to ensure public can consume and use food, water and drink, medicines, cosmetics and household materials safely.

1.1.2 Social Welfare and Protection

1.1.2.1 Background

Access to social welfare services are very limited for vulnerable population such as those living in rural area. The government spent less than 0.5 percent of GDP on social protection programs and services, which is minimal. To contribute towards the social objective, the Ministry of Social Welfare, Relief and resettlements set policies such as setting out the action plans that the union ministries are responsible for implementing and implementing the disaster management activities in accordance with international standards, AADMER Work Programme 2010-2015 and MAPDRR.

¹⁸ Ibid.

1.1.2.2 Law and Policies related to Social Welfare and Protection

(1) Constitution of the Republic of Myanmar 2008

The Myanmar Constitution imposes a constitutional duty upon the Union to take care of and provide assistance to the vulnerable people:

“Article 32: The Union shall

(a) Care for mothers and children, orphans, fallen defense services personnel’s children, the aged and the disabled.

(b) Ensure disabled ex-Defence Services personnel a decent living and free vocational training.”

(2) Myanmar National social protection strategic plans

(2.1) Myanmar’s Vision for Social Protection

This vision was developed under the oversight of a Social Protection Working Committee (SPWC) that was chaired by the Minister of Social Welfare, Relief and Resettlement. The Myanmar’s vision for social protection is an inclusive, equitable and sustainable system that

(a) Contributes to human capital by facilitate access to essential social services, such as education, health, housing and water;

(b) Protects people from risks and shocks;

(c) Addresses economic and social vulnerabilities and food insecurity over the life cycle and promotes economic opportunities; and

(d) Alleviates social exclusion

(2.2) Social Protection Coverage: President’s vision

President U Thein Sein gave a speech in Myanmar national social protection conference 2012 that “We must adopt a Social Protection System for Myanmar. Assistance and support of international organizations including the UN have an important role in social protection coverage”. He shared his vision on social protection that

1) Adopt a ‘Myanmar Social Protection System,’ based on the needs of different social groups and sectors, including children and women, the vulnerable, the aged and people with disabilities

2) Recognize the basic needs of every citizen: comprehensive health care, education, income security and job security

3) Promote the rights of workers and farmers in establishing universal health care system

4) Ensure that social protection policy be developed and aligned with the second phrase of the Governments overall reform strategy, people-centered development approach, and specifically linking social protection with the Rural Development and Poverty Alleviation Strategies

5) Encourage energetic cooperation, including with bilateral and multilateral organizations and NGOs, for an integrated and all inclusive social protection system

6) Create a high-level national institution (committee) for the coordination of social protection to ensure its policy formulation, and monitoring implementation to inform the policy makers and the public.

7) Develop a comprehensive social protection policy and strategies.

(2.3) The national social protection strategic plan

This strategic plan, initiated by President U Thein Sein in 2012, has been launched by the Union Minister of Social Welfare, Relief and Resettlement to develop a social protection system. This plan addresses four key dimensions:-protective social protection, preventive social protection, primitive social protection and transformative social protection. The objective of this plan is to provide a social safety to all its citizens. This plan is based on¹⁹

(a) An identification of the primary issues (poverty, risk and vulnerability) that social protection will address

(b) Linkage of specific risks and vulnerabilities to different stages of the life-cycle, as well as to cross cutting areas such as disaster risk management, and identification of social protection objectives in each area

(c) Recognition that regional and global practice shows that economic and social returns are greater when interventions occur earlier in the life cycle, and when problems are prevented before they arise and

¹⁹ The Republic of the Union of Myanmar, "Myanmar National Social Protection Strategic Plan," Retrieved October 15, 2015, from <http://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=50377>

(d) A recognition of the necessity to prioritize and sequence social protection interventions in Myanmar.

Moreover, this strategic plan identifies eight key “flagships programmes” to increase the capacity of Myanmar’s social protection system at all stages of the life cycle. The social protection interventions are

- (1) Cash allowance for pregnant women and children to age 2 years.
- (2) Gradual extension of that allowance to older children
- (3) Cash allowance for people with disabilities
- (4) School feeding programmes
- (5) Public employment and vocational education programmes
- (6) Social pension.
- (7) Older Person Self-Help Groups
- (8) Integrated Social Protection Services

1.1.3 Ensuring Environmental Sustainability

Myanmar is one of the most natural resources rich countries in South East Asia. However, there are many problems relating to environmental issues because many environmental laws and regulations created by military regime were very weak and no specific laws to govern pollution. Moreover, Burmese did not pay much attention to environmental problems because they did not understand how the problem would affect them. The military regime did not educate the people on environment issue and kept most information away from public. Therefore, they lacked knowledge and had little access information.²⁰

At the present time, the Government pays serious attention to environment issues. Myanmar also has obligation to achieve the Millennium Development Goal 7 which is to ensure environmental sustainability by 2015. Therefore, the government has established the National Commission for Environmental Affairs to adopted many national environmental policies and regulations which examine below.

²⁰ Gutter Peter, “Environment and Law in Burma,” Burma Lawyer’s Council.

1.1.3.1 National Policies and agreements related to environment

(1) Constitution 2008

The 2008 Constitution contains provisions concerning protection and conservation of the environment at the national level as follows:

“Section 45: The Union shall protect and conserve natural environment.

Section 390(b): Every citizen has the duty to assist the Union carrying out the environmental conservation.”

(2) The Guidance of the Head State

President U Thein Sein, the Head of State of Myanmar, gave a speech and provided a guidance as well as set a plan for environmental conservation that

“We will pay serious attention to conservation of forests and wood-lands and take measures in various sectors to reduce air and water pollution, control dumping of industrial waste and conserve wildlife. We will lay down a new policy in which we will work for economic development in parallel with environmental conservation.”

(3) The National Environment Policy (1994)

The National Environment Policy formulated by the National Commission for Environmental Affairs that is one of the government’s commitments to the principle of sustainable development. The main objectives of this policy are²¹

1) Achieving harmony and balance between socio-economic, natural resources and environment through the integration of environmental considerations into the development process enhancing the quality of the life of all its citizens.

2) State has responsibility to preserve its natural resources in the interest of present and future generations.

3) Every nation has the sovereign rights to utilize its natural resources in accordance with its environmental policies, but great care must be taken not to exceed its jurisdiction or infringe upon the interests of other nations

4) Environmental protection should always be the primary objective in seeking development.

²¹ SLORC Notification No. 26/94, dated 5 December 1994.

(4) The National Biodiversity Strategy and Action Plan (2015-2020) (NBSAP)

NBSAP is a national strategy for the biodiversity conservation and sustainable use of nature. It is composed of six main chapters starting with a general description of Myanmar's biodiversity and extends about a strategy for the sustainability of biodiversity conservation.

The objectives of NBSAP are²²

- 1) To provide a strategic planning framework for the effective and efficient conservation and management of biodiversity and natural resources with greater transparency, accountability and equity
- 2) To set the priorities for conservation investment in biodiversity management, and
- 3) To develop the range of options for addressing the issue of biodiversity conservation

Table: Summary of an overview of the Myanmar's social and cultural

1. Human Development		
1.1. Myanmar Education Policy		
Policy and Agreement Name	Description and coverage	Leading agency
Constitution (Article 28, 366)	The duties of State on education	The State of Myanmar
The Guidance of the Head State	To promote the nation's education standard to meet the international level and encourage human resource development	The State of Myanmar
Special Four-Year Plan for Education (2000-01 FY to	To strive for development of highly qualified human resource	The Ministry of Education

²² The republic of the Union of Myanmar National Biodiversity Strategy and Action Plan," from <http://www.cbd.int/doc/world/mm/mm-nbsap-01-en.pdf>, Retrieved October 15, 2015.

2003-04 FY)	and to introduce regional human resource development programs	
Thirty-Year Long-Term Education Development Plan (2001-02FY to 2030-31FY)	To reduce barriers for low income people to access education	The Ministry of Education
The National Education for All (EFA) National Action Plan (2013-2015) and Myanmar EFA Goals	To increase vulnerable children's access to and retention in primary school.	The Ministry of Education
1.2. Health		
Policy and Agreement Name	Description and coverage	Leading Agency
The Constitution (Article 28, 32 and 367)	The duties of State on health services	The State of Myanmar
The Guidance of the Head State	Uplifting the health standards	The State of Myanmar
The National Health Policy 1993	To achieve “the Health For All” goal and to promote equity by ensuring that all people can access to basic health services.	The Ministry of Health, The National Health Committee (NHC)
Myanmar Health Vision 2030	To achieve the health Millennium Development Goals (MDGs), which are MDGs 4: Reduce child mortality and MDGs 5: Improve maternal health	The Ministry of Health , The World Health organization (WHO), UNICEF
National Health Plan (2011 to 2016)	To ensure health and longevity for the citizens	The Ministry of Health

2. Social Welfare and Protection		
Policy and Agreement	Description and coverage	Leading agency
Constitution (Article 32)	The duties of State on social welfare and protection	The State of Myanmar
President's vision for Social protection	To adopt a Social Protection System for Myanmar. Assistance and support of international organizations including the UN have an important role in social protection coverage	The Minister of Social Welfare, Relief and Resettlement
The national social protection strategic plan	This plan addresses four key dimensions which are protective social protection, preventive social protection, primitive social protection and transformative social protection to provide a social safety to all its citizens	The Minister of Social Welfare, Relief and Resettlement
3.Ensuring Environmental Sustainability		
Policy and Agreement	Description and coverage	Leading agency
Constitution (Article 45, 390(b))	The duties of State on ensuring environmental sustainability	The State of Myanmar
The Guidance of the Head State	To set a plan for environmental conservation	The State of Myanmar
The National Environment Policy (1994)	To integration of environmental considerations into the development process to enhance the quality of life of all its citizens	The National Commission for Environmental Affairs

The National Biodiversity Strategy and Action Plan (2015-2020) (NBSAP)	A major guiding document for planning biodiversity conservation in Myanmar, as well as providing a strategic planning-policy framework for the effectiveness on conservation and management of biodiversity and natural resources	The Ministry of Environmental Conservation and Forestry
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1.2 International social-cultural agreements signed between Myanmar and other countries or international organizations

1.2.1 Human Development

1.2.1.1 Education

(1) Comprehensive Education Sector Review (CESR)

The main education reforms began in 2002, when the Ministry of Education (MOE) and UNESCO launched a Comprehensive Education Sector Review (CESR) to develop an education. The objective of CESR was “to promotes a learning society capable of facing the Challengers of the Knowledge Age” and it help to build “a modern developed nation through education”.²³ In coordination with the government, UNESCO, who is a lead Development Partner for the policy, legislation, management and financing component of the CESR, initiated a Capacity-Development for Education for All (CapEFA) programme to focus on sector wide policy and planning. There are three phrases. The first phrase of CESR supporting by the Asian Development Bank (ADB) was completed in 2012 covering four main areas of policy, legislation, management, TVET and higher education. Phrase II was conducting In-depth Analysis, building on and adding to the findings and recommendations

²³ “Myanmar Comprehensive Education Sector Review,” from <http://www.cesrmm.org/index.php/en/documents/category/27comprehensiveeducationsectorreview-cesr-phasei-rapidassessmentreport?download=43:comprehensiveeducationsectorreview-cesr-phasei-rapidassessmentreport>, Retrieved October 12, 2015.

of the Rapid Assessment (RA) which were produced in Phase 1. Phase III is now continue and plan will take 7 years, with one plan for 2014-2016 and a five year plan from 2016 to 2021. The aim of Phase III is to provide strategic directions and priorities for system reform and development of education.

(2) Response to the Millennium Development Goals (MDGs)

Myanmar is a member of country of the United Nations. Myanmar has the obligations to achieve the eight Millennium Development Goals by 2015. There are two goals which are relevant to education. The government has set a long term basic education development plan to respond the Millennium Development Goal 2 and 3.

(2.1) MDGs 2: Achieve universal primary education.

The target is that all children will be able to enroll in primary school by 2015.²⁴ To achieve the MDGs 2, the government creates many the nation-wide projects such as All-School Age Children in school project and School Enrolment Week Program, household survey on literacy and special regional development plans especially for border areas and national races.²⁵

(2.2) MDGs 3: Promote gender equality and empower women.

The target is to eliminate gender disparity in primary, secondary and tertiary education, which is achieved by 2015.²⁶ To achieve the MDGs 3, the National Strategic Plan for the Advancement of Women 2012-2021 (NSPAW) was created by the Department of Social Welfare (DSW) of the Ministry of Social Welfare, Relief and Resettlement and the UN Gender Theme Group (UNGTG). This plan aims to improve the realization of the rights of women and girls and reduce persistent gender gaps since the well

²⁴ United Nations Development Programmes, "Achieve universal primary education," from http://www.undp.org/content/undp/en/home/mdgoverview/mdg_goals/mdg2/, Retrieved October 12, 2015.

²⁵ The Minister for National Planning and Economic Development, "The Millennium Development Goals Report of Myanmar," from http://www.searo.who.int/entity/health_situation_trends/documents/MMR_MDG_Report_2005.pdf?ua=1, Retrieved October 12, 2015.

²⁶ United Nations Development Programme, "Promote gender equality and empower women," from http://www.undp.org/content/undp/en/home/mdgoverview/mdg_goals/mdg3/, Retrieved October 12, 2015.

educated women in Myanmar are discriminated against at work and place limitations on which choices are available to them. NSPAW also includes the strategic plan for the advancement of women in education and the media. Moreover, UNESCO in collaboration with UNGTG is currently supporting the government in working programmes in the area of education reform, TVET, higher education, literacy and women employment.

(2.3) Reforms in education and vocational training

As President U Thein Sein mentioned, the government are willing to work in cooperation with international organization including UN to “promote the nation’s education standard to the international level”²⁷. In partnership with MOE, UNESCO and PepsiCo are coordinating and implementing the Disaster Risk Reduction Education initiatives in Myanmar. A Centre of Excellence for Business Skills Development (CEBSD) is established in Yangon Institute of Economics. The objective of this project is to train and develop the skill and improve employment prospects for youth in Myanmar.²⁸ CEBSD organizes courses and workshops for leader, training in business and employability skills, and career counseling to assist and get young people to be ready to enter the working lives.

UNESCO also organized regional dialogues on education, organizing many workshops and conferences such as a regional workshop on Equivalency Programmes and Alternative Learning; a regional workshop on All Children Reading; a regional meeting on Alternative Learning/ Schooling Programmes for Primary Education to Reach the Unreached and a seminar on Cultural Factors in the Prevention and Promotion of Gender-based violence in the Greater Mekong Sub-region.²⁹

In ECCE/ basic education, UNESCO adapted and translated the Parenting Education Guidebook and Facilitators’ Handbook for Parenting Education,

²⁷ “New Light of Myanmar Thursday 31 March 2011,” supra note 2.

²⁸ United Nations Educational, Scientific and Cultural Organization, “Public-Private Partnership in education pioneered with the launch of the Centre of Excellence for Business Skills Development in Myanmar,” from <http://www.unescobkk.org/news/article/public-private-partnership-in-education-pioneered-with-the-launch-of-the-centre-of-excellence-for-bu>, Retrieved October 12, 2015.

²⁹ United nations Educational, Scientific and Cultural Organization, “Myanmar: UNESCO Country Programming Document 2013-2015,” from <http://www.unesdoc.unesco.org/images/0022/002237/223703E.pdf>, Retrieved October 12, 2015

under UNESCO Bangkok's Community-Based Parenting Education Programme.³⁰ The materials are aimed for distribution to education institutes and used by local and international partners.

To support education reform, UNESCO and the Ministry of Education (MOE) organized many activities including writing a comparative analysis in selected education policy areas across ASEAN+6 countries to support policy review and reform in Myanmar³¹; hosting two initial workshops with a view to building capacity in education sector analysis, planning and management within the Ministry of Education and other education institutions; reviewing the government's overall education policy, planning and management; preparing the projection of resources for education sector plan at the request of the MOE.

1.2.1.2 Health

(1) Myanmar Health Vision 2030

Myanmar decided to work toward achieve the health Millennium Development Goals (MDGs), which are MDGs 4: Reduce child mortality and MDGs 5: Improve maternal health. To achieve the MDGs target, a long term 30 years development plan- Myanmar Health Vision 2013 was developed to meet the future challenges. The objectives are following as³²

- (1) Uplifting the Health Status of the people.
- (2) Making communicable disease no longer public health problems and also reducing the magnitude of other health problems.
- (3) Ensuring universal coverage of health service for the entire nation.
- (4) Training and producing all categories of human resources for health within the country.
- (5) Ensuring availability in sufficient quantity of quality essential medicine and traditional medicine within the country.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

To achieve Myanmar's health objective, The World Health Organization (WHO) will continue to provide technical advice in the areas of health. WHO has also worked with the Government of Myanmar, national and external partners at several strategies and plans.³³ For example, WHO worked on Universal Health Coverage (UHC) programme. It aims to improve the health status of the poor and vulnerable, especially women and children.³⁴ WHO also worked on Health system strengthening (HSS). It focuses on improving service delivery of essential components of immunization, mother and child health (MCH), nutrition and environmental health and communicable diseases by strengthening programme coordination, health planning systems, and HR management and development.³⁵ In collaboration with the MOH, the United Nations Children's Fund (UNICEF), WHO worked with a comprehensive Multi-Year Plan (cMYP) for the Expanded Programme on Immunization (EPI) covering the period 2012-2016, which are a follow-up to the previous cMYP 2007-2011.³⁶

(2) Response to the Millennium Development Goals (MDGs)

The implementation of medium and long term health development plans is being responded to the Millennium Development Goal 4, 5 and 6.

(2.1) MDGs 4: "Reduce child mortality"

To respond MGDs 4, the government committed to reduce infant and child mortality by formulating a long term health plan. The Myanmar Health Vision Plan 2013 is expected to reduce the infant Mortality Rate and Under five Mortality Rate to 30 per 1000 live births (LB) and 39 per 1000 LB respectively in 2021.³⁷ Moreover, WHO, UNICEF and The United Nations population Fund (UNFPA) have worked with

³³ World Health Organization, "WHO Country Cooperation Strategy Myanmar 2014-2018", from http://www.who.int/countryfocus/cooperationstrategy/ccs_mmr_en.pdf, Retrieved October 12, 2015.

³⁴ Ibid, p.13.

³⁵ Ibid, p.15.

³⁶ World Health Organization, "WHO-UNICEF Guidelines for Comprehensive Multi-Year Planning for Immunization", from http://apps.who.int/iris/bitstream/10665/100618/1/WHO_IVB_14.01_eng.pdf, Retrieved October 13, 2015.

³⁷ Ministry of Health, "Health policy, Legislation and Plans", from <http://www.moh.gov.mm/file/HEALTH%20POLICY,%20LEGISLATION%20AND%20PLANS.pdf>, p.23, Retrieved October 13, 2015.

the Government of Myanmar to support the National Strategic Plans on Reproductive Health and Child Health through effective coordination mechanism. The programme aims to increase the availability and accessibility to antenatal care, skilled attendance at birth, postnatal care, birth spacing, neonatal and child health care, and ensuring the integration of sexual and reproductive health service with HIV prevention, treatment, care and support.

(2.2) MDGs 5: “To improve maternal health”

The national response to improve maternal health is being implemented Myanmar Health Vision Plan 2013.³⁸ According to the Myanmar Health Vision Plan 2013, Maternal Mortality Ratio is expected to decrease from 1.7 per 1000 LB in 2011 to 1.3 per 1000 LB in 2021.³⁹ Moreover, the National Health Plan 2011-2016 was formulated the programme with the objective to improving health for mothers, neonates, children, adolescent and elderly as a life cycle approach.

(2.3) MDGs 6: “To combat HIV/AIDS, malaria, and other diseases”

Many strategies and plans are developed by the government within the framework of the Myanmar Health Vision 2030. The World Health Organization (WHO) and the Ministry of Health worked together with many projects to support MDGs 6.⁴⁰ For example, the HIV/AIDS National Strategic Plan was formulated in 2011-2015. The objective of this strategic plan is to prevent of the transmission of HIV through unsafe sexual contacts and use of contaminated injecting equipment; to comprehend continuum of care for people living with HIV; and to mitigate the impact of HIV on people living with HIV and their families.⁴¹ In order to control and eliminate malaria, WHO worked closely with the Ministry of Health supporting the WHO Global Malaria Programme (GMP). GMP’s activities are focused on providing an integrated solution to various epidemiological and operational challenges that affect different parts of the world.⁴² In addition, the government implemented the National Tuberculosis Programme (NTP) in the line with the

³⁸ The World Health Organization, *supra* note 33.

³⁹ The World Health Organization, *Supra* note 36, p.23.

⁴⁰ The World Health Organization, *supra* note 33.

⁴¹ *Ibid*, p.15.

⁴² *Ibid*, p.16.

TB National Strategic Plan (2011-2015). The objective is to reduce morbidity, mortality and transmission of TB until it is no longer a public health problem and to prevent the development of drug-resistant TB and began to reverse the incidence of TB; and to halve the TB prevalence and mortality rates in 2015.⁴³

1.2.2 Social Welfare and Protection

1.2.2.1 ASEAN Declaration on Strengthening Social Protection

Myanmar is a party to ASEAN Declaration on Strengthening Social Protection which was adopted in October 2013. The objective of the Declaration is enhancing the well-being and livelihood of the people by providing them with equitable access to opportunities for human development, social welfare and justice. The government set strategies relating to social protection followed the Declaration which based on the needs of different social groups and sectors (including children and women, the vulnerable, the aged and people with disabilities). The ASEAN Declaration supports⁴⁴

(a) Equitable access to social protection programmes that are based on a life-cycle approach and that cover essential services as needed

(b) Extending coverage, availability, quality, equitability and sustainability of social protection to ensure optimal benefits to the beneficiaries

(c) Strengthening capacity of government officials, communities, service providers and other stakeholders to coordinate social protection at regional, national and local levels

(d) Strengthening of the family and community in order to enhance social protection; and

(e) Addressing social protection as a cross cutting issue engaging government, civil society, service providers and development partners.

⁴³ Ibid.

⁴⁴ The Republic of the Union of Myanmar, “Myanmar National Social protection Strategic Plan”, from <http://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=50377>, Retrieved October 13, 2015.

1.2.3 Environmental sustainability

1.2.3.1 Myanmar Agenda 21

Myanmar Agenda 21, an important blue-print for all natural resource management and environmental conservation work in order to strive for the sustainable development of the country, was adopted in 1997. The Government and the United Nations (UN) have a cooperation working on this program. It covers three pillars of sustainable development which are the social, economic and environmental dimensions. Within the framework of Myanmar Agenda 21, it is included many issues as follows⁴⁵

- ☐ Increasing energy and material efficiency in production processes
- ☐ Reducing wastes from production and promoting recycling
- ☐ Promoting use of new and renewable source of energy
- ☐ Reducing wasteful consumption
- ☐ Increasing awareness for sustainable consumption

Table: Summary of an overview of the Myanmar's social and cultural Agreement

1. Human Development		
1.1. Education		
Policy and Agreement Name	Description and coverage	Leading agency
Comprehensive Education Sector Review (CESR)	To promotes a learning society capable of facing the Challengers of the Knowledge Age and to build a modern developed nation through education	The Ministry of Education, UNESCO and Asian Development Bank (ADB)
Response to the Millennium Development	Creating many the nation-wide projects to achieve universal	The Ministry of Education, The United

⁴⁵ The United Nations, Economic Aspects of Sustainable Development in Myanmar,”, from <http://www.un.org/esa/agenda21/natlinfo/countr/myanmar/eco.html>, Retrieved October 13, 2015.

Goals (MDGs)	primary education and promote gender equality and empower women	Nations, UNICEF
Reforms in education and vocational training	To train and develop the skill and improve employment prospects for youth in Myanmar	The Ministry of Education, UNESCO and PepsiCo
1.2. Health		
Policy and Agreement Name	Description and coverage	Leading Agency
Myanmar Health Vision 2030	To achieve the health Millennium Development Goals (MDGs), which are MDGs 4: Reduce child mortality and MDGs 5: Improve maternal health	The Ministry of Health , The World Health organization (WHO), UNICEF
Response to the Millennium Development Goals (MDGs)	To implement medium and long term health development plans to achieve MDGs 4: Reduce child mortality, MDGs 5: Improve maternal health and MDGs 6: To combat HIV/AIDS, malaria, and other diseases	The Ministry of Health, WHO, UNICEF and The United Nations population Fund (UNFPA)
2. Social Welfare and Protection		
Policy and Agreement Name	Description and coverage	Leading agency
ASEAN Declaration on Strengthening Social Protection	Enhancing the well-being and livelihood of the people by providing them with equitable access to opportunities for human development, social welfare and justice.	ASEAN Countries

3.Ensuring Environmental Sustainability		
Policy and Agreement Name	Description and coverage	Leading agency
Myanmar Agenda 21	An important blue-print for all natural resource management and environmental conservation work in order to strive for the sustainable development of the country	The Ministry of Environmental Conservation and Forestry, the United Nations (UN)

Chapter 2

Overview policies and agreements regarding

Myanmar's politics and securities

2.1 Overview of Myanmar's politics and securities : policies and international agreements

2.1.1 Political policies

According to the ASEAN Political-Security Community Blueprint,⁴⁶ two key areas of political development include strengthening of democracy and enhancing of good governance and the rule of law.⁴⁷ Reflecting these two objectives of the Blueprint, this chapter addresses: Myanmar policies regarding democratisation – replacing an undemocratic regime with a democratic one⁴⁸ – in Myanmar; governance reform in Myanmar; and rule of law promotion.⁴⁹ Myanmar policies toward democratization, governance, and rule of law are reflected in the Constitution, orders, declarations, and notification of the ruling military, Statutes, Presidential Decrees, and official statement made by the President and Ministers. At the international, these issues are reflected in ASEAN agreements and declarations as well as initiatives formulated by international non-governmental organizations. In addition to addressing the Myanmar's politics *per se*, this chapter serves as an introduction to the Myanmar's political problems such as political turmoil and coups d'état in the twentieth century and how the Myanmar constitutional framework and legal system have been developed as a consequence of these political events.

2.1.1.1 Democratization in Myanmar

The western concept of democracy did not exist in the ancient Myanmar as the country was ruled under the absolute monarchy regime. Democratic transitions in Myanmar have been inextricably linked with political situations after gaining

⁴⁶ ASEAN Political-Security Community Blueprint.

⁴⁷ Ibid, 2.

⁴⁸ Haerpfer, Christian W. et al. Democratization. Oxford University Press, 2009, P. 25.

⁴⁹ Issues regarding protection of human rights and fundamental rights such as problems associated with ethnic minority violation of human rights will be discussed in Chapter 2.

independence from the UK in 1947. An initial transition took place during the decolonisation process in the late 1940s and was sustained for the best part of a decade and a half to the early 1960s.⁵⁰ Arguably, a second democratization attempt was made in the mass uprising of 1988 or the so-called “8888”.⁵¹ The third attempt could be found in the monk-led protests of 2008 or the so-called “Saffron Revolution”.⁵² From the legal perspective,⁵³ the Constitutions the 1947 Constitution; the 1974 Constitution; and the 2008 Constitution played important roles in recognising as well as rejecting Myanmar democracy as displayed in Table below

Table: Democratisation in Myanmar and the constitutional framework				
Period	Political regime	Rulers	Constitutions	Remarks
(1) The pre-independence era (AD849 – 1948)	Absolute monarchy/Colonialisation	The King/ The British	The Government of Burma Act, 1935	Independence in 1948
(2) A brief experiment of democracy and the socialist regime (1948 – 1962)	Parliamentary democracy	The U Nu government	The 1947 Constitution	Overthrown by Ne Win in 1962
(3) The Socialist regime (1962 – 1988)	Socialist democracy	The BSPP	The 1974 Constitution	

⁵⁰ Holliday, Ian. "Voting and violence in Myanmar: nation building for a transition to democracy." *Asian Survey* 48.6 (2008): 1042.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Observers of democracy and democratisation generally choose, implicitly or explicitly, among four types of definitions: constitutional, substantive, procedural, and process-oriented. A constitutional approach concentrates on laws. Please see Tilly, Charles. *Democracy*. Cambridge University Press, 2007, P.7.

Table: Democratisation in Myanmar and the constitutional framework				
Period	Political regime	Rulers	Constitutions	Remarks
(4) Democracy under the SLORC (1988 – 1997)	SLORC's ruling	The SLORC	Drafting the 2008 Constitution	<ul style="list-style-type: none"> - The “8888 Uprising” - Suu Kyi's detention - The 1990 Elections
(5) Democracy under the SPDC and the USDP (1997 – the present)	Parliamentary democracy	The SPDC and a civilian government	The 2008 Constitution	<ul style="list-style-type: none"> - The Saffron Revolution - The 2010 Elections - General elections in November 2015

(1) The pre-independence era (AD849 – 1948)

(1.1) The ancient time (AD849 – 1885)

Prior to the British colonialisation, Myanmar had been ruled by several Burmese monarchies under the absolute monarchy regime. After 1885, it was fully annexed to the British Empire. During this pre-independence era, it could be said that the country was not ruled by the democratic-elected government. The pre-colonial Myanmar is referred to as the first millennium of the state between the founding of the kingdom of Bagan around AD849 and the fall of the last Konbaung king in 1885.⁵⁴ During this

⁵⁴ Taylor, Robert H. The state in Myanmar. NUS Press, 2009, 15.

era, the Myanmar lived under an absolute monarchy,⁵⁵ referred to in Myanmar language as “*Thet Oo San Pine*”⁵⁶. Kingship arose in theory from the concern of the people to escape social chaos.⁵⁷ The king's primary duty was to protect his people by punishing the unjust and the predatory strong. The ruler was supposed to be truthful and wise, considerate before acting, capable of curbing his personal desire for wealth and pleasure.⁵⁸

Under this absolute monarchy regime, the king was governed Buddhism practices and principles. Patronage of Buddhism was a basis for loyalty to the king. Buddhism provided its devotees with uniform attitudes and social values and operated as a cohesive force uniting the territorial and national fragments of the Burma State.⁵⁹ However, there were no controls on the king's power and such religious limitations were often ignored.⁶⁰ During this time, the administration of justice was “*marked by a high degree of personalized behaviour, with little procedure other than prevailing notions of status and etiquette.*”⁶¹

⁵⁵ Ng, Connie. "Burma and the Road Forward: Lessons from Next Door and Possible Avenues Towards Constitutional and Democratic Development" Santa Clara L. Rev. 53 (2013): 267.

⁵⁶ Silverstein, Josef. "Myanmar: History." The Far East and Australasia 1998(1998): 666-678.

⁵⁷ Burma's Lawyer Council. "Brief Survey of Development of Laws in Burma" Legal Issues on Burma Journal 20(2005): 1.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

Picture: The Royal Family of Burma: The last king and Queen



Retrieved from <https://drkokogyi.wordpress.com/2010/08/08/the-royal-family-of-burma/>

(1.2) The Colonialisation period (1885 – 1948)

Myanmar was annexed piecemeal after the three Burmese Wars: the northern and southern divisions of Arakan and Tenasserim in 1826, Rangoon and the rest of Lower Burma in 1852, and Upper Burma in 1886.⁶² Myanmar was separated from India under the Government of Burma Act 1935.

⁶² Butler, Harcourt. "Burma and Its Problems." *Foreign Affairs* 10.4 (1932): 647-658.

Picture: An illustration of battlefield of First Anglo-Burmese war



Retrieved from http://www.allthingsburmese.com/History_WarwiththeBritish.htm

(2) A brief experiment of democracy and the socialist regime (1948 – 1962)

Myanmar gained her independence on the fourth of January 1948 and has become a sovereign state since then. On the 17th of October 1947, the UK and the provisional government of Burma signed a treaty recognising independence of Burma. Article I of this treaty states that: *“The Government of the United Kingdom recognize the Republic of the Union of Burma as a fully Independent Sovereign State”*.⁶³ Two months later, the Burmese Independence Bill was passed by the Westminster.⁶⁴

The 1947 Constitution clearly established a democratic regime for the post-independence Myanmar. According to the 1947 Constitution, the newly-independent Burma was officially called: the “Union of Burma”. Clearly reflecting the separation of power and the parliamentary democratic regime, this version of the Burma Constitutions stated that

⁶³ Treaty between the Government of the United Kingdom and the Provisional Government of Burma (London, 17th October, 1947), Article 1.

⁶⁴ Bowman, John Stewart. *Columbia chronologies of Asian history and culture*. Columbia University Press, 2013, 484.

“All powers, legislative, executive and judicial are derived from the people and are exercisable on their behalf by, or on the authority of, the organs of the Union or of its constituent units established by this Constitution.”⁶⁵

The Myanmar parliamentary democracy was shattered on the 2nd of March 1962. A Military Revolutionary Council headed by General Ne Win overthrown the civilian government of Prime Minister U Nu.⁶⁶ U Nu was imprisoned.⁶⁷ The Parliament was dissolved and replaced by a military dictatorship under the rule of the Burmese Socialist Programme Party (BSPP).⁶⁸ The military did not formally revoke the 1947 constitution but abolished the Parliament and the High Court and the Supreme Court.⁶⁹ As such, the 1947 Constitution became ineffective because there was no way to use or enforce its terms.⁷⁰

The end of civilian rule was considered the beginning of the military junta's control over all aspects of the state and its self-imposed isolation from international affairs.⁷¹ Nationalising the economy of the country, the Revolutionary Council declared all political opposition illegal and took over the direct management of most educational and cultural organisations.⁷² Under the military rule, the economy of Myanmar started to deteriorate from the year 1966.⁷³ The military ruler attempted to solve this

⁶⁵ The Constitution of the Union of Burma 1947, Article 4.

⁶⁶ Taylor (n54) 293.

⁶⁷ Thamilmaran, V. T. "Human Rights and Democracy: The Experience in Myanmar." Sri Lanka J. Int'l L. 8 (1996): 205.

⁶⁸ Ibid.

⁶⁹ Southalan, John. "Burma and the common law? An uncommon question." Legal Issues on Burma Journal 25(2006): 15.

⁷⁰ Ibid.

⁷¹ Tan, Audrey. "Myanmar's Transitional Justice: Addressing a Country's Past in a Time of Change." S. Cal. L. Rev. 85 (2011): 1643.

⁷² Taylor (n54) 295.

⁷³ Burma's Lawyer Council. "Modernization, Democracy and Constitutional Reform in Burma." Legal Issues on Burma Journal 1(1997): 3.

economic problem by seeking foreign assistance; however, due to the absence of a constitution, the attempt did not work out.⁷⁴

(3) The socialist regime under BSPP (1962 – 1988)

Finally, the country's second constitution was promulgated in 1974. The BSPP clearly noted in that a socialist economic system and a socialist democracy were two key objectives of the constitution.⁷⁵ The 1974 Constitution clearly stated that: "*A Socialist society is the goal of the State*". In turn, it recognised a Socialist economic system as the economic system of the State.⁷⁶ Interestingly, Socialist democracy was stated as the basis of the State structure.⁷⁷ The only political party that ruled that country was the BSPP as stipulated by Article 11 of the Constitution

*"The State shall adopt a single-party system. The Burma Socialist Programme Party is the sole political party and it shall lead the State."*⁷⁸

Stipulating the above basic principles of the state, the 1974 Constitution, as noted by Michael Aung-Thwin and Maitrii Aung-Thwin, effectively returned power to the centre.⁷⁹ The BSPP was a single organisation that dominated fiscal policies, administrations, and political ways of the country.⁸⁰

(4) The SLORC (1988 – 1997)

On July 23th 1998, general U Win, who played a role in Myanmar's politics, has resigned from his position as a Burmese Socialist Structural leader in order to show responsibility in violence situation against students.

⁷⁴ Ibid.

⁷⁵ The Constitution of the Union of Burma 1974, Preamble.

⁷⁶ The Constitution of the Union of Burma 1974, Article 5.

⁷⁷ The Constitution of the Union of Burma 1974, Article 7.

⁷⁸ The Constitution of the Union of Burma 1974, Article 11.

⁷⁹ Aung-Thwin, Michael, and Aung-Thwin, Maitrii. A history of Myanmar since ancient times: traditions and transformations. Reaktion Books, 2013: 251.

⁸⁰ Ibid.

The BSPP was later replaced by the State Law and Order Restoration Council (SLORC) in September 1988. The SLORC comprised nineteen members and was assumed comprehensive executive, legislative, and judicial powers.⁸¹ This centralised power is clearly reflected by the first SLORC Declaration, which states that: *“The Tatmadaw abolished all the Organs of State Power including the Pyithu Hluttaw, formed the State Law and Order Restoration Council [SLORC], declared that it would carry out the four main tasks and undertook the responsibility of all the affairs of the State.”*⁸² Under the SLORC’s ruling, the country underwent several movements relating to democratisation including: the 8888 Uprising; Aung San Suu Kyi’s movements; and the 1990 Elections.

Picture: SLORC Members



Retrieved from <http://wisdomquarterly.blogspot.com/2009/06/burma-rebels-vow-to-fight.html>

(4.1) Critics on the military and the “8888 Uprising”⁸³

As a response to the economic stagnation under the military rule in the 60s, 70s and 80s, the public consisting of students, workers, and even Ne Win’s former supporters criticised the military government and started to protest. Major student demonstrations started in March, and were joined by many government and other workers

⁸¹ McCarthy, Stephen. "Ten years of chaos in Burma: Foreign investment and economic liberalization under the SLORC-SPDC, 1988 to 1998." *Pacific Affairs* (2000): 233.

⁸² SLORC Declaration No. 1/90 of July 27, 1990, Paragraph 2.

⁸³ Arendshorst, John. "Dilemma of Non-Interference: Myanmar, Human Rights, and the ASEAN Charter", *Nw. UJ Int'l Hum. Rts.* 8 (2009): 102.

in the following months.⁸⁴ Ne Win's former supporter, and retired Brigadier U Aung Gyi, issued an open letter denouncing the destruction of Burma's economy under the military government.⁸⁵

Among a number of movements against the military, the so-called “8888 Uprising” on August 8, 1988 has been widely referred to as a landmark movement in the Myanmar history. The uprising started on the 12th of March 1988 at a local tea shop when a fight broke out between a group of university students and local youths over whether modern rock or traditional Burmese music was to be played on a radio.⁸⁶ In this incident, a student was injured.⁸⁷ The police arrested the alleged culprit but he was released, because of his alleged personal connections to a Government official.⁸⁸ When the word began to circulate the next day that the arrested youth had been released a group of students took to the streets to protest the police’s handling of the matter. On 8 August 1988 and subsequent days the army opened fire on peaceful unarmed demonstrators in central Rangoon; some reports suggest thousands of deaths.⁸⁹ However pro-democracy demonstrations continued, with most people in the cities participating.⁹⁰

Picture: The “8888” Uprising



⁸⁴ Bradley, David. "Democracy in Burma?." *Asian Studies Review* 21.2-3 (1997): 19, 20.

⁸⁵ *Ibid.*

⁸⁶ Aung-Thwin and Aung-Thwin (n79) 256.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ Bradley (n84) 20.

⁹⁰ *Ibid.*

Retrieve <http://www.radioaustralia.net.au/international/2010-08-09/burmese-exiles-commemorate-8888-uprising/181366>

(4.2) Aung San Suu Kyi's movements

Aung San Suu Kyi made her first political speech at a rally after the uprising and quickly emerged as a leader of the National League for Democracy ("NLD"), a group that opposed the military rule of Burma.⁹¹ Daw Aung San Suu Kyi, the daughter of General Aung San, started to give pro-democracy speeches to large crowds from the 26th of August 1988.⁹² In delivering her speech, Suu Kyi commended the students and encouraged them to continue and unify. She addressed that

*"The students are most able. They have already demonstrated their physical courage. I believe that they will now go on to demonstrate their moral and mental ability. May I appeal to the students to continue to march forward with the same kind of unity and resolve? At this moment there are a number of student groups. I would like these groups to come together as a unified body..."*⁹³

To conclude her speech, she emphasised that the single-party system must be replaced by the multi-party system and free and fair elections were needed. She said

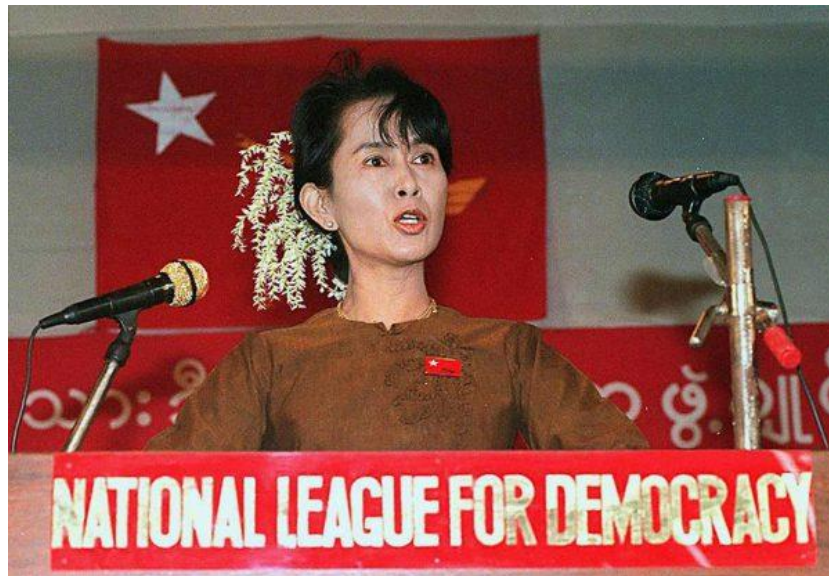
⁹¹ Houtman, Gustaaf. *Mental Culture in Burmese Crisis Politics: Aung San Suu Kyi and the National League for Democracy*. Vol. 33. Ilcaa, 1999.

⁹² Tonkin, Derek. "The 1990 elections in Myanmar: broken promises or a failure of communication?." *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 29.1 (2007): 33-54.

⁹³ Kyi, Aung San Suu. 'Speech to a Mass Rally at the Shwedagon Pagoda (26 August 1988)' (Online Myanmar Library, May 2005), from <<http://www.ibiblio.org/obl/docs3/Shwedagon-ocr.htm>> Retrieved 26 January 2014.

*"To conclude I would like to reiterate our emphatic demands and protests, namely that we have no desire at all for a referendum, that the one-party system should be dismantled, that a multi-party system of government should be established, and we call for free and fair elections to be arranged as quickly as possible. These are our demands."*⁹⁴

Picture: Aung San Suu Kyi



Retrieved from <https://heroinesofhistory.wikispaces.com/Aung+San+Suu+Kyi>

Suu Kyi travelled the country making speeches until July 1989 when the SLORC placed her under house arrest.⁹⁵ She won the Nobel Peace Prize in 1990 for her efforts.⁹⁶

(4.3) The 1990 May election⁹⁷

As a response to calls for elections, the SLORC announced that they would hold a multi-party democratic election.⁹⁸ This announcement was clearly

⁹⁴ Ibid.

⁹⁵ Bradley (n84) 21.

⁹⁶ Kyi, Aung San Suu. "Freedom from fear." Index on Censorship 21.1 (1992): 11-30.

⁹⁷ Guyot, James F. "Myanmar in 1990: The unconsummated election." Asian Survey (1991): 205-

reflected by the SLORC's Announcement No. 1/88. The announcement recognised the Elections Commission for Holding Democratic Multiparty Elections and referred to genuine democracy practising as quoted below

“2) The present Elections Commission for Holding Democratic Multiparty Elections will continue to exist for the successful holding of multiparty general elections.

3) In order to be ready for the multiparty general elections, all parties and organizations which will accept and practice genuine democracy can make preparations and form parties beginning now.”⁹⁹

As a result of the above announcement, 235 political parties were formed and, consequently, created the impression of a multi-party situation.¹⁰⁰ Official results of the 1990 had the National League for Democracy (NLD) winning 392 of the 485 contested seats in the new parliament. SLORC's party, the National Unity Party, won 10 seats.¹⁰¹ Two other opposition parties — the ethnic-based Shan Nationalities League for Democracy and the Arakan League for Democracy — won 23 and 11 seats, respectively.¹⁰² Following the election, Aung San Suu Kyi and other opposition leaders pressed SLORC to accept the popular will and transfer power to the new parliament.¹⁰³

However, the SLORC refused to honour the results of the election, maintaining its grip on power.¹⁰⁴ It announced SLORC Declaration No. 1/90 of July 27, 1990 which practically rejected the result of the 1990 election. State power would not be transferred to the elected representatives.¹⁰⁵ Retaining the SLORC's power, the

⁹⁸ Burma's Lawyer Council (n73) 6.

⁹⁹ Announcement No. 1/88 of the State Law and Order Restoration Council, 18 September 1988, Paragraph 2 and 3.

¹⁰⁰ Burma's Lawyer Council (n73) 6.

¹⁰¹ Martin, Michael F., 'Burma's 2010 Elections: Implications of the New Constitution and Election Laws' (Congressional Research Service, April 2010), from <<https://www.fas.org/sgp/crs/row/R41218.pdf>> Retrieved 26 January 2010, 3.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Arendshorst (n83) 104.

¹⁰⁵ Burma's Lawyer Council (n73) 8.

Declaration recognised that the SLORC is the only organisation exercising legislative power, executive power, and judicial power. As quoted below, it stipulated that the representatives elected by the people are responsible only to draw up a new constitution.

“Consequently under the present circumstances, the representatives elected by the people are those who have the responsibility to draw up the constitution of the future democratic State”¹⁰⁶

Months later, spokesman of the SLORC explained that state power would not be transferred unless a constitution is promulgated.

“It has been said that power will be transferred to the government that will come into being in accordance with the law after the elections are held. Power could not be handed over immediately after the elections are held as government will have to be formed on the basis of a constitution. If power will be transferred hastily [without a proper procedure], it would lead to a shaky and weak government; any rational person can understand it. ...”¹⁰⁷

It is clear from the start that the SLORC will transfer power “systematically” to a government legally constituted on the basis of a constitution.¹⁰⁸

(5) The SPDC and the USDP (1997 – the present)

In 1997, the SLORC changed its name to the State Peace and Development Council (“SPDC”), but did not change any of its autocratic and oppressive policies.¹⁰⁹ Under the SPDC’s ruling, the country underwent the Saffron Revolution in 2007

¹⁰⁶ SLORC Declaration No. 1/90 of July 27, 1990, Paragraph 19.

¹⁰⁷ SLORC Declaration No. 1/90 of July 27, 1990, Paragraph 20.

¹⁰⁸ Maung Aung Myoe, ‘A Historical Overview of Political Transition in Myanmar Since 1988’ (National University of Singapore, August 2007), from <http://www.ari.nus.edu.sg/docs/wps/wps07_095.pdf> Retrieved 27 January 2007, 15.

¹⁰⁹ Ibid 104.

and later promulgated its third Constitution in 2008. At the present, the country has been governed by an elected civilian government under the Thein Sien's presidency.

(5.1) The Saffron Revolution

On 15 August 2007, the government made an announcement addressing massive increases in gas and oil prices that the poor were unable to reconcile.¹¹⁰ As a result, there were extensive increases in bus fares for the poor, who had been shunted to the outskirts of many cities and who could not afford the new rates.¹¹¹ As a response to this situation, thousands of Burmese Buddhist monks dressing in saffron and laypeople marched in protest of the military leadership of Myanmar (Burma).¹¹² In September, the SPDC began to crack down violently on the marchers, using of tear gas and smoke grenades, severe beatings with wooden and bamboo sticks, rubber batons and slingshots (catapults), rubber bullets and live rounds.¹¹³ More than thirty people were killed.¹¹⁴

To address widespread international condemnation of the SPDC's response to the protests, the government held a constitutional referendum on May 10, 2008 (delayed until May 24 in some areas due to Cyclone Nargis). The Constitution was finally adopted on the 29th of May 2008 after a nation-wide referendum and has become the highest law of the land since then¹¹⁵

¹¹⁰ Steinberg, David. "Globalization, Dissent, and Orthodoxy: Burma/Myanmar and the Saffron Revolution." *Georgetown Journal of International Affairs* (2008): 51-58.

¹¹¹ *Ibid* 53.

¹¹² McDaniel, Justin Thomas. *The Lovelorn Ghost and the Magical Monk: Practicing Buddhism in Modern Thailand*. Columbia University Press, 2013, 657.

¹¹³ Arendshorst (n83) 104.

¹¹⁴ *Ibid*.

¹¹⁵ *Ibid*.

Picture: The Saffron Revolution



Retrieved from http://www.matichon.co.th/news_detail.php?newsid=1424760359

(5.2) The 2008 Constitution

The SPDC noted in the preamble of the 2008 Constitution that: *“it made efforts to adopt multi-party democratic system and market economy in accord with the National situation”*.¹¹⁶ Reflecting this aspiration, the 2008 Constitution states that the Union’s consistent objective includes flourishing of a genuine, disciplined multi-party democratic system. Moreover, Article 7 of the 2008 Constitution states that: *“The Union practises genuine, disciplined multi-party democratic system”*.¹¹⁷ In relation to political parties, the 2008 Constitution recognises that: *“The Union shall enact necessary law to systematically form political parties for flourishing of a genuine, disciplined multi-party democratic system.”*¹¹⁸ In accordance with this, Article 405 (a) states that a political party shall *“accept and practise a genuine and discipline-flourishing multi-party democratic system”*.¹¹⁹

¹¹⁶ Constitution of the Republic of the Union of Myanmar 2008, Preamble.

¹¹⁷ Constitution of the Republic of the Union of Myanmar 2008, Article 7.

¹¹⁸ Constitution of the Republic of the Union of Myanmar 2008, Article 6 (d).

¹¹⁹ Constitution of the Republic of the Union of Myanmar 2008, Article 405.

(5.3) The 2010 Elections and its by-election (2012)

On 7 November 2010, the people of Burma had the opportunity to vote in the first elections after 1990 election. These elections were for the Pyithu Hluttaw (People's Assembly or lower house) of 440 seats (110 of which were reserved for non-elected military representatives), the Amyotha Hluttaw (the upper House of Nationalities) of 224 seats (56 reserved for the military), as well as for 14 state and regional assemblies.¹²⁰ The result of these elections are displayed in the Table below¹²¹

Table: The 2010 election result	
Winning parties	Percentage (seats in the general elections)
The Union Solidarity and Development Party (USDP)	76.5%
The National Unity Party (NUP)	5.5%
The Shan Nationalities Democratic Party	5%
The Rakhine National Development Party	3%
The National Democratic Force	1.4%

On the 30th of March 2011, the military junta was finally replaced by a civilian government lead by President Thein Sein.¹²² The President addressed the first regular session of Pyidaungsu Hluttaw. From the outset of his inaugural speech, he addressed that all the representatives including him are elected hluttaw members and, therefore, are all duty-bound to honour and safeguard the constitution of the Republic of

¹²⁰ Turnell, Sean. "Myanmar in 2010." (2011): 148, 149.

¹²¹ The Burma Fund UN Office, 'Burma's 2010 Elections: a comprehensive report' (Burma Library Online, January 2011), from <http://www.burmalibrary.org/docs11/BurmaFund-Election_Report-text.pdf> Retrieved 29 January 2015, 6-7.

¹²² Audrey (n71), 1643.

the Union.¹²³ Beyond safeguarding the constitution, the President also called all representatives to “*protect at risk to life the democratic nation to be built in line with the constitution*”.¹²⁴ Moreover, he explicitly referred to democratic transition in Myanmar as quoted below

*“From now on, Myanmar has initiated democratic transition. There are many tasks ahead after the multi-party democracy general elections, the first step of the process. Not only do we have to continue to work constitutionally and democratically in the nation’s legislative, executive and judicial affairs. But we have to build mutual cooperation and understanding between the Union Government and Region/State Government and between Pyidaungsu Hluttaw and Region/State Hluttaw.”*¹²⁵

Picture: Thein Sein, The first and present president of Myanmar



Retrieved from <http://news.voicetv.co.th/world/53133.html>

On 1 April 2012, the Thein Sein Government held its first by-election. The elections were for forty-five legislative seats that had been vacated by the ruling USDP party primarily due to elected representatives being appointed to the cabinet and therefore constitutionally required to resign their seat. In addition, a further three seats were also available in Kachin State at Phakant, Moe Kaung and Ba Maw. In this by-election,

¹²³ Sein, Thein. "President U Thein Sein Delivers Inaugural Address to Pyidaungsu Hluttaw." *New Light of Myanmar* (2011): 1-6.

¹²⁴ Ibid.

¹²⁵ Ibid.

the NLD was allowed to compete. The NLD won most of the seats except representatives of Sagaing Region and Shan State where the USDP and Shan Nationalities Democratic Party won the seats.¹²⁶ The party leader, Aung San Suu Kyi, was elected to be the representative of Yangon.¹²⁷

The Myanmar public will have an opportunity to select their leader through the general election on the 8th of November 2015. This general election will allow the voters for four levels of parliament representatives: 330 constituencies are set for elections to the House of Representatives (lower house of Pyidaungsu Hluttaw), 168 constituencies for the House of Nationalities (Amyotha Hluttaw or upper house of Pyidaungsu Hluttaw), 644 constituencies for regional or state parliaments and 29 constituencies for regional or state parliaments for national races. Unlike the 2010 Election, the Aung San Suu Kyi confirmed the NLD's participation in the upcoming general election. On the 13th of July 2015, she spoke to the press that: "This is to announce officially that the NLD will be contesting the elections that will be held on the 8th of November, ..." ¹²⁸

Aung San Suu Kyi expressed to an Indian journalist Karan Thapar that: *"If the NLD wins the elections and we form a government, I am going to be the leader of that government whether or not I am the president. Why not?"*¹²⁹ She further stressed that *"Do you have to be president in order to lead a country?"* Suu Kyi's wish on her and the NLD's ruling roles are not an intangible wish as the Tatmadaw publicly announced that the NLD's victory in the 2015 election shall be honored by the military. The Myanmar's Military Chief. General Min Aung Hlaing who announced that as far as the elections are carried out fairly their result will be respected, even if Aung San Suu Kyi's NLD wins a

¹²⁶ Republic of the of Myanmar Union Election Commission Announcement No. 21/2012 (3 April, 2012).

¹²⁷ Republic of the of Myanmar Union Election Commission Announcement No. 17/2012 (3 April, 2012).

¹²⁸ Oliver Holmes, 'Burma's Aung San Suu Kyi confirms her party will contest November elections' (The Guardian, 13 July 2015), from <<http://www.theguardian.com/world/2015/jul/13/burmas-aung-san-suu-kyi-confirms-her-party-will-contest-november-elections>> Retrieved 8 October 2015.

¹²⁹ Oliver Holmes and Jason Burke, 'Aung San Suu Kyi vows to lead Myanmar if her party wins election' (The Guardian, 7 October 2015), from <<http://www.theguardian.com/world/2015/oct/07/aung-san-suu-kyi-vows-to-lead-myanmar-if-her-party-wins-election>> Retrieved 8 October 2015.

majority.¹³⁰ He further said that: “*We (the Tatmadaw) will approve and support the results announced by the Union Election Commission.*”¹³¹

2.1.1.2 The Myanmar legal system and the rule of law

The Myanmar legal system is unique since it has integrated combination of the customary law of the family, codified English common law, local case law, and recent Myanmar legislation.¹³² The English laws such as those relating to prescription, arbitration, cooperate, juristic act, witness, trade law, property law, trust law, and civil law have continued to play their roles in the legal system.¹³³ In case that the English laws are inapplicable, the general law of Myanmar will be applied.

In 1965, the Chief Court addressed the sources of Burmese law through a case called *MaungKoGyi v Daw On Kin*. Justice MaungMaung directed judges to seek the Burmese law not in the common law, but from dhammasattha (Buddhist law texts) based on ‘lawkabalataya’ or the ‘principles upholding the universe’ Remedies such as certiori, madamus, habeas corpus were not used after 1962. They were not officially removed, but have never been granted by courts in Myanmar.¹³⁴ It could be said that Myanmar had applied natural law until it has become customary law consisting of Civil and Commercial law, Family law and Succession law. The judges apply laws in the trial holding the “Equalitarian Rights” principle which has developed from the traditional principle called “Phyahton”¹³⁵

¹³⁰ Aung Hla Tun, ‘Burma Militatry’s Chief Says Armed Forces Will Respect Vote’ (Irrawaddy, 25 August 2015), from <<http://www.irrawaddy.org/election/news/military-chief-says-armed-forces-respect-vote>> Retrieved 14 September 2015.

¹³¹ Ibid.

¹³² Alec Christie, ‘The Rule of Law and Commercial Litigation in Myanmar’ (2000) 10(1) PACIFIC RIM LAW & POLICY JOURNAL 47, 50.

¹³³ Ibid.

¹³⁴ Burma’s Lawyer Council (n69) 16.

¹³⁵ The ASEAN Study Report: laws, provisions, rules, regulations, governance working system and practice in Ministry of Justice of Myanmar, from http://asean.moj.go.th/mini1_1_0/wp-content/uploads/2013/04/law.pdf Retrieved on 10 March 2015.

(1) History of the rule of law in Myanmar

As a part of the Myanmar legal system, the rule of law concept has been repeatedly referred to by the Myanmar authorities since its post-independence era. From the year of independence to 1962, rule of law was attached to the Parliamentary democracy. Rule of law is integral to and necessary for democracy and good governance.¹³⁶ Attempts to democratise without a functional legal system in place have resulted in social disorder.¹³⁷ Given this linkage between democratisation and rule of law, the post-independence Myanmar government recognised that rule of law was essential to a parliamentary democratic system. Prime Minister U Nu spoke to the whole nation on the 12th of March 1948 that

*“The first essential condition for making democracy secure in our lives is to base all our activities firmly rule of law”.*¹³⁸

However, the rule of law was officially replaced by the “rule by law” after the coup led by General Ne Win in 1962. General Ne Win created a political system called “Burmese Way to Socialism” and implemented new “rule by law” system to replace “rule of law” system.¹³⁹ In new “rule by law” system under the socialist ideology, law is made by the authoritarian power.¹⁴⁰ Under this system, it should be noted that the army became the centre of society.¹⁴¹

The “rule of law” concept was reincarnated under the SLORC’s ruling. Rule of law became one of the political objectives proclaimed by the SLORC. One attempt of the SLORC to push the rule of concept forward was to reform the judiciary

¹³⁶ Randall Peerenboom, ‘Human Rights and Rule of Law: What’s Relationship?’ (2004-2005) 36 Geo. J. Int’l L. 809, 813.

¹³⁷ Ibid.

¹³⁸ Burma’s Lawyer Council (n57) 26.

¹³⁹ Myint, Tun. "Democracy in global environmental governance: issues, interests, and actors in the Mekong and the Rhine." Indiana Journal of Global Legal Studies 10.1 (2003): 287-314.

¹⁴⁰ Ibid.

¹⁴¹ Kurlantzick, Joshua. "Can Burma Reform?." FOREIGN AFFAIRS-NEW YORK-81.6 (2002): 133-147.

branch. It passed the SLORC's law no.2/88, the "Judiciary Law" which explicitly recognised central roles of law and court. Displaying the Judicial Principles, Section 2 of the law stated that: "justice will be administered independently according to law".¹⁴² Moreover, it further stated that: "Justice shall be dispensed in open court unless otherwise prohibited by law".¹⁴³

(2) The rule of law in the Myanmar Constitution

One key element of the rule of law requires separation of powers between legislator or law-maker, on the one hand, and those who 'execute' or administer the laws, on the other.¹⁴⁴ This element of the rule of law is clearly recognised by the Constitution of Myanmar. Section 11 of the 2008 Constitution separates three branches of the sovereign powers legislative power, executive power and judicial power.¹⁴⁵ Given this clear separation, it could be said that the Constitution aims at inhibiting the exercise of arbitrary state power. However, the constitution empowers the army as one unit of the organisations in the constitution.

(2.1) Legislative Power

The constitution of Myanmar states that the legislative power is functioned by the Parliament called "PyidaungsuHluttaw" This bicameral legislature consists of: PyithuHluttaw or House of Representative and AmyothaHluttaw or Nationality Council. The House of Representative is consisted of no more than 440 members. For the House of Representative, no more than 330 members are elected through the general election whereas 110 members can be nominated by the Commander-in-Chief of the army.¹⁴⁶ The Nationality Council is consisted of not more than 224 members. According to the Constitution, each Regions or States equally has twelve representatives.¹⁴⁷ Moreover, each

¹⁴² The State Law and Order Restoration Council: The Judiciary Law (State Law and Restoration Law No. 2/88) September 26th, 1988, Section 2(a).

¹⁴³ Ibid, Section 2 (e).

¹⁴⁴ T. R. S. Allan, *Constitutional Justice: A Liberal Theory of the Rule of Law* (Oxford University Press 2003) 32.

¹⁴⁵ Constitution of the Republic of the Union of Myanmar 2008, Section 11.

¹⁴⁶ Constitution of the Republic of the Union of Myanmar 2008, Section 74.

¹⁴⁷ Constitution of the Republic of the Union of Myanmar 2008, Section 141 (a).

Self-Administered Division or Self-Administered Zone has one representative.¹⁴⁸ The aforesaid election process can have up to 168 of the elected members; whereas the Commander-in-Chief can nominate up to 56 members.¹⁴⁹

(2.2) Executive Power

The constitution states that the President is the leader of the state and is the head of Executive branch. The government of Myanmar consists of President, Vice President, Minister of the Union, and Prosecutor of the Union. The ministers will be nominated by the President with the PyidaungsuHluttaw's approval. Reflecting the rule of law principle, the President and Vice President are bound by the Constitution and laws. This limitation of power is clearly recognised by Section 66 of the Constitution which can be read as the following: *"The President or the Vice-Presidents shall exercise duties and powers vested by this Constitution and other laws"*.¹⁵⁰

(2.3) Judicial Power

In the mid of the twentieth century, the military seized the power and changed the ruling system including the court and justice system to communism. It abolished the high court and there's the appointment of Chief Court instead. Under the 1974 Constitution, it established the Central Court, District Court, and other Courts. The military issued a series of laws which changed the structure of court system and justice system such as the Law of Judge (1998) which established courts throughout the country. However, this law was replaced by the SPDC's Law of Judge (2000).¹⁵¹

According to the constitution of Myanmar, there exist three types of Courts¹⁵² Court of Justice, Court-Martial, and Constitutional Tribunal of the Union. Court of Justice consists of Supreme Court of the Union, High Court of Region, High Court of the State, District Court, and Township Courts. For the self-governing areas, the government is required set up a local court for those areas. Court-Martial is responsible for army-related

¹⁴⁸ Constitution of the Republic of the Union of Myanmar 2008, Section 141 (a).

¹⁴⁹ Constitution of the Republic of the Union of Myanmar 2008, Section 141 (b).

¹⁵⁰ Constitution of the Republic of the Union of Myanmar 2008, Section 66.

¹⁵¹ U Sein Than, Director General Supreme Court of the Union, Current Judicial System, Formation and Function of Courts in Myanmar, Paper presented at Keio University Law School, Japan, 5 December 2012, available online at , Retrieved 20 March 2013.

¹⁵² Constitution of the Republic of the Union of Myanmar 2008, Section 293.

disputes. Constitutional Tribunal of the Union consists of 9 judges including, the chairman of the constitutional court¹⁵³. This Constitutional Tribunal is vested with powers, for example, to interpret the provisions under the Constitution, determine constitutionality of the laws promulgated by the Parliament, and determine constitutionality of the measures of the executive authorities of the Union.¹⁵⁴

(3) The rule of law at the regional and international level

In addition to formulating and developing its domestic policies towards the rule of law, the Myanmar government's policy towards rule of law promotion has been sharpened and influenced by the external pressure. Under the SPDC, after the Saffron Revolution, the rule of law concept was also repeated by the ruler. The SPDC made the rule of law one of its top priorities to ensure the military's legitimacy based on "multi-party democracy" and the "rule of law."¹⁵⁵ Another driving reason behind the SPDC's commitment to promote rule of law was the need to attract foreign investment.¹⁵⁶

An official manifestation towards rule of law as well as other political objectives is clearly reflected in the ASEAN Charter, a legally-binding treaty to which Myanmar is a party. From the outset of the Charter, Article 1 (7) states that the object and purpose of the ASEAN are

*"To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN".*¹⁵⁷

¹⁵³ Constitution of the Republic of the Union of Myanmar 2008, Section 320.

¹⁵⁴ Constitution of the Republic of the Union of Myanmar 2008, Section 322.

¹⁵⁵ Donald M. Seekins, 'Myanmar in 2008: Hardship, Compounded' (2009) VOL. XLIX, NO. 1, ASIAN SURVEY 166, 170.

¹⁵⁶ Alec Christie, 'The Rule of Law and Commercial Litigation in Myanmar' (2000) 10(1) PACIFIC RIM LAW & POLICY JOURNAL 47, 47.

¹⁵⁷ The ASEAN Charter, Article 1 (7).

Influenced by the Charter, the ASEAN's political and security cooperation (APSC) issued a blueprint called "ASEAN Political-Security Community Blueprint (2009-2015)" exhibiting political and security reforms to be done by each ASEAN Member State. One of the objectives includes promotion of rule of law.¹⁵⁸ Furthermore, the blueprint referred to strengthening of judiciary systems and legal infrastructure.¹⁵⁹ Given participation of Myanmar in the ASEAN community, it appears reasonable to rule of law development in Myanmar is not only led by the internal policy, but also led by the regional cooperation.¹⁶⁰

Under the Thein Sein's Presidency, the Myanmar government repeatedly made statements supporting rule of law in Myanmar. For example, President Thein Sein stated in his inaugural statement to Pyidaungsu Hluttaw that

*"...we need to convince some nations with negative attitude towards our democratization process that Myanmar has been committed to see the interests of the nation and the people to serve those interests only in the constitutional framework and not to try to disrupt democratization process outside the constitutional framework and harm peace, stability and the rule of law."*¹⁶¹

However, a clearer and more-detail policy of Myanmar government towards rule of law promotion was evidenced in the UNGA Res 65/102 of 13 January 2012, a resolution which Myanmar adopted. The resolution recognizes promotion of the rule of law at the national and international levels. The Resolution reaffirms that human rights, the rule of law and democracy are interlinked and mutually reinforcing.¹⁶² Moreover, the resolution notes that

¹⁵⁸ ASEAN Political-Security Community Blueprint, 3.

¹⁵⁹ Ibid.

¹⁶⁰ However, to avoid over expectation on the role of ASEAN, one should pay attention to passive role of ASEAN in interfering internal affair of Member States.

¹⁶¹ Thein Sein (n151) 6.

¹⁶² UNGA Res [A/66/475] 13 January 2012.

“...the advancement of the rule of law at the national and international level is essential for realization of sustained economic growth, sustainable development, the eradication of poverty and hunger and protection of all human rights and fundamental freedoms...”¹⁶³

2.1.1.3 Enhancing good governance

Despite having no universally accepted definition,¹⁶⁴ the term “governance”, as referred to by several international organizations, implies processes and traditions in which power and responsibilities are exercised and to what extent the people’s right to say and benefits are protected.¹⁶⁵ OECD and the World Bank stressed power exercising. OECD noted defined governance as: *“The exercise of political, economic and administrative authority necessary to manage a nation’s affairs”*¹⁶⁶ While, the latter defined governance as: *“The process – by which authority is conferred on rulers, by which they make the rules, and which those rules are enforced and modified”*¹⁶⁷ Apart from how power and authorities are exercised, governance involves how national resources are managed and how relations among the state, citizens and the private sector are regulated.¹⁶⁸ It should be noted that the scope of governance covers how citizens or other stakeholders have their say.¹⁶⁹

¹⁶³ Ibid.

¹⁶⁴ Melvin LM MBao and GG Komboni, ‘Promotion of good governance and combating corruption and maladministration: the case of Botswana’ (2008) 12 Law Democracy & Dev. 49, 50.

¹⁶⁵ Wood, Ngaire. “The Challenge of Good Governance for the IMF and the World Bank Themselves.” 2000 28(5) World Development: 824.

¹⁶⁶ OECD, Applying Strategic Environmental Assessment: Good Practice Guidance for Development Co-Operation (OECD Publishing 2006) 147.

¹⁶⁷ The World Bank, ‘What is Governance?’ (The World Bank) <<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/EXTMNAREGTOPGOVERNANCE/0,,contentMDK:20513159~pagePK:34004173~piPK:34003707~theSitePK:497024,00.html>> Retrieved 19 January 2014.

¹⁶⁸ MBao and Komboni (n164), 50.

¹⁶⁹ Michael Lockwood et.al, ‘Governance Principles for Natural Resource Management’ 23 (2010) 986, 987.

The World Bank defined “good governance” as efficient and transparent conduct of public affairs and management of public resources, thus being more fundamental to economic development than any specific policy intervention. Moreover, it can be thought of as the creation of an environment in which beneficial policy can be formulated and implemented in a socially inclusive manner. The Thein Sein government has launched a wide range of governance reform programs including those concerning political governance and economic governance.

Right to Expression

(1) Political governance reform

Article 364 of the Constitution of Myanmar allows for broad interpretation in terms of its guarantees of the rights to freedom of expression and freedom of assembly.¹⁷⁰ The Myanmar Parliament enacted the Right to Peaceful Assembly and Peaceful Procession Act on the 2nd of December 2011 with an aim to enable the people to systematically exercise their basic right to peaceful assembly and peaceful procession and to provide them with legal protection.¹⁷¹ In addition this right, the Myanmar Parliament enacted the Labor Organization Law on the 11th of October 2011 which allows the labour organizations to carry out peacefully in going on strike and carrying out other collective activities.¹⁷²

Apart from development of the rights to freedom of expression and freedom of assembly, censorship has been significantly relaxed. Since the army first began controlling the levers of state power in 1962, numerous publications have been censored or banned; hundreds of journalists, writers, poets, playwrights and cartoonists, as well as pro-democracy activists have been arrested, detained or sentenced to long prison terms, tortured, ill-treated or otherwise harassed, even killed, and tens of thousands of ordinary people have been punished simply for peacefully expressing their views.¹⁷³

¹⁷⁰ The Constitution of Myanmar, Section 364.

¹⁷¹ The Right to Peaceful Assembly and Peaceful Procession Act on the 2nd of December 2011 Section 3 (b).

¹⁷² The Labor Organization Law on the 11th of October 2011, Section 22.

¹⁷³ Venkat Iyer, Acts of Oppression: Censorship and the law in Burma (ARTICLE 19 1999) 3.

However, the Press Scrutiny and Registration Department (PSRD) announced on the 20th of August that 2012 that pre-publication censorship of the country's media is abolished. Tint Swe, the head of the PSRD, stated that:

*“Any publication inside the country will not have to get prior permission from us before they are published. From now on, our department will just carry out registering publications for keeping them at the national archives and issuing a license to printers and publishers...”*¹⁷⁴

In general, the Thein Sein government has emphasised on administrative reform, removing bureaucratic impediments and corruption in government and the business environment for the broader population.¹⁷⁵ Reflecting this endeavour, President Thein Sein established the Public Services Performance Appraisal Task Force to review the operations of all government ministries dealing with the public, cut red tape, streamline decision making, restructure organization where necessary, and change organizational culture to improve the delivery of public services.¹⁷⁶ Moreover, at the international level, the Myanmar government declared the country's intention to join the Open Government Partnership (OGP) in November 2012. OGP was launched in 2011 to provide an international platform for domestic reformers committed to making their governments more open, accountable, and responsive to citizens.¹⁷⁷ The OGP aims at securing *“concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance”*

¹⁷⁴ BBC, ‘Burma abolishes media censorship’ (BBC News, 20 August 2012), from <<http://www.bbc.co.uk/news/world-asia-19315806>> Retrieved 9 October 2015.

¹⁷⁵ Priscilla Clapp and Suzanne DiMaggio, ‘Sustaining Myanmar’s Transition: Ten Critical Challenges’ (AsiaSociety, 24 June 2013), from <http://asiasociety.org/files/pdf/Sustaining_Myanmars_Transition.pdf> Retrieved 9 October 2015, P.4.

¹⁷⁶ Ibid.

¹⁷⁷ Open Government Partnership, ‘What is the Open Government Partnership?’ (Open Government Partnership, 2014), from <<http://www.opengovpartnership.org/>> Retrieved 9 October 2015.

(2) A case study of extractive industry: implementation of the EITI

This research finds that the Myanmar government's policies towards improved transparency and accountability are not only a hypothetical claim, but also practically implemented. One illustrative example in this regard is the Myanmar government's decision to join the EITI – an association under Norwegian law which seeks to promote transparency in the extractive industries through regular publication of the revenues accruing to the state. President Thein Sein recognised EITI as a part of broader reform efforts in Myanmar and expressed his support for implementation of EITI by saying in an interview with EITI in June 2012 that

“We are preparing to be a signatory to the Extractive Industries Transparency Initiative to ensure that there is maximum transparency in these sectors and try to make sure the benefits go to the vast majority of the people and not to a small group”¹⁷⁸

President Tein Sein publicly announced that Myanmar would implement the EITI and appointed U Soe Thein, Minister of the President's Office, to lead EITI implementation in Myanmar in December 2012.¹⁷⁹ The Leading Authority for the Myanmar Extractive Industries Transparency Initiative was established under the President Office's Notification¹⁸⁰ No. 99/2012 issued on 14 December 2012. The primary functions of this Leading Authority are quoted below

“The Leading Authority is meant to ensure better management for extractive industries of natural resources, develop good investment environment, create

¹⁷⁸ EITI, 'Myanmar considers EITI' (EITI, 13 July 2012), from <<https://eiti.org/newsevents/myanmar-considers-eiti>> Retrieved 10 October 2015.

¹⁷⁹ EITI, 'Myanmar appointed EITI lead' (EITI, December 2012), from <<http://eiti.org/news/myanmar-appoints-eiti-lead>> Retrieved 31 January 2014.

¹⁸⁰ Ibid.

opportunity for a frank and transparent discussion between private investors and the people... ”¹⁸¹

In May 2013, Myanmar together with the United States reaffirmed their shared objectives to manage their natural resources, including oil and gas, and the revenues they generate, transparently and for the benefit of all their citizens.¹⁸² The Government of the Republic of the Union of Myanmar expressed its intention to continue to reform its energy sector, and to participate in the G8’s Partnership for extractives transparency in conjunction with the United States – an initiative that seeks to demonstrate how G8 members and partner countries, companies, and civil society are working together to advance greater transparency in extractives industry management.

In December 2013, Clare Short, the Chairman of EITI International, made a visit to Myanmar and commended President Thein Sein Myanmar’s progress towards becoming a member of EITI. President Thein Sein reaffirmed the need for better governance of Myanmar’s natural resource wealth and necessity of the EITI by stating that:

*“We want to use the EITI to ensure that these resources are developed and managed in a transparent manner for the **sustainable benefit of our people**. Political and economic reforms are an important part of the democratization process. **Becoming a member of the EITI will be a tangible result of these reforms.**”¹⁸³*

¹⁸¹ U.S. Department of States, ‘United States G8 Partnership with Myanmar on Extractives’ (U.S. Department of States, 14 June 2013), from <<http://www.state.gov/e/enr/rls/210632.htm>> Retrieved 10 October 2015.

¹⁸² Ibid.

¹⁸³ EITI, ‘Myanmar moving towards the EITI’ (EITI, 10 December 2013), from <<https://eiti.org/news/myanmar-moving-towards-eiti>> Retrieved 10 October 2015.

Myanmar became an EITI candidate country in July 2014, and has until January 2016 to produce its first EITI Report. Taking the EITI implementation into account, it could be said that the Myanmar government especially that of President Thein Sein is enthusiastic to promote transparency and governance in the upstream industry.

Table: Summary Democratisation in Myanmar

1.1 Democratisation in Myanmar		
1.1.1 Policies towards democratisation		
Names of the instruments	Description and coverage	Agencies
The Constitution of Myanmar (2008): Preamble, Section 6(d), 7, and 405	Constitutional recognition of disciplined multi-party democratic system	-
President Thein Sein's inaugural statement on 30 March 2011	Endorsement of democratic transition and the multi-party election	President Thein Sein and the Parliament
The Union Election Commission Announcement No. 17/2012 (3 April, 2012) and No. 21/2012 (3 April, 2012)	By-election which the NLD won most of the seats	The Election Commission
Aung San Suu Kyi's statements	Confirmation of the NLD's participation in the 2015 election	A political party
General Min Aung Hlaing's statement	The military's acceptance of the 2015 election's outcome	The military

1.1.2 International agreements and cooperation		
The ASEAN Charter: Article 1(7)	Endorsement of the principle of democracy	ASEAN
1.2 The rule of law in Myanmar		
1.2.1 Policies towards the rule of reform		
Names of the instruments	Description and coverage	Agencies
The Constitution of Myanmar (2008): Section 11, 74, 141, and 293	Separation of sovereign powers (legislative, executive, and judicial)	-
The Constitution of Myanmar: Section 66	Limitation of the President and Vice President powers	-
The Constitution of Myanmar: Section 320 and 322	Authority of the Constitutional Tribunal to determine constitutionality of laws and executive measures	-
President Thein Sein's inaugural statement to the Parliament	Endorsement of the rule of law	President Thein Sein
1.2.2 International agreements and cooperation		
ASEAN Charter: Article 1(7)	Endorsement of the principle of rule of law	ASEAN
ASEAN Political-Security Community Blueprint (2009-2015)	Endorsement of the rule of law at the regional level	ASEAN

The UNGA Res 65/102 of 13 January 2012	Endorsement of the rule of law at the international level	The United Nations
1.3 Governance reform in Myanmar		
1.3.1 Policies towards governance reform		
Names of the instruments	Description and coverage	Agencies
The Constitution of Myanmar (2008): Section 364	The rights to freedom of expression and freedom of assembly	-
The Right to Peaceful Assembly and Peaceful Procession Act (2011)	The Right to Peaceful Assembly and Peaceful Procession	The Parliament
The Labour Organisation Law (2011)	Right of a labour organisation to going on strike and carrying out other collective activities	The Parliament
The Press Scrutiny and Registration Department (PSRD)'s announcement (August 2012)	Abolishment of pre-publication censorship	The Press Scrutiny and Registration Department
The Public Services Performance Appraisal Task Force	Improvement of the government's efficiency	President Thein Sein
The President's statement on the EITI (June 2012)	Endorsement of EITI implementation in Myanmar	President Thein Sein
The President Office's Notification No. 99/2012 issued on 14 December 2012.	Establishment of the leading authority (EITI implementation)	President Thein Sein

The President's statement on the EITI (July 2014)	Usage of the EITI as a means to the sustainable benefit of the Myanmar people	President Thein Sein
1.3.2 International agreements and cooperation		
Names of the instruments	Description and coverage	Agencies
The Open Government Partnership (OGP)	Promotion transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance	A multilateral initiative (launched by the governments of Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the United Kingdom and the United States)
The G8's Partnership for extractives transparency	Endorsement of EITI implementation in Myanmar	The United States Government and the Myanmar government
The Extractive Industries Transparency Initiatives (EITI)	Promotion of transparency in the Myanmar upstream industry and empowering the Myanmar public to hold their government accountable	The EITI Association (under Norwegian law)

2.1.2 Security policies

A study of security and laws relating to security of Republic of Myanmar is inextricably linked with the political development of Myanmar. Therefore, we will examine the history of politics and ruling to the extent that is necessary to the security issues. The details concerning the history or the development of politic and ruling of Myanmar has been studied in chapter 1. After gaining her independence from British Empire, Myanmar has faced

a series of political chaos and was ruled by the military dictator. In the 60s, the Myanmar government adopted the economic plan called “the Burmese Way to Socialism.” Unfortunately, this socialism approach caused a country’s severe poverty.¹⁸⁴

Nowadays, Myanmar is still facing problems arising from confrontation between the military and the armed force of the ethnic minorities. Hence, a study on stability and security of Myanmar is very important for Thailand. Myanmar is our neighbor country and its security will definitely have impact on Thailand. This study will enable us to be more prepared and aware of possible effect from the internal instability of Myanmar. This chapter will be the study about an overview of the security policy and the security within Myanmar. This is to be in line with ASEAN Political - Security Community (APSC) Blueprint. Since Myanmar is one of the members in ASEAN, no one will be treated differently from other ASEAN countries that have signed the agreement.

2.1.2.1 Promotion of peace and stability in region

(1) The security policy

The management of security of Myanmar was set in the constitution as the supreme law of the country¹⁸⁵. However, the Myanmar army can exercise the political influence beyond any other organization in the country regardless of the fact the current Constitution has greatly decreased the power of Myanmar army. The Myanmar army still actives in political situations especially those that affect the security of the country.

The structure of the politics and ruling and the relationship of governmental organizations of Myanmar have the great deal in maintaining the security of the country. In the past, Myanmar was ruled by dictatorship. Currently, Myanmar was ruled by civilian government. However, the army still has great political influence.

According to the history of Myanmar, there are 3 important incidents urged dictatorship government to strengthen the army to protect their securities, which are

¹⁸⁴ Fisher, Brendan, and Treg Christopher. "Poverty and biodiversity: measuring the overlap of human poverty and the biodiversity hotspots." *Ecological Economics* 62.1 (2007): 93-101.

¹⁸⁵ Constitution of the Republic of the Union of Myanmar 2008 enacted on 30 May 2008.

1. The anti-government movement by people of Myanmar

After the civilian government of General Ne Win was overthrown, the dictator government allowed the set-up political parties in 1989. Since the military government of Myanmar at the time desired to have the election on May 27, 1990. The result of the election showed that National League of Democracy: NLD, led by Aung San Suu Kyi, won the election. This ran against the expectation of the military government. The National Unity Party which was the owned by the military government lost the election. The military government, hence, rejected the NLD and used the power to suppress the people who opposed the government.¹⁸⁶

2. The need to rule themselves of the minorities in Myanmar

When Myanmar was colonized by the British, it was divided into 2 parts: the old Myanmar, that lived the Myanmar, Mon, and Karen; and the land along the borders that lived the minorities such as Taiyai, Chin, and Kachin. The British bought Myanmar into part of India and let the minorities ruled themselves. Since those who lived in Myanmar are differed in terms of ethnicity, language, religion, and cultures, and the geographic limitation that allowed the minorities to live in the high mountains, it is difficult to unite Myanmar together. This made the structure of ruling after being granted independency scatter, although the current constitution of Myanmar attempts to rule the entire country. Even though there were attempts to negotiate ceasefire agreements between the Myanmar army and the army of the minorities, the Myanmar government army broke the promises several times. This caused the internal insecurity of Myanmar until now¹⁸⁷.

3. The pressure from foreign countries

The Myanmar government has resisted any interference of western countries and international organizations. North Korea may be an example for Myanmar for preventing

¹⁸⁶ Chanvit Kasetsiri, "Burma History and Politics", Bangkok, social science and humanity printing foundation (2009), 132-194.

¹⁸⁷ Official of the Civil Service Commission "The Myanmar service management" Nontaburi, Korakrok Printing 2014.

the interference since, in the past, former Myanmar government planned to build Nuclear Power Plant by using technology from Russia. This was to strengthen the army¹⁸⁸.

Hence, Myanmar organized the system to deal with the security as below:

(1.1) General situation

In general situation, there are 3 organizations for the security management of Myanmar government: Armed Forces; Myanmar Police Force; and Intelligence Community. The 2008 Constitution states that Myanmar army assumes a duty protect the citizen both internal and external threats¹⁸⁹. All Myanmar armies must be under the command of National Security Unit¹⁹⁰. And the National Security Unit has the power to overrule all citizens to maintain peace. The supporting army will be led by the army which will protect the citizens along borders. The police is responsible to protect people living in cities.¹⁹¹

The National Intelligence Bureau (or “NIB”) assumes a duty is to investigate the news over the country, evaluate and confirm regarding evidences from the story telling, rumors, or the claims that cannot be proved¹⁹². However, after the fall of General Khin Yoon, the military government adjusted the NIB to be under the army rules¹⁹³ and the regional agents must be under the army leader¹⁹⁴.

¹⁸⁸ Khlopkov, A., & Konukhov, D., Russia, Myanmar and nuclear technologies. center for energy and security studies, 2011, 29, from <http://ceness-russia.org/data/doc/MyanmarENG.pdf> Retrieved 10 March 2015.

¹⁸⁹ Constitution of the Republic of the Union of Myanmar 2008, section 339.

¹⁹⁰ Constitution of the Republic of the Union of Myanmar 2008, section 338.

¹⁹¹ A.Selth (2013). Burma's Security Forces: Performing, Reforming or Transforming. https://www.griffith.edu.au/__data/assets/pdf_file/0011/559127/Regional-Outlook-Paper-45-Selth.pdf. Retrieved 10 March 2015.

¹⁹² Ibid.

¹⁹³ Mratt Kyaw Thu , Police receive orders to reform National Intelligence Bureau, Myanmar time, from <http://www.mmmtimes.com/index.php/national-news/12757-police-receive-orders-to-reform-national-intelligence-bureau.html>, Retrieved 15 March 2015.

¹⁹⁴ The National Intelligence Bureau: NIB, from <http://salweennews.org/home/?p=530> Retrieved 18 June 2015.

(1.1) The special security in emergency case

The constitution establishes the point for exercising its control in many cases. This will allow the National Defence and Security Council to take control Myanmar instead of the President. The cases for emergencies are as followed:

Firstly, the case that the president believes that or the local ruling unit proposed that the power of ruling is unenforceable either in region or state;¹⁹⁵

Secondly, the fall of Myanmar or there is enough reason to believe that the state of emergency shall be declared due to the fall of Myanmar or something caused it to be banished from riot, violence, or the unfair use of armed force; and¹⁹⁶

Thirdly, the case that the president finds or the local ruling proposes that the state of emergency shall be declared due to the threats to lives, homes, public belongings in regional or state level.¹⁹⁷

If any of the situations above occurred, the president and the national security unit have the power to declare state of emergency. For example, in the second situation, the president will transfer the power of law issuance, management, and court to Commander-in-Chief of the Defence Services in order to make the situation back to normal as soon as possible. It will deem that the power of law issuance of the parliament and governmental agencies be banished when there is the state of emergency. Moreover, the Parliament will be out of power¹⁹⁸.

When the commander-in-chief exercises the power after the state of emergency has been declared, the commander has the right to use such power. The legislative branch can use power itself or have the commander use it. The executive power and the court power might be assigned to the suitable organization or person during the state of emergency. The commander-in-chief will abolish the basic right of the citizen in the area where permission was asked. Moreover, in the emergency situation, the constitution

¹⁹⁵ Constitution of the Republic of the Union of Myanmar 2008, section 410.

¹⁹⁶ Constitution of the Republic of the Union of Myanmar 2008, section 417.

¹⁹⁷ Constitution of the Republic of the Union of Myanmar 2008, section 412.

¹⁹⁸ Constitution of the Republic of the Union of Myanmar 2008, section 418.

states that National Security Unit will be the organization using the sovereign power instead of the president.¹⁹⁹

From the mentioned facts, the power to overcome emergency situations belongs to the military and armies or the organization that recruited those in army to lead. As a consequent, the army is still powerful in managing Myanmar and is responsible to protect its citizen according to the constitution.

(2) National security unit of Republic of the Union of Myanmar

(2.1) The National Defense and Security Council

As mentioned, though the 2008 constitution of Myanmar reduced the power of the military, the military still have actual power over the politics. When we consider the constitution, it is outstanding that this constitution is the attempt of Myanmar government in maintaining the power. This is a major different of this constitution and the previous two which prohibited the cooperation between any races in Myanmar. This risked the separation of powers. Hence, the political and ruling of Myanmar from being in the hand of the State Law and Order Restoration Council: SLORC and the State Peace and Development Council: SPDC to be in the hand of The National Defence and Security Council. The composition of The National Defence and Security Council comprised of

- 1) The President
- 2) 2 Vice Presidents
- 3) Speaker of House of Representative
- 4) Speaker of House of Nationalities
- 5) Commander-in-Chief of the Defense Services
- 6) Deputy Commander-in-Chief of the Defense Services
- 7) Minister of Defense
- 8) Minister of Foreign Affairs;
- 9) Minister of the Interior and
- 10) Minister for Border Affairs (administer the country in case of emergency).

The National Defense and Security Council plays an important role in maintaining order in crisis. The constitution sat that the President and the National

¹⁹⁹ Constitution of the Republic of the Union of Myanmar 2008, section 431.

Defence and Security Council announced that Myanmar can enter emergency state and use the power of the National Defense and Security Council to govern and rule Myanmar temporarily instead of President. However, the constitution set that the time for state of emergency may no longer than 1 year from the date of announcement.

(2.2) Army

The army is one of the organizations recognized by the 2008 constitution to play an important role in Myanmar. Myanmar army has influences in Myanmar society in all parts. The military is also in monitoring media censorship and newspaper from foreign countries²⁰⁰ to maintain internal securities especially for the military security.

The role of Myanmar army in control of securities has become clearer after the overthrowing of General Ne Win in 1962. The army has the important role in joining the country as the union after being freed from the United Kingdom in 1948. After Myanmar military government overthrown Pang Luang agreement and the first constitution, the civil war of the minorities occurred so many times. When constitution 2008 launched, in Chapter 7 Section 337-344 set that the army has the right in protecting the union. All armed forces and of the minorities must be under control of the military or, it can be said that, if the armed forces of the minorities denied the ruling of the military, Myanmar military will attack those minorities lawfully. However, the extended fighting damages both the minorities and the military. The government has the policy for the minorities to turn themselves in without being punished. But, later, the military usually use the violent policy and open for negotiation²⁰¹.

(2.3) Polices

The role of military government about securities has become clearer after the overthrowing of General Ne Win in 1962. The Myanmar military was the main force of Myanmar government. Apart from using the military to deal with the armed

²⁰⁰ Steinberg, D. I.. moving Myanmar: the future of military prominence.2013, from <http://kyotoreview.org/issue-14/moving-myanmar-the-future-of-military-prominence/> Retrieved 9 June 2015.

²⁰¹ Khajadpai Buruspat. Ibid.

forces of the minorities and the drug producer in remote area, the Myanmar military must sustain of the peace in the city as well.

In such time, the role of Myanmar police has not become clearer. However, this organization has the important role in governing and ruling the country. It still has the continuous development and growing. Though the army has more power, currently, Myanmar police has the bigger size and more power than previous and becomes the part of the change and was controlled by the mixture of government and civilian. When Myanmar military (Tatmadaw) was back into power in 1988, SLORC (The State Law and Order Restoration Council) and SPDC (The State Peace and Development Council) paid attention to the important of the police force, which supported maintaining peace and order both internally and externally such as Saffron Revolution in 2007. The special police force worked together with the military. Police arrested those protesters on the streets and investigated them for the military. However, police is differs from the army. All data of the army will be top secret. But, for the police, there will be the exchange of information with other organizations such as police in foreign country in order to solve international crime²⁰².

(3) Current issues regarding Security of Republic of the Union of Myanmar

(3.1) Domestic conflicts

(3.1.1) Political Security and Civil War

One of the most important problems that obstruct Myanmar from development is the political conflict since there are many military governments being overthrown.

In the past, Myanmar changed the ruling the country many times and attempted to rule by democracy. However, the army still be the powerful source that interfered with the coup and overthrown the government. Military government was protested by citizens of Myanmar who suffered from their ruling. The revolution was summarized as the below table.

²⁰² Selth, A. Ibid.

The table shows the political changes and the civil war of Myanmar since 1947 until now.²⁰³

Table: The political changes and the civil war of Myanmar since 1947 - present		
Date	Events	Remarks
January 1947	General Ong San signed the agreement with government of England to liberate Myanmar	
February 1947	General Ong San signed the Pang Lhong agreement with the leader of the minorities in order to create unity of Myanmar	July 19, 1947 General Ong San was assassinated by the armed force that loyal to the politicians who wanted to be back to power
January 1948	Myanmar has been independent and changed to the parliament system in ruling according to England. Au Nu was the first elected Prime Minister	

²⁰³

The political changing in Myanmar, from

http://www.tacdburmese.org/web/index.php?option=com_content&view=article&id=58:2010-11-16-05-42-04&catid=36:2010-10-21-08-06-37&Itemid=58 Retrieved 9 June 2015.

Table: The political changes and the civil war of Myanmar since 1947 - present		
Date	Events	Remarks
March 2, 1962	General Ne Win overthrown Au Nu government and appointed himself as the Prime Minister	July 1962 Ne Win government announced that Myanmar will socialism. Set up the socialist party of Myanmar. Abolish parliament system. Took over politics and economics. Seize business to be owned by government. Managed all media.
1974	General Ne Win seized all powers as the leader of Burmar and set up military court	
August 8, 1988	There was 8888 Uprising to call for democracy throughout Myanmar	March 1988, Ong San Suu Kyi returned to Myanmar
September 1988	Myanmar soldier under general Ne Win organized State Law and Order Restoration Council-SLORC with the promise to host the general election according to democracy. And Ong San Suu Kyi set up NLD	

Table: The political changes and the civil war of Myanmar since 1947 - present		
Date	Events	Remarks
1990	There was the election for the first time in 30 years. Ong San Su Kyi won landslide. But SLORC did not admit the result and did not return power to the people. And, it grounded Ong San Suu Kyi in her own house.	SLORC ordered Ong San Suu Kyi to be grounded.
1997	SLORC was renamed State of Peace And Development Council = SPDC General Tan Chuay is the Speaker of the Parliament, Commander-in-chief and Khin Nyunt as the Prime Minister and Cleark of the Parliament. General Mhong Aey overlooked military in the region.	
2007	Saffron Revolution	
2008	The announcement of the current constitution of Myanmar 2008	
March 30, 2010	There is the general election. General Thein Sein is the first President of Myanmar	November 13, 2010 Myanmar military government released the grounding of Ong San Suu Kyi

Nowadays, Thein Sein is the leader of Myanmar and has been trying to change Myanmar to true Democracy. There is an attempt to create or reestablish relationship with other nations. President Thein Sein publicly announced that

Myanmar will try to eliminate all conflict in the army and give priority to political security²⁰⁴. This is to be in line with peace and stability in ruling and in order to develop the country. Once, Thein Sein visited the United States of America to meet with President Barack Obama. Obama mentioned “Principled Engagement” that was announced in 2009. Its main target is to support democracy in Myanmar. This policy will focus on the negotiation with the leader of Myanmar. If it is not working, the United States would excommunicate. It could be said that the strategy the United States has adopted is “half building relationship half boycott.”²⁰⁵

(3.1.2) The problems with Minorities

Myanmar is the diverse country. The minorities are scattered all over the country. These minorities have their own original languages, religions, believes, and cultures that are different. There are 135 official minorities in Myanmar. There are 240 languages used²⁰⁶. The Burmese is the majority. The Burmese inhabit in the middle of the country or in Irrawaddy triangle while the minorities are living the border areas²⁰⁷. With these differences, there have been a series of anti-military government movements led by the minorities, especially before the general election in 2007 until now. The fighting between military government and minorities are more violent especially in Shan state, Kayin state, and Kachin state. Shan state is the most diverse state. Kayin State shares border with Thailand’s Mae Sod, Tak province. And, Kachin state is in the north border of Myanmar sharing border with China. The population of Kachin is around 1.2 million people. The geography of Kachin involves high mountains and is covered with snow and very cloudy throughout the year²⁰⁸

²⁰⁴ Prapat Thepchatree President of Myanmar visiting USA, from www.thepchatree.blogspot.com. Retrieved 9 June 2015.

²⁰⁵ Ibid.

²⁰⁶ Katreeya Leamdee. Myanmar. Bangkok: Sathaporn Book. 2012. 117.

²⁰⁷ Khajadpai Buruspat. Burmese Minorities. Bangkok, PREA Phitaya. 1997. 10.

²⁰⁸ Official of the Civil Service Commission “The Myanmar service management”, Ibid.

Picture: The ladies with Kachin original costume



Retrieved from <http://www.prachatai.com/journal/2013/01/44644>

The conflict between military government and minorities in Myanmar affected the ruling of the military government. There are 3 main reasons²⁰⁹:

Firstly, the diverse geographic and population in Myanmar caused the different ideology and the difficulty in managing the minorities in each region. The geographical structures that are mountains made the minorities scattered. This affects the policy implementation of military government. Besides, the minorities are closer to the countries between borders than military government. The minorities desire to be independent from military government.²¹⁰ This caused civil war between military government and the minorities or the war between minorities.

²⁰⁹ Dulayapak Preecharat, Myanmar strategy, Bangkok, Thammasart University publishing, 2011, page 33-44.

²¹⁰ Khajadpai Buruspat. Ibid.

Hence, the conflict between groups, geographical structure and the relationship with neighboring countries of the minorities are the forces that the government must try to pull them all together.

Secondly, the history suggests that there has always been full of conflict between military government and minorities. After the United Kingdom taken over Myanmar, it divided and ruled the country. There was Proper Burmar, in the middle and is part of India, under the ruling of governor-general of Delhi. This used the parliament ruling. In addition, there was the Frontier Areas, such as Kachin State, Shan State, and Kayin State. These states reported directly to the United Kingdom government. However, the United Kingdom let the minorities to run their government locally. When Myanmar was liberated from the United Kingdom,²¹¹ there was the agreement that allowed Tai Yai, Kachin, and Shin to be independent. However, the changing of the constitution 1947 to 1974 stated that Myanmar is the single state. The minorities in Myanmar cannot isolate themselves.

Hence, the colonial ruling of England and the violation of Pang Luang agreement were likely the main causes that led to civil war to separate from military government of the minorities.

Lastly, Myanmar has only a single central government that is responsible to rule the entire country. Internally, Myanmar has 7 regions and 7 States. There are also states in the state. There are groups that are the anti-military government such as SSA-S, KNPP, KNU. These are the main obstacles in collecting the power in the central. In some case, some minorities got special privilege that they decided to negotiate to stop firing. But there is the risk since these groups can collect weapons to cause the war.

Therefore, the mentioned fact causes Myanmar has more complicated ruling system than what stated in the constitution.

The security problem of Myanmar is still the problem for the military government because they cannot gather the ruling in the central. The citizens are not able to be united. There is possibility of civil war occurred at any time.

²¹¹ Ibid.

(3.1.3) SSA and Kokang Incident

The fight between Myanmar army and Shan army (SSA) and Kokang Incident are a part of the problems regarding minorities in Myanmar. Though, both incidents are the extended and violent. Hence, it could divide them into separate points as follows;

Shan State share border with Kachin State and Yunan in China in the North. In the South, it connected with Chiang Rai, Chiang Mai, and Maehongsorn of Thailand. In Myanmar, the south was connected to Kayah State and Kayin State. In the East, it connected with Lao's Luang Nam Tha and Borkaew. In the West, it is connected with Sagaing Region and Mandalay Region. Shan's capital city is Tong Yee. Shan can be separated into 3 parts which are the north, with

LahSiew as the central, the south, with Tong Kee and the central, and the east, which is on the shore of Salawin river, with Chieng Tung as the central. Back when the United Kingdom was a ruler, Shan was separated into 46 cities. Now, the Myanmar military government separated it into 60 cities²¹². The geographic of Shan has high mountains in all area with the land in the middle. There are plenty of natural resources.

Shan is the most diverse state of Myanmar. After England freed Myanmar, the minorities in Myanmar made The Pang long Agreement, which is the agreement that will allow the minorities to set free themselves within 10 years after Myanmar's independent day. Shan was cooperating with Myanmar government well. After 10 years, Shan asked to be independent as written in the agreement but the government denied due to the natural resources.

Such act caused the minorities to repay the military government. Another point was that the assassination of general Ong San was from the conflict of separation. This caused distrusted of the minorities. Until year 1949, there was the rebel of the minorities can communist party against Myanmar military government. Later,

²¹²

Shan

State,

from

http://www.khonkhurtai.org/index.php?option=com_content&view=article&id=106:2009-12-02-06-50-44&catid=31:general&Itemid=46 Retrieved 9 June 2015.

Myanmar government was able to take the land back from the minorities. When General Ne Win coup, there was an attempt to negotiate but failed²¹³.

The groups against Myanmar military government sat up the armed force in 1958. The objective was to fight for sovereignty and maintain the basic right for Shan people. In 1989, Myanmar military government signed the Ceasefire Agreement with the 17 armed forces. However, the current constitution states that only the Myanmar military government can be the armed force. The offer to rule themselves of the minorities was rejected by the government. Moreover, the constitution states that the minorities must be ruled by the Myanmar government.

In 1996, the Myanmar government attacked the people in Chan violently. Moreover, it forced the over 300,000 villagers from the central and the south of Shan to move to the area where the military was in control. Most of the villagers were told to do so only 3-5 days in advance. If anyone denied to obey such the order, he would be punished severely. Many villagers were tortured, killed and raped²¹⁴ and forced to use labour.

Picture: People fleeing the fighting in Laukkai, the main city in the Kokang region of the northern Shan state, walk towards a rescue convoy

²¹³ Kaitichai Pongpanit. Myanmar 3ed Bangkok; Prapatsarn 2010. 290-293.

²¹⁴ License to Rape, from http://burmacampaign.org.uk/media/License_to_rape.pdf Retrieved 9 June 2015.



Retrieved from <http://www.ibtimes.co.uk/myanmar-tens-thousands-refugees-flee-fighting-kokang-region-near-china-border-1488688>

In 2009, the dictatorship military government drew the deadline for the armed forces of the minorities to be part of the army or in command of the Myanmar Military government. The minority's armed forces requested the negotiation. Until August of the same year, the military government attacked the Myanmar National Democratic Alliance Army: MNDAA. It is the ethnic Kokang group in the north of Shan. The logic of the attack was that MNDAA was easy to beat. This is the warning to other minorities' armed forces. After such attack, Myanmar government set up the army in Shan state. The situation was under controlled until November 8, 2010. The Myanmar army attacked the Democratic Kaen Buddhist Army: DKBA in Karen State. The reason for attacking was that DKBA denied being in controlled by Myanmar government. However, Myanmar government cannot overcome this Karen armed force.²¹⁵

²¹⁵ Burma Briefing No. 12. Crisis in Shan State. published by Burma Campaign UK. 2011. <http://burmacampaign.org.uk/media/12-Crisis-in-Shan-State.pdf> Retrieved 9 June 2015.

The attack of Kokang led to the peaceful instability in the north of Shan. In the beginning of 2015, the Myanmar army attacked Myanmar National Democratic Alliance Army: MNDAA. The Myanmar military used air force to attack. This caused more than 30,000 villagers to move to Nhansao in Yunan Precinct in China which another 5,000 moved to La Siew and Mandalay. There is the news that more than 100 people were killed by Myanmar military. Some villagers were bodily injured. However, the fight with Kokang has affected the relationship of China and Myanmar. Myanmar army accused that Chinese paid soldiers helped Kokang. And, Chinese help Kokang to attack Myanmar from the border of China.²¹⁶

The reason for the attack of Kokang effect the relationship with China is that Kokang is Han which is the main race of China. It is possible that China supported Kokang. If Myanmar military government will do harm to this group of minorities, it can caused the conflict with China. And, even though Myanmar military have superior army and weapons than Kokang, the geographic between Myanmar and China are complicated. This made it difficult to beat Kokang.

Picture: People travel in a truck to a refugee camp in Nansan, Yunnan province, China, near the border with Myanmar

²¹⁶ Myanmar-Kokang War <http://transbordernews.in.th/home/?p=7293> Retrieved 9 June 2015.



Retrieved from <http://www.ibtimes.co.uk/myanmar-tens-thousands-refugees-flee-fighting-kokang-region-near-china-border-1488688>

(3.1.4) The elimination of Rohingya

The problem of Rohingya affects many countries in South East of Asia. This is one of the security problems of Myanmar and ASEAN as well.

Rohingya is a group of people living in Yaka or Arakan along the South West border of Myanmar. The origin of Rohingya might be from Arabian, Monks, Turk, Bengali merchant and soldier or it could be Portugal that traded with Myanmar. When Islam was promoted in the current Bangladesh in the 15th century, Rohingya in that area changed to be Muslim²¹⁷.

During 1824-1826, England fought with Myanmar for the first time. Rohingya joined force with England. This caused them to be perceived as traitors.

²¹⁷ K. Jonassohn & K. S. Björnson, *Genocide and Gross Human Rights Violations in Comparative Perspective*, Transaction Publishers, 1998, p. 262.

After the end of World War II, Rohingya still support England in fighting with Myanmar. Until 1948, Myanmar was liberated from England²¹⁸.

Though Myanmar was officially independent on January 4, 1948, there was the negotiation to free Myanmar 1 year in advance. After general U Nu took power, he believed in single state and denied the separation of minorities. The situation in Myanmar had become instability. Though, General U Nu allowed the minorities to take part in ruling the country. During General U Nu governing, Myanmar was full of civil war of Myanmar military and minorities, and Myanmar military of communist party, or between the minorities. General U Nu, hence, invited Ne Win to rule the country to maintain peace and order. When General U Nu came back into the ruling position, the situation had not changed. General Ne Win and the soldier caused the rebel in 1962 and abolish the first constitution. He drawn new constitution by seizing the power and did not set free the minorities. Moreover, he used the military way in solving the conflict between Myanmar military and minorities.²¹⁹

Myanmar government or Burmese might not feel comfortable with Rohingya because they assisted England fighting with Myanmar twice. The military government pointed that the Rohingya in Myanmar entered the country illegally since when England ruled Myanmar. And, Rohingya tried to separate Arakan state which is Muslim state. In the view of Myanmar government, Rohingya is not the minorities, thus, they denied any rights of the Rohingya. Later, Myanmar military announced citizenship law of

²¹⁸ Birmanie : violences et apartheid contre les Rohingyas [archive] - article du Ceri de novembre 2012.<http://archive.wikiwix.com/cache/?url=http%25253A%25252F%25252Fwww.sciencespo.fr%25252Fceri%25252Ffr%25252Falterinter%25252Fbirmanie-violences-et-apartheid-contre-les-rohingyas> Retrieved 9 June 2015.

²¹⁹ The Human Rights of Stateless Rohingyas in Thailand, from [http://www.eoi.at/d/EOI%20%20Jahresberichte/Thailand/The%20Human%20Rights%20of%20Stateless%20Rohingya%20in%20Thailand\(small\).pdf](http://www.eoi.at/d/EOI%20%20Jahresberichte/Thailand/The%20Human%20Rights%20of%20Stateless%20Rohingya%20in%20Thailand(small).pdf), Retrieved 9 June 2015.

Myanmar in 1982. This caused the Rohingya to be stateless and not even obtain Myanmar nationality²²⁰.

When Myanmar government drawn the constitution that seize all power, and not allowed the minorities to be free unlike the first constitution, the Myanmar government uses violence in dealing with minorities. But Rohingya is not considered minorities in the view of the government. The government perceives that Rohingya used the national resource without being the citizen. , It is the security problem. This caused the Myanmar government to drive out Rohingya in any possible way such as the use of military power. They have limited rights only as people living in Myanmar or as human which is lack of freedom to travel and force to move out of the country.

Picture: Rohingya refugees are pictured on a boat



Retrieved from http://www.huffingtonpost.com/2015/05/14/boat-people-photos_n_7283178.html

²²⁰ The Human Rights of Stateless Rohingya in Thailand, from [http://www.eoi.at/d/EOI%20Jahresberichte/Thailand/The%20Human%20Rights%20of%20Stateless%20Rohingya%20in%20Thailand\(small\).pdf](http://www.eoi.at/d/EOI%20Jahresberichte/Thailand/The%20Human%20Rights%20of%20Stateless%20Rohingya%20in%20Thailand(small).pdf), Retrieved 9 June 2015.

(3.1.5) The change of capital city to preserve security

Myanmar has officially moved the capital city to Naypyidaw and it is administered as the Naypyidaw Union Territory²²¹. This affects the security of the country and should be raised as a point to study.

On November 6, 2005, Myanmar military government or the State Peace and Development Council: SPDC moved the capital city from Yangon to Pyinmana which is in the valley in the south of Mandalay. This is 330 kilometers from Yangon²²². The government claimed that moving to Pyinmana because it is the centre of Myanmar both geographically and strategically in developing the country²²³.

The main reason in moving the capital city of Myanmar military government is not only according to Brigadier general Kyaw Hsan, it also about the prevention of civil war democracy movement. Myanmar has also been pressured by western country such as America or EU. This pressuring began when the government rejected the result of general election in 1990, the use of severe measure to university students and citizens who opposed government, the grounding of Ang San Suu Kyi, the use of violent against minorities, and the destroying of the basic rights of the Burmese, minorities, and the race that government not considered as citizen such as Rohingya. The pressuring of western countries especially America irritated the government. Hence, they transferred the government agencies and army from Yangon to Pyinmana. The relocation was declared official on November 6, 2006 as mentioned. Later, on March 27, 2006, Myanmar government announced the new name of the capital city as Naypyidaw or Nay Pyi Taw²²⁴. The name means “the city of the king” or “royal city or abode of the king”²²⁵.

²²¹ Naypyidaw Union Territory, from http://self.gutenberg.org/articles/naypyidaw_union_territory Retrieved 9 June 2015.

²²² Seekins, Donald M. State and society in modern Rangoon. Routledge, 2014, p. 1, from http://samples.sainsburysebooks.co.uk/9781317601548_sample_819138.pdf Retrieved 9 June 2015.

²²³ Kaitichai Pongpanit. Ibid.

²²⁴ Kaitichai Pongpanit. Ibid.

²²⁵ Ibid.

The decision of general Than Shwe was sudden and desired willfully. The transfer of the governmental agencies, documents and tools was poorly managed. The governmental agencies, when arrived at the new city, had to face with the difficulties in living and working. This is due to the insufficient place to live, food and water. The lack of facilities is was the main problem. Everyone was forced suddenly or unexpectedly. They had to leave their family. When there is insufficient place to live, many sleep at the unfinished work place.

Myanmar after being independent has civil war many times and fought between military with the minorities or the fight between the minorities. The military used power over the citizen. The expansion of the democratic rebellions, and the interference of western countries. This caused the State Peace and Development Council: SPDC to disturb about the stability of the power and caused them to move to Nay Pyi Taw to maintain and strengthen their dictatorship power. The change of the capital city is significant. It affected Myanmar military government stability²²⁶ as follows

Firstly, moving the capital of Myanmar government was to weaken the power of opposition and democracy supporters. Because the military government moved the government offices that had been in Rangoon to the new capital. People in the new capital and in addition to government officials and government officials organized as a group that supports the military government the group supports democracy.

Secondly, the building of NayPyidaw as the center of military of Myanmar is the decrease of being attack by the sea and sudden attack. And, the geographic around the city enhance the guerrilla fighting.

²²⁶ Ibid.

Picture: NayPyidaw the capital city of Myanmar



Retrieved from <http://2nified.com/2015/01/naypyidaw-myanmars-surreal-capital-city/>

(3.1.6) The project of nuclear weapon

When Myanmar military government announced the building of nuclear reactor in 2000, it made many countries in South East Asia, Europe and America worried that Myanmar would create nuclear weapon. If Myanmar has nuclear power plant, it can continue to develop nuclear weapon.

For Myanmar and nuclear project, after being independent in 1948, Myanmar played an important role in reducing the attempt to use of nuclear weapons. However, in 2000, Myanmar military government or State Peace and Development Council: SPDC announced the project to buy small nuclear reactor from Russia. The original plan was to build the plant in 2003. But due to financial situation, the building was postponed until 2007. Myanmar agreed to buy nuclear reactor from Russia²²⁷.

²²⁷ Dulayapak Preecharat, Myanmar strategy, Bangkok, Thammasart University publishing, 2011, page 33-44.

The reasons that Myanmar interested in nuclear technologies are²²⁸:

Firstly, Myanmar wants to be the leader in ASEAN. Myanmar government believes that the development in nuclear of the nation will be the basis for development in science and research of the country.

Secondly, Myanmar has plenty of Uranium. Such element was the by product of doing gold mining in Myanmar. Uranium can be found in other areas scattered over the country. There is no need for Myanmar to use Uranium. Hence, it exported to China and North Korea.

When Myanmar government announced the plan to buy the nuclear reactor from Russia in February 2001, Russian and Myanmar government negotiated about the building and management of 10-15 megawatt nuclear reactor and isotope laboratory. Later in June 2001, the company Atomstroyexport of Russia signed with Myanmar to design and build Research center. In July, the same year, Russian and Myanmar government has begun the building of nuclear reactor according to the agreement.

However, the signing of cooperation between Russian and Myanmar government in 2003 was postponed after the International Atomic Energy Agency: IAEA checked and noticed if the expert in Myanmar is qualified or not.²²⁹

Many countries are worried about the management of the complex project like nuclear project of Myanmar. Also, the usage rate of the electricity was in the bottom rank of the world. Myanmar is in the same level as Haiti, Senegal, Congo, Eritrea, and Ethiopia²³⁰. The electricity usage in Myanmar is very little compared to the neighboring countries. Hence, the nuclear electricity production in Myanmar might be unnecessary. But, nowadays, there is no evidences showing that Myanmar began the project to produce nuclear weapon.

²²⁸ Khlopkov, A., & Konukhov, D., Russia, Myanmar and nuclear technologies. center for energy and security studies, 2011, 29, from <http://ceness-russia.org/data/doc/MyanmarENG.pdf>, Retrieved 9 June 2015.

²²⁹ Khlopkov, A., & Konukhov, Ibid.

²³⁰ Ibid.

(3.2) Foreign conflicts

After 20 years of using the power to fight with minorities, civil war, and closure of the country, now Myanmar is in revolution state. It has been developing and changing country quickly. In revolutionizing, Myanmar government began by releasing political prisoners which was arrested due to criticizing the military government, began the negotiation to stop shooting with minorities in the country, and developed counties to join the modern globalized economy.²³¹

However, the revolution of ruling of Myanmar has many limitations. The current constitution that military government claimed to lead country to democracy still mainly rests the power onto the military government. According to the constitution, the military has seats for the council 25%. There are also the legislation members controlled by be the part of the councils. It could be said that the military desires to maintain the political power. The constitution sat that it needs 75%²³² of the votes in the council to amend the constitution. The result of such provision is that if the military do not give the consent to change the constitution, it might not happen.

The military still are politically dominant, hence, it focuses mainly on the military security and the anti-country separation. However, the fighting with armed-forces of minorities also affected the neighboring counties. For example, there is the conflict with China when Myanmar attacked Kokang or Myanmar National Democratic Alliance Army: MNDA in August 2009. Such incident was near Chinese border. China needed

²³¹ Report of the International Bar Association's Human Rights Institute (IBAHRI). The rule of law in Myanmar: challenges and prospects. 2012, from <https://www.google.co.th/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=0CD8QFjAEahUKEwin9OCs85XHAhXPjo4KHVZrBW4&url=http%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUid%3DDDE0EE11D-9878-4685-A20F-9A0AAF6C3F3E&ei=vxTEVeeYI8-dugTW1pXwBg&usq=AFQjCNHnAMTXDLGPqEwd04HcuULH38mDXA&sig2=bOwxKXEQnadwGV9Arr0i1A&bvm=bv.99804247,d.c2E> Retrieved 9 June 2015.

²³² CSS analysis in security policy. Myanmar: Limited reforms, continued military dominance. 2012. http://www.css.ethz.ch/publications/pdfs/css_analysen_nr115_e.pdf. Retrieved 9 June 2015.

to increase the military along the border²³³. There are about 30,000 people of Kokang and Myanmar migrated into Yunan, in China. Kokang has Han race the same as China main population²³⁴.

2.1.2.2 Human rights issues of Republic of the Union of

Myanmar

The point about the protection of human right is the subject that ASEAN and global emphasize. In Asean Political-Security Community Blueprint, it sets the promotion and protection of human right in A.1.5 The main point is about the measure in human right protection established in ASEAN human rights body and promote the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers and the establishment of an ASEAN commission on the promotion and protection of the rights of women and children.

(1) Human rights development is region and international

At international level, after gained independence from the UK in January 1948, Myanmar joined as member of the United Nations (UN), an intergovernmental organization which replaced the ineffective League of Nations to maintain international peace and security, in April 1948.²³⁵ The United Nations has the Charter of United Nations (UN Charter) as a constituent treaty for all members to be bounded by its articles.²³⁶ The aim of the United Nations can be seen through Article1 of this charter which states that

²³³ <http://www.manager.co.th/Local/ViewNews.aspx?NewsID=9580000047559>. Retrieved 7 June 2015.

²³⁴ <http://www.bangkokbiznews.com/blog/detail/633801> Retrieved 7 June 2015.

²³⁵ The United Nations, 'Member States of the United Nations' (the United Nations, February 2015) <<http://www.un.org/en/members/>> Retrieved 5 February 2015.

²³⁶ The United Nations, 'Charter of the United Nations' (the United Nations, February 2015) <<http://www.un.org/en/documents/charter/intro.shtml>> Retrieved 5 February 2015.

The Purposes of the United Nations are²³⁷

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.²³⁸

It is very clear that the promotion and protection of human rights and fundamental freedoms of people also been recognised under this charter. To ensure the promotion and protection of human rights and fundamental freedoms of people, the UN created the International Bill of Human Rights which, consist of the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) and it two Optional Protocols.²³⁹ The UDHR was adopted and declared by the General Assembly in 1948 as

²³⁷ The United Nations, 'Charter of the United Nations' (the United Nations, February 2015) <<http://www.un.org/en/documents/charter/intro.shtml>> Retrieved 5 February 2015.

²³⁸ The Charter of United Nations (adopted 24 October 1945, 1 UNTS XVI), Art 1

²³⁹ Office of the High Commissioner for Human Rights, 'Fact Sheet No.2 (Rev.1), The International Bill of Human Rights' (the OHCHR, February 2015) ၁၁၈ <<http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>> Retrieved 5 February 2015.

*“a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”.*²⁴⁰

This was the first time in history that the organised community of nations had made a declaration of human rights and fundamental freedoms. Nowadays, the UDHR is considered as a common standard instrument to measure the level of respect for and compliance with the standard of human rights at international level.²⁴¹

In case of other two international covenants, the ICESCR 1966 entered into force on 3 January 1976.²⁴² This covenant aims to promote the right to self-determination,²⁴³ the equal right of men and women on human rights,²⁴⁴ the safeguards against the destruction or undue limitation of any human right or fundamental freedom,²⁴⁵ and the rights to work including other adequate standard of work, education and cultural

²⁴⁰ The Universal Declaration of Human Rights 1948 (adopted 10 December 1948 UNGA Res 217A(III))

²⁴¹ Office of the High Commissioner for Human Rights, (n4)

²⁴² The International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966 UNGA Res 2200A (XXI))

²⁴³ The International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966 UNGA Res 2200A (XXI)), Art 1

²⁴⁴ The International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966 UNGA Res 2200A (XXI)), Art 3

²⁴⁵ The International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966 UNGA Res 2200A (XXI)), Art 5

life.²⁴⁶ On the one hand, the ICCPR 1966, entered into force on 23 March 1976, has the same standard perspective of human rights protection as article 1,3 and 5 of the ICESCR but more focus on the civil and political rights protection such as the right to life,²⁴⁷ the right to freedom from torture, and cruel or degrading treatment,²⁴⁸ or the right of security of person.²⁴⁹ Moreover, article 25 provides that everyone has a right to election²⁵⁰ and Article 26 which provides a right to the equal protection under the law for all persons.²⁵¹ This covenant also has two optional protocols. The first optional protocol is *the international treaty establishing an individual complaint mechanism for the International Covenant on Civil and Political Rights*. This optional protocol empowers the Human Rights Committee which, created under the ICCPR to receive and consider information from individuals claiming to be victims of violations of any of the rights set forth in the ICCPR.²⁵² The second optional protocol is *the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty*. The aim of this optional protocol is to abolish the capital punishment.

The International Bill of Human Rights is considered as a backbone of the promotion and protection of human rights at international level. Besides,

²⁴⁶ The International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966 UNGA Res 2200A (XXI)), Art 6-15

²⁴⁷ The International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200A (XXI)), Art 6

²⁴⁸ The International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200A (XXI)), Art 7

²⁴⁹ The International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200A (XXI)), Art 9

²⁵⁰ The International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200A (XXI)), Art 25

²⁵¹ The International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200A (XXI)), Art 26

²⁵² The international treaty establishing an individual complaint mechanism for the International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302)

to promote the promotion of human rights protection, the UN has created many conventions for the protection of human rights to fulfil this mission. Consequently, under the UN charter, Myanmar as a member state of the UN needs to respect the promotion and protection of human rights for people of Myanmar. The ratification of international human rights treaties of Myanmar will be shown in table below

Table: Ratification of International Human Rights Treaties of Myanmar²⁵³

International Bill of Human Rights	Signature	Status: Ratification, Accession (a), Succession(aa)
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Not signed	
International Covenant on Civil and Political Rights (ICCPR)	Not signed	
Optional Protocol to the International Covenant on Civil and Political Rights	Not signed	
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	Not signed	
Prevention of Discrimination on the Basis of Race, Religion, or Belief; and Protection of Minorities		
<u>International Convention on the Elimination of All Forms of Racial</u>	Not signed	

²⁵³University of Minnesota Human Rights Library, 'Ratification of International Human Rights Treaties - Myanmar' (UMN, February 2015), from <<http://www1.umn.edu/humanrts/research/ratification-myanmar.html>>, Retrieved 17 February 2015

<u>Discrimination</u>		
Women's Human Rights		
<u>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</u>		Accession 22 July 1997
<u>Optional Protocol to the Convention on the Elimination of Discrimination against Women</u>	Not signed	
<u>United Nations Convention against Transnational Organized Crime</u>		Ratification 30 March 2004
<u>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Preamble, supplementing the United Nations Convention against Transnational Organized Crime</u>		Accession 30 March 2004
<u>Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime</u>		Accession 30 March 2004
Slavery and Slavery-Like Practices		
<u>Slavery Convention</u>	Not signed	
<u>Protocol amending the Slavery Convention</u>	Not signed	

<u>Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery</u>	Not signed	
<u>Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others</u>	14 March 1956	
Protection from Torture, Ill-Treatment and Disappearance		
<u>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</u>	Not signed	
Rights of the Child		
<u>Convention on the Rights of the Child</u>		Accession 15 July 1991
<u>Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts</u>	Not signed	
<u>Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography</u>		Accession 16 June 2012
<u>Convention concerning the Prohibition and Immediate Action for</u>		Ratification 18 December 2013

<u>the Elimination of the Worst Forms of Child Labour</u>		
Refugees and Asylum		
<u>Convention relating to the Status of Refugees</u>	Not signed	
<u>Protocol Relating to the Status of Refugees</u>	Not signed	
Nationality, Statelessness, and the Rights of Aliens		
<u>Convention on the Reduction of Statelessness</u>	Not signed	
<u>Convention relating to the Status of Stateless Persons</u>	Not signed	
War Crimes and Crimes Against Humanity, Genocide, and Terrorism		
<u>Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity</u>	Not signed	
<u>Convention on the Prevention and Punishment of the Crime of Genocide</u>	30 December 1949	Ratification 14 March 1956
<u>Rome Statute of the International Criminal Court</u>	Not signed	
Law of Armed Conflict		
<u>Geneva Convention for the Amelioration of the Condition of the</u>		Ratification/ Accession 25 August

<u>Wounded and Sick in Armed Forces in the Field</u>		1992
<u>Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea</u>		Ratification/ Accession 25 August 1992
<u>Geneva Convention relative to the Treatment of Prisoners of War</u>		Ratification/ Accession 25 August 1992
<u>Geneva Convention relative to the Protection of Civilian Persons in Time of War</u>	Not signed	
<u>Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)</u>	Not signed	
<u>Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims on Non-International Armed Conflicts (Protocol II)</u>	Not signed	
Terrorism and Human Rights		
<u>International Convention Against the Taking of Hostages</u>	Not signed	
<u>International Convention for the Suppression of Terrorist Bombing</u>		Accession 12 November 2001
<u>International Convention for the Suppression of the Financing of</u>	12 November 2001	

<u>Terrorism</u>		
<u>International Convention for the Suppression of Unlawful Seizure of Aircraft</u>		Ratification 22 May 1996
<u>International Convention on the Prevention and Punishment of Crimes Against International Protected Persons</u>	Not signed	

The information shows that Myanmar did not seriously concern about the promotion and protection of human rights for people. The negligence to ratify the ICESCR and the ICCPR can be used as a mirror to reflect the sincerity of Myanmar's government in human rights issue. Nevertheless, the lack of ratification of international human rights treaties does not mean the end of human rights protection at national level, Customary International Law (CIL) still has the status of "general practice accepted as law" which can be legally binding to every government of the world.²⁵⁴ For example, although Myanmar did not sign the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it is still bound by those provisions of the treaty that have arisen to the level of CIL. An integral component of CIL is the laws which regulate state-to-state conduct, commonly referred to as the laws of state responsibility. Largely unwritten, these rules were finally codified in 2001 by the UN International Law Commission in the Draft Articles on the Responsibility of States for Internationally Wrongful Acts. Additionally, some norms of CIL involve obligations to respect "those rules of conduct that prohibit what has come to be seen as intolerable because of the threat it presents to the survival of States and their peoples and the most basic human values."²⁵⁵ These norms are known as

²⁵⁴ Statute of the International Court of Justice (adopted 26 June 1945 UNTS993; 39 AJIL Supp. 215) Art. 38 (1)

²⁵⁵ Global Justice Center, 'Myanmar/Burma's Binding Obligations Under International Law' (GJC November 2012), from <http://www.globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=106&cf_id=34> Retrieved 4 February 2015.

peremptory, or *jus cogens* norms and include the prohibitions on slavery, torture, apartheid and genocide –states are in no way allowed to derogate from those norms. The International Court of Justice (ICJ), the principal judicial organ of the UN, has described basic rules of international humanitarian law as “intransgressible,” which indicates that these too could be considered peremptory²⁵⁶

Under the laws of state responsibility, where there are serious breaches of peremptory norms, the violator state is obligated to take certain actions to end the breach. Additionally, all states incur obligations to respond, including: (1) take positive measures to end a breach, including non-recognition; (2) not recognize as lawful a situation created by a serious breach; and (3) not render aid or assistance to maintain the unlawful situation.²⁵⁷

At regional level, Myanmar joined as the 9th member state of the Association of Southeast Asian Nations (ASEAN) in 1997. ASEAN is a Southeast Asia’s regional organisation which was established in 1967 by the ASEAN Declaration (Bangkok Declaration) and the consensus of five founder countries (Indonesia, Malaysia, Philippines, Singapore and Thailand. Latterly, ASEAN had a chance to welcome new five member states including Myanmar (Brunei Darussalam joined in 1974, Vietnam joined in 1995, Lao and Myanmar joined in 1997 and finally, Cambodia joined in 1999).²⁵⁸ ASEAN aims to promote economic, social and political co-operation among its members as well as regional peace and security.²⁵⁹ To reaffirm these missions, The ASEAN Charter, a constitution for the ASEAN’s members was adopted at the 13th ASEAN Summit in November 2007 and entered into force on 15 December 2008.

²⁵⁶ Ibid

²⁵⁷ Ibid

²⁵⁸ Ministry of Foreign Affairs, ‘Myanmar and ASEAN, Establishment’ (MOFA March 2015), from <http://www.mofa.gov.mm/?page_id=322>Retrieved 3 March 2015.

²⁵⁹ Peter Malanczuk ‘Association of Southeast Asian Nations (ASEAN)’ in Rudiger Wolfrum (ed), The Max Planck Encyclopedia of Public International Law 695.

(2) Human rights issues

Though Myanmar signed many international human right treaties, in practice, there are many cases that Myanmar government violated the human right. The important cases are as below

(2.1) Child Soldiers

In 1991, Myanmar signed the Convention on the Rights of The Child. But Myanmar does not propose the child protection in the constitution but the right of child protection is written separately. This means that if there is the violation of the right, the internal law will be applied. The judge will use the internal law rather although it is in conflict with the convention²⁶⁰.

After Myanmar signed the convention of the right of child protection, Myanmar issued the Child Law in July 1993 and made amendment in 2001 to align with the Convention in the Rights of The Child. However, many sections of the Child Law are incompatible with the convention. For example, the definition of child is not aligned. The convention said that the child refers to those under 18 except they will reach his legal age before such time. But Myanmar's child law states that child refers to those under 16. And, there is no minimal age in getting married²⁶¹.

Although Myanmar military government signed Convention of the Rights of the Child and the issued the Child Law, in practice, they're not really concern with Child rights. They only care about the security of their own power.

The example, which showed that Myanmar government did not concern much about preserving Child Right according to the convention, is that the case of the civil war with minorities that Myanmar government focused on strengthening its army.

Children and youth in Myanmar were the victims of these civil wars. The forcing the minorities to move or send in the troops effected the children in the battle field directly. During 2002 to 2009, in the east of Myanmar, there were some

²⁶⁰ UNICEF, et al. situation analysis of children in Myanmar. 2012, from http://www.unicef.org/eapro/Myanmar_Situation_Analysis.pdf Retrieved 9 June 2015.

²⁶¹ UNICEF, Ibid.

homeless due to the war more than 580,000 people. Of those amounts, there are 190,000 children. These people are homeless due to escaping from the civil war and were forced to leave by Myanmar military.²⁶²

At the same time, Myanmar children were forced to become the soldiers since Myanmar army lacked man power. Some Children who were forced were as young as 10 years old. Many we hit before surrender into joining the army. Recruiting children to the army is a business in Myanmar.

Myanmar military counterfeited the documents about the age of becoming the soldier of these children. When they are in the soldier, they will be sent to boot camp for 18 weeks and were sent to the battle field after that. However, many cases showed that these children will be sent immediately to the battle field. At the beginning of 2004, SPDC or the State Peace and Development Council tried to solve this problem about recruiting young children into the troops to fend off the critics of many countries. SPDC appointed high committee to prevent the recruit of Child soldier. However, there is no proof that such committee did something to solve the problem of child soldier.²⁶³

In 2012, Myanmar military government signed an action plan with United Nations in trying to discharge child soldier and stop the recruit of child soldier. The army let go 472 children²⁶⁴. However, it is doubtful if Myanmar military government will sincerely follow the action plan. Bangkok Post released the article on the website on

²⁶² Displaced childhoods: human rights & international crimes against Burma's internally displaced children. a report by partners relief & development and free Burma rangers, from http://burmacampaign.org.uk/images/uploads/Displaced_Childhoods.pdf Retrieved 9 June 2015.

²⁶³ Human right watch, Ibid.

²⁶⁴ Burma's child soldiers return home to face a fresh set of challenges, from <http://www.theguardian.com/global-development/2014/oct/02/burma-child-soldiers-army-recruitment>, Retrieved 9 June 2015.

December 23, 2002 reporting that Myanmar military still use child soldier in battling with Kachin Independence Army: KIA²⁶⁵.

Hence, the problem of violating the human right by recruiting a child as the soldier in Myanmar is still existed nowadays. The solving by international organization must be done continuously so that Myanmar follows the plan that it signed with the United Nations.

(2.2) Women rights

Sexual equality is one of the human right core values that have been widely accepted. Hence, many countries issued the law to protect Woman rights both in constitution and law in general. Institutions to protect women were established. However, such process did not equalize the right of women and men effectively. The law of many counties, no matter if it is the constitution or royal decree has set the gender equality. But it is impossible in practice.

In 1997, Myanmar signed The Convention on the Elimination of All Forms of Discrimination Against Women: CEDAW. After the signing, the Myanmar government determined to build the confidence that the issued laws promoted women right and equality within the country. Promulgation of these laws was strongly influenced by its old law when Myanmar was colonized by the United Kingdom and mixed with the tradition of Myanmar. The result was the law that not in line with the CEDAW²⁶⁶.

When we consider the culture or the tradition of Myanmar that has been there for a long time, we'll see that Myanmar culture was led by men or Patriarchal Cultural. Though, nowadays, Myanmar became more diverse²⁶⁷. The Buddhist

²⁶⁵ Naing, S.Y., No end in sight amid season of slaughter. 2012, from <http://www.bangkokpost.com/news/investigation/327559/no-end-in-sight-amid-season-of-slaughter> Retrieved 9 June 2015.

²⁶⁶ Network, gender equality. Myanmar laws and CEDAW, the case for anti-violence against Women Laws, January 2013. 2015, from http://www.burmalibrary.org/docs20/Myanmar_Law+CEDAW-en-red.pdf Retrieved 9 June 2015.

²⁶⁷ Nwe, A. Gender Hierarchy in Myanmar. RAYS, 2009, 10: 131-139, from http://cca.org.hk/home/ctc/ctc-xxvi-1/131-139_aye_nwe.pdf Retrieved 9 June 2015.

believe of Myanmar has effect on the minorities. The belief that man is superior to women is hard to fix by signing the convention²⁶⁸.

Though the 2008 constitution of Myanmar guarantees the equality of men and women, it is not the same level as the convention. As we can see that some section of the constitution of Myanmar promoted the idea that women are incapability to work the same as men. And women need protection because women are physically weaker than men. There are no laws regarding gender discrimination or the law stating the punishment for being violent to women. The explanation in Criminal Code as of 1860 about the sexual violent is not up to date. If husband raped wife, it will be wrong only if wife is younger than 14 years old. And, there is no other law of Myanmar to protect violent in the family.

Besides, many laws of Myanmar are not in line with CEDAW. For example, family law which limited some right in divorce, and the law regarding sex trade is not according to the actual intention of the convention.²⁶⁹

Myanmar signed CEDAW in 1997. But the law of Myanmar both the constitution and the general law do not respect CEDAW. And, in some case, the constitution and general law do follow CEDAW, the culture and belief in the Myanmar social is still be that men is superior than women. This causes the following of equal right law implementation impossible.²⁷⁰

(2.3) Rohingya eviction situation

The violation of Rohingya's right of Myanmar government as mentioned earlier in the internal security. Rohingya has problem with Myanmar's government so many times. This began when Rohingya joined British army to fight Myanmar during 1824-1826. Until the end of World War II, Rohingya still supported England in fighting with Myanmar. Myanmar government considered Rohingya as the immigrant from

²⁶⁸ Network, gender equality. Myanmar laws and CEDAW, the case for anti-violence against Women Laws, January 2013. 2015, from http://www.burmalibrary.org/docs20/Myanmar_Law+CEDAW-en-red.pdf Retrieved 9 June 2015.

²⁶⁹ Network, Ibid.

²⁷⁰ Nwe, Ibid.

Bangladesh. Rohingya is not the race in Myanmar.²⁷¹ And, Myanmar government denied any rights of the Rohingya. After the announcement of the civil law of Myanmar of nationality law in 1982, Rohingya is stateless. They have no Myanmar nationality or any. In 1998, General Khin Nyunt, the Prime Minister of Myanmar at the time wrote the letter to the United Nations High Commission for Refugees: UNHCR. Part of the letter stated that “These people (Rohingya) are not from Myanmar. But they illegally migrated to Myanmar due to population pressures²⁷² of their own country.”²⁷³ This message confirmed that, in the view of Myanmar government, Rohingya is not the local in Myanmar. This caused the current constitution to not support their citizenship.

The denial to admit that Rohingya is one of 135 ethnic groups in Myanmar, and also claim that they are the illegal population, Myanmar government has attempted to eliminate them from Myanmar since 1991. The government’s method used in getting rid of the Rohingya are, such as, the usage of military power both as the army and non-army. In 1948, the military killed Rohingya in many villages. Myanmar soldiers burned their villages and raped them. Myanmar government limited their basic citizen rights, limited their freedom in traveling, monopolized their economy by having to ask for permission of Myanmar government, and use the army to force them to the area prepared for them.

Nowadays, Myanmar still has continuous problems with political securities. On August 13, 2015, President Thein Sein ordered the trucks and security officers to surround The Union Solidarity and Development Party: USDP²⁷⁴. They seized Chuay Man and dismissed him from being the chief of USDP. Moreover, the relationship of Myanmar government and minorities is not smooth. There is frequent battling such as the war between Myanmar government and Kokang, the fight with Karen army. The policy of the

²⁷¹ Siwawong Suktawee. Life under the dark power from East border to Thailand. *Social science and Humanity* 33(1); January – June 2014, 203.

²⁷² Population Pressures, from <http://www.popterms.mahidol.ac.th/Popterms/showmeanTH.php?id=p00193&keyword=POPULATION%20PRESSURE>, Retrieved 9 June 2015.

²⁷³ Lewa, C. North Arakan: an open prison for the Rohingya in Burma. forced migration review, 2009, 32: 11-13, from <http://sayedarakani48.webs.com/rohingyaarticles.htm> Retrieved 9 June 2015.

²⁷⁴ <http://www.manager.co.th/IndoChina/ViewNews.aspx?NewsID=9580000092662>, Retrieved 9 June 2015.

government has affected the life of the minorities and can cause the conflict to arise, for example, the building of Salawin dam.²⁷⁵

2.2 The international and regional cooperation regarding the security

One of the aims of the ASEAN Political-Security Community (APSC Blueprint) is to collaborate and develop political-security among ASEAN members. The aforesaid collaboration and development could be achieved by assuring that people inhabiting in the ASEAN countries are living in peace with outside world under justice, reconciliation and democracy atmosphere²⁷⁶. International relationship between Myanmar and the foreign countries has been reflected in a series of treaties: and regional level international level which can be summarized as follows.

2.2.1 International legal binding regarding security policy of Myanmar

When Myanmar was declared independent from British in 1949, the civilian government was in power for 14 years. Then, in March 1962, General Ne Win overthrown the state and closed the country. He used non-confrontation policy during Cold War. However, Myanmar still has to contact with other states. In order to moderately govern the country, Myanmar has to join the international treaty. We will study, firstly, the treaty in ASEAN showing the regional level and, secondly, the treaty with international countries level.

2.2.1.1 Regional legally binding Agreement: the ASEAN level

The Myanmar government focuses greatly in security. However, taking the situation on security in Myanmar into account, it could be said that the Myanmar government has paid greater attention to the security of governmental power more than to promotion of peace and stability in the region. This ignorance or inactiveness is reflected by for example the genocide of the minorities in the country. For this reason, a study on the policy of internal security in Myanmar is necessary because it can affect the stability within the region.

²⁷⁵ <http://thaipublica.org/2015/07/salween-river-7-7-2558/>, Retrieved 9 June 2015.

²⁷⁶ the ASEAN Political-Security Community (APSC Blueprint) , from http://www.oae.go.th/biae/download/AEC_2_5_5_8_/ASEAN%20Political-Security%20Community%20Blueprint.pdf Retrieved on 25 October 2015.

(1) The Bangkok Declaration

Although Myanmar joined ASEAN later, Myanmar has currently become a part of the ASEAN community and, as a consequence, is bound to accomplish the following ASEAN's objectives:²⁷⁷

- 1) cooperate and assist each other in economic, social, cultural, technology, science, and management among members;
- 2) cooperate and enhance regional peace and security;
- 3) enhance economic prosperity and development of culture in the region;
- 4) make people of ASEAN have good quality of life
- 5) support each other in terms of training and research and enhance the education about South East Asia
- 6) enhance the agriculture and industrial, expand trade, improve transportation; and
- 7) enhance the cooperation between ASEAN and other countries, other organization, and international organization.

Myanmar joined ASEAN in 1997 and has become a member since then.

(2) ASEAN Political-Security Community: APSC

The main goal is to promote peace in South East Asia. If there is a conflict, it must be resolved peacefully. The ASEAN Political-Security Community Blueprint has the following objectives²⁷⁸.

- 1) The community set rules and the development of value and standardize together. There are 2 rules which are not to interfere internally and enhance the value of the people.

²⁷⁷ Thailand and ASEAN , from <http://www.education.dusit.ac.th/ASIAN/books/asian/006.pdf>
Retrieved 12 June 2015.

²⁷⁸ Ministry of Foreign Affairs, ASEAN: The Political and Security Plan, Bangkok: Pagemaker, P.5.

2) The community creates unity, has peace, and joint responsibility in solving the security problem in all aspects. Allow ASEAN to rely on themselves in solving all problems.

3) Community attempts to create dynamic aspect and assists each other.

(3) Treaty of Amity and Cooperation in Southeast Asia: TAC

This is the first Treaty that has been agreed as a legal means to solve potential conflicts between the member states. In essence, the Treaty prohibits usage of armed forces against each other. In addition, it also encourages the parties in conflict to negotiate. If an attempt to negotiate does not work out, the High Council might step in to solve the problem²⁷⁹.

(4) ASEAN Regional Forum: ARF

The ultimate objective of this forum is to promote peace by increasing trust and cooperation and relationship between ASEAN countries, ASEAN and other parties in Asia Pacific about politics and securities. There are steps: first, enhance trust, second, develop diplomatically approach, and lastly, resolve conflict²⁸⁰.

(5) ASEAN Defense Ministerial Meeting: ADMM

This meeting is to create the close bond between armies in ASEAN countries. This bond will be for preventing drugs, protection against international crime, and anti-terrorism²⁸¹.

(6) Southeast Asian Nuclear-Weapon-Free Zone Treaty: SEANWFZ

There are 10 countries that have signed this treaty namely: Thailand, Indonesia, Malaysia, Singapore, Brunei, Philippines, Vietnam, Cambodia, and Myanmar. As of December 15, 1995, Myanmar had not been a member of the ASEAN. This

²⁷⁹ Manotham Jinchutha, Highlight ASEAN : Mechanism of solve the conflict, from <http://www.mfa.go.th/asean/contents/files/asean-media-center-20121203-180844-334785.pdf>. Retrieved 12 June 2015.

²⁸⁰ The Political and Security, from <http://www.asean.go.th/asean/index.php/1> Retrieved 8 June 2015.

²⁸¹ Ibid.

Treaty contains several unique features. Firstly, it is the first treaty that covers land territory, territorial sea, exclusive economic zone, and continental shelf of each country. Secondly, this treaty is the first attempt to create nuclear-free zone. This treaty not only enforced on the signed parties but also all area of the members²⁸². This means that the mighty nation cannot use the area of the members to store or test nuclear.

Currently, none of ASEAN countries store or tend to build nuclear weapon. Though Myanmar has been planning to build Nuclear power plant by using Russian technology, there is no evidence to prove this decision. Hence, Myanmar has not violated any obligation under the Treaty.

2.2.1.2 International legal binding: international level

Myanmar has signed many treaties at international level. Inter alia, significant treaties are discussed below:

(1) Biological Weapons Convention: BWC

The actual title of this Convention is: Biological Weapons Convention or Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction. It consists of 172 states signed the convention. Mostly haven not ratified the convention. This convention opens for any states to sign since April 10, 1972. It has been effective since March 26, 1975.

This convention has the critical message as follows: Firstly, the members are prohibited to develop, produce, collect, transfer, obtain, and use biological weapon. Secondly, the members are not allowed to develop, produce, collect, transfer, obtain and use biochemical weapons and poison except for peace. Thirdly, member must destroy the biochemical weapon that their possession. Fourthly, the members must have national policy to eliminate biochemical weapon. Fifthly, to enforce the convention and solve the problem as written in the convention, it could be done by bilateral or multilateral. Sixthly, when there is the violation, the members should request the presence of United

²⁸² Acharya, A., & Boutin, J. K. The Southeast Asia nuclear weapon-free zone treaty. *Security Dialogue*, 1998, 29.2: 219-230, from <http://www.amitavacharya.com/sites/default/files/The%20Southeast%20Asia%20Nuclear%20Weapon-Free%20Zone%20Treaty.pdf> Retrieved 12 June 2015.

Nations Security Council: UNSC to investigate the matter. Moreover, the member must respect and accept the UNSC judgment. Seventhly, the member should help other members attacked by biological weapons. Finally, members will support the peaceful use of science technology and biological matters²⁸³.

Myanmar signed BWC on April 10, 1972 and ratified on December 1, 2014. Currently, there is no sign that Myanmar will violate the convention.

(2) Chemical Weapons Convention: CWC

Chemical Weapons Convention: CWC or the Convention on The Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction. The key messages of this convention are as follows: firstly member states are restricted to use chemical weapon in war and develop, produce, collect and must destroy chemical weapon in their possession before the signing of the convention. Secondly, the members must control the production, possession, selling, import, export, and transfer of chemical and substance for poisonous chemical according to the convention.

Myanmar signed the convention on January 14, 1993. And, it ratified in such convention on in 2015. Currently, there is no report that Myanmar will violate the convention²⁸⁴.

(3) Convention on the Prevention and Punishment of the Crime of Genocide

Genocide is a crime according to the international laws and it is in the jurisdiction of International Criminal Court: ICC. The Rome Statute of the International Criminal Court has set the genocide as the intention to destroy all or part of the nationality race and religion group²⁸⁵.

²⁸³ Ministry of Foreign Affairs. Powerful weapons reduction, from <http://www.mfa.go.th/main/th/issues/9901>, Retrieved 9 June 2015.

²⁸⁴ Myanmar Ratifies Chemical Weapons Convention, from <http://www.armscontrol.org/blog/ArmsControlNow/2015-01-28/Myanmar-Ratifies-Chemical-Weapons-Convention>, Retrieved 12 June 2015.

²⁸⁵ Genocide watch, from <http://www.genocidewatch.org/myanmar.html>, Retrieved 9 June 2015.

Myanmar signed this convention on December 30, 1949. It ratified on March 14, 1956²⁸⁶. However, although Myanmar signed this convention, but actions toward the minorities and Rohinja may deem to be Genocide.

(4) Comprehensive Nuclear-Test-Ban Treaty: CTBT

Comprehensive Nuclear-Test-Ban Treaty: CTBT is the treaty ruling out all nuclear tests.

This treaty will be effective when all 44 states having nuclear weapon ratify the UN secretary-general. However, many states that owns nuclear have not signed the treaty such as United State, India, Parkistan, and North Korea. Besides all these, only 36 governments possessing nuclear have ratified.²⁸⁷

Myanmar signed the treaty on November 25, 1996, but has not ratified²⁸⁸. Nowadays, there is no evidence suggesting that Myanmar has launched or carried out projects about nuclear weapon. Therefore, there is no tendency to obtain nuclear weapon to test.²⁸⁹

(5) Convention for the Suppression of Financing of Terrorism and Convention for the Suppression of Terrorist Bombings

The Convention for the Suppression of Financing of Terrorism substantially requires member states to find or gather financial resource to create terrorism according to the convention considered a crime. Besides, the penalty for Convention will allow the countries to exchange the prisoners over the borders without claiming that it is the political motive which will be able to reject the extradition or cooperate with the justice process²⁹⁰. Myanmar singed this convention on November 12, 2001 and has ratified this convention on August 16, 2005.

²⁸⁶ United Nation Treaty Collection, from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&lang=e#EndDec. Retrieved 9 June 2015.

²⁸⁷ Comprehensive Nuclear-Test-Ban Treaty (CTBT), from <http://www.nti.org/treaties-and-regimes/comprehensive-nuclear-test-ban-treaty-ctbt/>, Retrieved 9 June 2015.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

The Convention for the Suppression of Terrorist Bombings will put into prison the bomber in public place as a terrorist. Myanmar government joined this convention on November 12, 2001. However, it noted that Myanmar sets the reservations not binding article 20 in the convention. This is *“Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration...”*²⁹¹.

²⁹¹ Ibid.

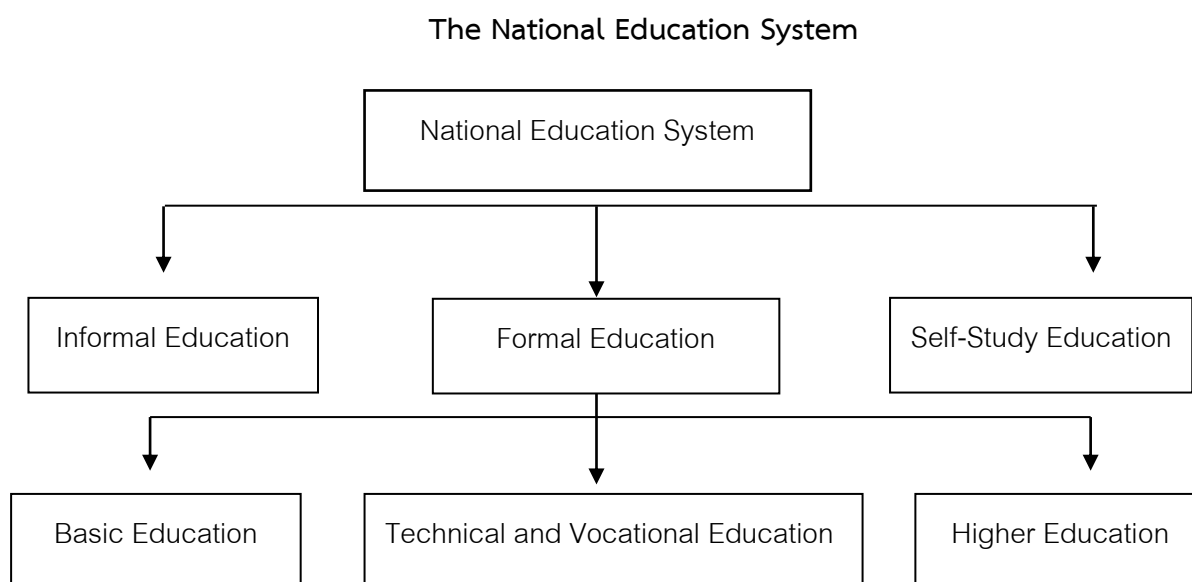
Chapter 3

Law relating to society, culture, politics and securities

3.1 Laws relating to education: The National Education System

Education in the Union of Myanmar is mainly under the responsibility of the Ministry of Education. Ministry of Education has to work with National Education policy Commission to lay down national education objectives and educational policies.

The National Education System



As seen in Diagram 1 above, the National Education System will be divided into formal education, informal education and self-study education. The formal education means the education which is taught at schools through systematic curriculum and system of testing qualification.²⁹² The formal educations include basic education, technical and vocational education and higher education.²⁹³ Informal education is a system that is facilitated with flexible methods outside formal education.²⁹⁴ Self-study education means

²⁹² Section 1 (j) of the Basic Educational Law 1973

²⁹³ Section 14 of the Basic Educational Law 1973

²⁹⁴ Section 1 (k) of the Basic Educational Law 1973

the procedure in which one studies by himself/herself according to his/her need and interest.²⁹⁵

This paper will discuss five main parts (1) basic education, (2) higher education (3) Technical and vocation education (4) Informal education and (5) self-study education.

3.1.1 Basic Education

There are two laws concerning basic educations. Firstly, the Basic Education Law was enacted in 1973 amending in 1989 in order to establish basic education system of the every Union of Myanmar citizen for access of basic education. Secondly, the National Education Law was enacted in 2014 amending in 2015 in order to provide for the determination of national policy for education.

3.1.1.1 Definition

Before discussing the basic education law, it is necessary to define what the basic education is. According to Article 1 (g) of the Basic Education Law, basic education means basic education prescribed by the Government that should be pursued and accomplished by every citizen in order to study for university education or vocational education.²⁹⁶ Moreover, Article 1 (q) of National Education Law emphasized the definition of basic education that basic education means an education system in which basic level of education that must be accomplished by every citizen is facilitated so that every citizen could pursue either technical and vocational study or higher study.²⁹⁷

3.1.1.2 The objective of basic education

According to Article 3 of the Basic Education Law 1973 the objectives of basic education are to

(a) enable every Myanmar citizen to accomplish basic education level and become healthy white-collar workers and blue-collar workers having good character

²⁹⁵ Section 1 (m) of the Basic Educational Law 1973

²⁹⁶ Article 1 (g) of the Basic Education Law 1973

²⁹⁷ Section 1 (q) of the Basic Educational Law 1973

(b) understand and believe in the meaning of Myanmar Socialist Programme and are capable of establishing and maintaining Myanmar Socialist Society.

(c) lay down the basic principles for teaching and training relevant profession for the establishment and maintenance of Myanmar Socialist Society.

(d) develop manufacturing capacity and to prioritize science study.

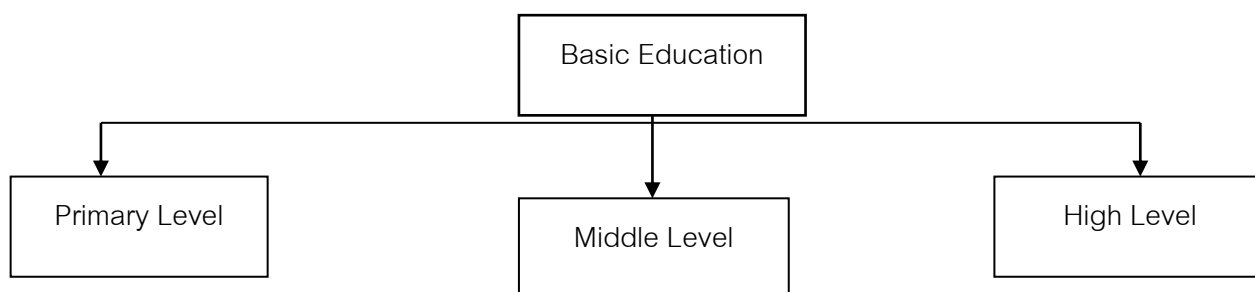
(e) develop and maintain culture, arts and literature of the state and to prioritize arts study.

(f) establish firm basic education for further studies of university education.

3.1.1.3 The structure of basic education

The basic education system is divided into three levels primary level education, middle level education and high level education²⁹⁸ as seen in Diagram below.

The Basic Education System



The total number of the basic education is 12 years.²⁹⁹ The testing and evaluation of accomplishment of learning and knowledge shall be prescribed in the rules of relevant educational law.³⁰⁰

Before going to primary education, children have an optional to study in preschool. Pre-primary education starts from the age of 3 years to the age of 5.³⁰¹ Pre-

²⁹⁸ Section 16 (a) of National Education Law and Article 4 (a) of the Basic Education Law 1973

²⁹⁹ Section 16 (a) of the Basic Educational Law 1973

³⁰⁰ Section 16 (c) of the Basic Educational Law 1973

³⁰¹ Section 13 of the Basic Educational Law 1973

primary education shall be regarded as the basic standard of primary level education.³⁰² Grade-1 education is opened for the children 5 years of age.³⁰³ After completing Grade-1, student will go to primary school at the age of 6.³⁰⁴ Primary education, the first step of basic education, is free and compulsory in Myanmar.³⁰⁵ Children enter primary school for 5 grades.³⁰⁶ English will be taught starting from primary education.³⁰⁷ To proceed further education, students must successfully pass a comprehensive examination in basic academic subject. Secondary education is divided into two levels: the middle level education shall be four grades which consist of grades 6 to 9 (age 12 to 16 years),³⁰⁸ and high level education consists of grades 10-12 (age 17 to 19 year). At the end of high school, students take the university entrance examination administered by the Board of Examinations.

Table: Basic Education System in Myanmar

Education	Grade	Ages	Years	Note
Primary level	1-5	6-11	5	Free and compulsory
Middle level	6-9	12-16	4	
High level	10-12	17-19	3	

3.1.1.4 School

There are different types of schools that include public schools, private schools, monastic education schools, philanthropic schools, special education programme schools, mobile and emergency school and schools determined by the Ministry

³⁰² Section 16 (b) of the Basic Educational Law 1973

³⁰³ Section 18 (a) of the Basic Educational Law 1973

³⁰⁴ Section 18 (b) of the Basic Educational Law 1973

³⁰⁵ Section 17 of the Basic Educational Law 1973

³⁰⁶ Article 4 (b) (1) of the Basic Education Law 1973

³⁰⁷ Section 19 of the Basic Educational Law 1973

³⁰⁸ Article 4 (b) (2) of the Basic Education 1973

or relevant ministries from time to time.³⁰⁹ School for primary, middle and high level educations are known as primary school, middle school and high school respectively.³¹⁰

3.1.1.5 Curriculum

The National Curriculum Committee shall supervise and ensure that the curriculum used have standard and meet these objectives³¹¹

(1) to train the students to have good thinking power and are intelligent enough to differentiate the right and the wrong and equipped with multimodal education

(2) to enable practice and implementation of knowledge, intellect and skills useful for an individual citizen to whole Myanmar society; to value and respect good characters, diversification, equality, accountability, responsibility, democracy practice and human rights standards

(3) to enable the improvement of values of citizens and rich literature, culture, arts, customs and tradition and historical heritage of variety of national races

(4) to facilitate the curriculums to fulfill the needs of the current age and to accommodate with international curriculums

(5) to lay down curriculum framework and standards to be practiced in nationwide basic education levels

(6) to enable independent performance on curriculum development based on the curriculum standards in the respective Regions and States

(7) to connect the curriculum with real life situation

(8) to adopt curriculum and teaching methodology that centres multimodal development of students and to accommodate with students' age and nature and

³⁰⁹ Section 34 of the Basic Education 1973

³¹⁰ Article 4 (c) of the Basic Education 1973

³¹¹ Section 39 of the Basic Education 1973

(9) to have a connection among early childhood education and primary, middle and high curriculums.³¹²

The Ministry and relevant Ministries shall determine the standard for the national education curriculum for every level of basic education system with approval from the National Curriculum Committee.³¹³ School can teach either Myanmar language or English language or with both.³¹⁴ If it is needed, language of national race can be used in classroom in basic education level.³¹⁵ In addition, teaching and learning of literature and language of national races in regions and states shall be implemented from basic education primary level through the plan arranged by the relevant region or state government and extended step-by-step.³¹⁶

3.1.1.6 Basic Education Supervision

Union of Myanmar Basic Education Council has a responsibility to supervise basic education learning.³¹⁷ Moreover, Basic Education Council which includes the Basic Education Curriculum, Syllabus and Textbook Committee and Teacher Training Supervision Committee has duties with regard to directives and instructions curriculum and syllabus, and textbook. The main functions of the Basic Education Council are

(a) to lay down directives and instructions that are consistent with the education policy of the country with regard to the following matters such as basic education teacher training education, curriculum and syllabus and textbooks³¹⁸

(b) to review whether the directives and instructions are conformity with the activities conducted for the whole basic education system and amend them for effective support to the development of the country³¹⁹

³¹² Section 39 of the Basic Education 1973

³¹³ Section 41 (a) of the Basic Education 1973

³¹⁴ Section 43 (a) of the Basic Education 1973

³¹⁵ Section 43 (b) of the Basic Education 1973

³¹⁶ Section 44 of the Basic Education 1973

³¹⁷ Article 5 (a) of Basic Education Law 1973

³¹⁸ Article 5 (c) of Basic Education Law 1973

³¹⁹ Article 5 (c) of Basic Education Law 1973

(c) to discuss the matters with regard to basic education and to remark.³²⁰ Moreover, the duties of Basic Education Curriculum, Syllabus and Textbook Committee are given hereunder: preparing curriculum and syllabus reviewing and altering; preparing and printing textbooks producing teaching aids suggesting and recommending how make examination; carrying out by forming subject team, regional syllabus teams and teams for preparing and printing textbooks scrutinizing and recognition.³²¹

Teacher Training Supervision Committee also have duties preparing curriculum and syllabus for teacher training course reviewing and altering teaching and training teachers; preparing textbooks for teacher training course recognition and prescription holding examination for teacher training schools improving the teaching proficiency of teachers determining the qualification of teachers registration of teachers and safeguarding the prestige and integrity of teachers.³²²

3.1.1.7 Educational Duties and Responsibilities

The National Education Law 2014 states the roles of parents or guardians that parents or guardians shall be responsible to make admission for their children who are mature enough for education to school in order to pursue free compulsory education.³²³ Moreover, parents or guardians have rights not only to make admission for their children to any school if they meet the specifications³²⁴ but also to co-operate with Parent-Teacher Association and Secretary of an Association in order to get access the opportunity of constant learning.³²⁵ In addition, ward or village tract community shall help and assist until children in their community have accomplished free compulsory education.³²⁶

³²⁰ Ibid

³²¹ Article 7 (b) of Basic Education Law 1973

³²² Article 7 (d) of Basic Education Law 1973

³²³ Section 45 of the Basic Education 1973

³²⁴ Section 46 of the Basic Education 1973

³²⁵ Section 47 of the Basic Education 1973

³²⁶ Section 48 of the Basic Education 1973

3.1.1.8 The qualification of teacher

One of the most important factors in raising achievement is a highly qualified teacher since teacher's knowledge is associated with student learning. Therefore, the National Education Law stated that teachers are entitled to make research independently without effecting national interests; to choose the methods independently that are in conformity with the curriculum for learning development to get the opportunity for further studies in local and international for high quality of learning, and apply for favourite schools or regions.³²⁷

The qualification of teachers shall be determined and prescribed in the educational laws.³²⁸ It is also necessary for the Ministries to make necessary arrangement for teachers to obtain high qualification and international experience.³²⁹ Moreover, there shall be no discrimination among teachers who teach and value various subjects in the respective educational levels³³⁰ or who is disable or special needs.³³¹

3.1.1.9 Quality Assessment and Quality Assurance

To ensure quality assessment and quality assurance, National Education Standard and Quality Assurance Assessment Committee shall be formed by the Commission in order to carry out the functions that ³³²

(1) To have education quality assurance programme in every level of education³³³

(2) To have internal and external quality assessment procedures that will inspect and assess quality and standard of education.³³⁴

³²⁷ Section 50 of the Basic Education 1973

³²⁸ Section 51 of the Basic Education 1973

³²⁹ Section 52 of the Basic Education 1973

³³⁰ Section 53 (b) of the Basic Education 1973

³³¹ Section 53 (c) of the Basic Education 1973

³³² Section 54 (a) of the Basic Education 1973

³³³ Section 54 (a) of the Basic Education 1973

³³⁴ Section 54 (c) of the Basic Education 1973

3.1.1.10 Education Management

For education management, the basic education schools shall be managed and supervised by the Ministry and relevant Ministry.³³⁵ The Ministry, the relevant ministries and regional Administration Bodies are formed with responsibility for educational management and supervision on the whole educational system throughout the country. Its main functions are to support the implementation of setting up high quality education and lay down development educational policies.

3.1.1.11 Finance

The National Education Law states that the educational expenses of the State shall have a target of reaching up to 20% of all expenses spent by the State.³³⁶ Moreover, the relevant school or educational organization may accept money or material donated by local or international private or official organizations after scrutinizing them.³³⁷ In order to use the fund, the relevant school or educational organization shall be transparent to the public and donators.³³⁸ Furthermore they shall make effective use of money or material for development of education sector and go under the inspection of the Ministry.³³⁹

3.1.2 Higher Education

The Higher Education is governed by the Union of Myanmar University Education Law 1973 amending 1998 which provides the legislative foundation for the higher education system.

According to the University Education Law “University” means not only to Arts and Science University but also Proficiency University.³⁴⁰ All universities need to ensure

³³⁵ Section 57 (a) of the Basic Education 1973

³³⁶ Section 62 (a) of the Basic Education 1973

³³⁷ Section 62 (b) of the Basic Education 1973

³³⁸ Section 61 (a) of the Basic Education 1973

³³⁹ Section 63 (b) of the Basic Education 1973

³⁴⁰ Section 2 (a) of the Basic Education 1973

to produce trained intellectuals and to prioritize and teach skills that will support their professions.³⁴¹

3.1.2.1 The Structure

Universities in Myanmar offer bachelor's degree, master's degree, and doctorate degree programs. The higher education system follows 4 years for a bachelor degree and 3 years for a master's degree. Regarding to university supervision higher education administrative policy falls under two councils which are the University Central Council and the Council of University Academic Bodies. Minister of Education is a chairman of both the University Central Council and the Council of University Academic Bodies.³⁴² The memberships of these Councils include ministers of relevant ministries administering universities, person assigned duty by the government, heads of department rectors and principals of colleges.³⁴³ The University Central Council is mainly responsible for laying down policy and giving guidance and supervising university education. Its duties are

- (a) to lay down policy for University education
- (b) to submit the recommendation to the Government for establishment of new universities and degree college
- (c) to determine the type of post graduate degree degree diploma and certificate to be awarded by universities
- (d) to determine the number of students to be admitted to the Universities
- (e) to determine research activities that will benefit the whole country
- (f) to prescribe basic education qualification of teachers
- (g) to award honorary degree and

³⁴¹ Section 6 of the Basic Education 1973

³⁴² Section 8 (a) and 9 (b) of the Basic Education 1973

³⁴³ Section 8 (a) of the Basic Education 1973

(h) to supervise the activities of University to pass the decision for issues submitted by them.³⁴⁴

The University Academic Bodies is principally responsible for supervising all matters relating to standard of university education syllabus examination and education. Responsibilities assigned to the University Academic Bodies are

- (1) to prescribe and determine University education level
- (2) to determine educational qualification and system of selection for University admission
- (3) to appraise University education teaching and learning systems and supervise them
- (4) to prescribe and determine terms and conditions and systems to hold University examinations
- (5) to determine basic educational qualification of teachers and to lay down research activities in order to improve educational qualification of teachers
- (6) to coordinate research activities of Universities Academic Bodies, their functions and tasks and
- (7) to implement after scrutinizing the university education development measures submitted by the respective University Academic Bodies.³⁴⁵

3.1.2.2 University Management

Higher Education shall be managed by the Ministry of Education and relevant Ministry.³⁴⁶ There are two branches of the Department of Higher Education which are Lower Myanmar and Upper Myanmar to responsibility for the administration and coordination of higher education.³⁴⁷ As regarding carry out management and educational duties of universities two bodies one for University Management Body and the others for

³⁴⁴ Section 8 (c) of the Basic Education 1973

³⁴⁵ Section 9 (c) of the Basic Education 1973

³⁴⁶ Section 10 of the Basic Education 1973

³⁴⁷ Section 11 (a) of the Basic Education 1973

University Academic Body shall be formed by Universities Central Council.³⁴⁸ Rector is given responsibility for a chairman of University Management Body and the Council had comprised of 11 persons which are pro rector two persons selected by Ministries, two members of university Central Council three members of the University Teaching Staff, and the Head of Department.³⁴⁹ The duties of University Management Body are

- (1) to carry out financial tasks
- (2) to determine disciplines for students to be followed and to cause students to follow such disciplines strictly
- (3) To carry out University compound related matters
- (4) to supervise and arrange sports, physical education and cultural tasks for students
- (5) to administer health of University staff and students
- (6) to administer University buildings and
- (7) to carry out the selection of scholars who should be awarded stipends and exemptions for University fees for all courses except for first year course.³⁵⁰

The law determined that Rector also is a chairman of University Academic Body and with much the same membership of University Management Body.³⁵¹ The main responsibilities of University Academic Body are

- (1) to cooperate with and suggest teaching groups in order to teach subjects that go well with Union of Myanmar political, economic and social systems
- (2) to scrutinize curriculum and syllabus prepared and submitted by teaching groups formed in accordance with subjects and submit them to Council of University Academic Bodies together with remarks
- (3) to hold examinations and announce the results
- (4) to award degrees diplomas certificates and rewards

³⁴⁸ Section 12 (a) of the Basic Education 1973

³⁴⁹ Section 12 (b), (d) of the Basic Education 1973

³⁵⁰ Section 12 (d) of the Basic Education 1973

³⁵¹ Section 12 (d) of the Basic Education 1973

(5) To recommend on the formation of new departments

(6) to scrutinize and approve any documents and books to be prescribed for University and

(7) To co-operate with teaching departments and recommend on the opening of post graduate courses in universities.³⁵²

3.1.2.3 Finance

Regarding finance universities shall

(1) submit their budget to the Government with regard to income and expenses. Universities

(2) deposit all of its income to the Government's account

(3) spend the expenses according to the procedure prescribed by the Government.³⁵³

3.1.3 Technical Agricultural and Vocational Education

Technical Agricultural and Vocational Education is governed by the Union of Myanmar Technical, Agricultural and Vocational Education Law 1974. According to this law "Technical Agricultural and Vocational Subjects" means any vocational subject trained and taught by Technical Agricultural and Vocational Training School/Institutes in order to establish the primary objectives of technical agricultural and vocational education.³⁵⁴ Furthermore, "Technical Agricultural and Vocational Training School/Institute" means any school or Institute that trains and teaches any vocational subject supervised by Technical Agricultural and Vocational Education Directorate.³⁵⁵

³⁵² Section 12 (e) of the Basic Education 1973

³⁵³ Section 13 of the Basic Education 1973

³⁵⁴ Section 2 (b) of the Basic Education 1973

³⁵⁵ Section 2 (c) of the Basic Education 1973

The objectives of Agricultural and Vocational Education are

(1) to nurture and produce technicians and experts who are required not only for establishing industries but also in applying the modern technology for the development of agricultural, breeding activities

(2) to extend the vocational subjects as necessary which are consistent with economic political and social system of the country and

(3) to train and nurture skilled technicians and experts who are imbued with a sense of consciousness and convictions to cherish the State.³⁵⁶

3.1.3.1 The objective of Technical, Agricultural and Vocational Education

Technical Agricultural and Vocational Education Council shall be formed by the Ministry of Education in order to provide the exact instructions when implementing the primary objectives of technical agricultural and vocational education.³⁵⁷ Their main functions are to

(1) laying down guidelines in relation to training courses of the respective Technical Agricultural and Vocational Educational Schools and Institutes in the interest of the State

(2) reporting to the Ministry of Education to extend Technical, Agricultural and Vocational Training Schools/Institutes and making recommendation

(3) scrutinizing courses to be taught at Technical Agricultural and Vocational Training Schools/Institutes curriculum syllabus textbooks and academic year and ratifying them so that the required standards will be met for conformity with political-economic and social systems of the country

(4) submitting to the Ministry of Education about the pursuit of relevant vocational subjects by those who could not afford basic education for various reasons and making recommendation

³⁵⁶ Section 3 of the Basic Education 1973

³⁵⁷ Section 4 of the Basic Education 1973

(5) submitting to the Ministry of Education and making recommendation for opening courses required for nurturing teachers for Technical Agricultural and Vocational Training Schools/Institutes

(6) forming Education Committees for Technical Agricultural and Vocational Training Schools/Institutes Management Committees Examination Boards Curriculum Boards, Textbook Committee and other bodies

(7) determining the number of members and duties of the committees and bodies formed under sub-section

(8) considering and deciding on the type of certificates and diplomas to be conferred by the Technical Agricultural and Vocational Schools and Institutes.³⁵⁸

3.1.3.2 Structure

The Technical Agricultural and Vocational Education Council, chaired by the Minister of Education is to include the deputy Minister of Education Deputy Chairman, Director General Member Directorate of Technical Agricultural and Vocational Education, Director General Member Directorate of Basic Education, Director General Member High Level Education Directorate, Chairman Member Union of Myanmar Examination Board, Rector Member Yangon Technical University, Rector Member Yangon Agricultural University, representatives in particular subject areas individuals appointed by the Government Member, Director Member Technical, Agricultural and Vocational Directorate Deputy Director (Technical and Agricultural) Member Agricultural and Vocational Directorate, and the term of members who do not hold any title in Technical Agricultural and Vocational Directorate.³⁵⁹

3.1.3.3 Management

Ministry of Education will play a significant role to supervise the technical agricultural and vocational education.³⁶⁰ The Council, committees and bodies have

³⁵⁸ Section 7 of the Basic Education 1973

³⁵⁹ Section 5 of the Basic Education 1973

³⁶⁰ Section 8 of the Basic Education 1973

worked with the Directorate of Technical Agricultural and Vocational Education to accomplish the primary objectives of technical agricultural and vocational education.³⁶¹ In addition, Examination for the conferment of certificates and diplomas by the respective Technical Agricultural and Vocational Schools and Institutes shall be conducted under the supervision of the Department of Technical Agricultural and Vocational Education.³⁶²

3.1.3.4 Finance

Regarding to finance The Technical Agricultural and Vocation Education Directorate shall

(1) submit its budget to the Government with regard to income and expenses.

(2) deposit all of its income to the Government's account.

(3) spend the expenses according to the procedure prescribed by the Government.³⁶³

3.1.4 Informal Education

Informal education is one of important teaching and learning ways in Myanmar. The informal education is subject to the National Education Law 2014. Before discussing informal education it is necessary to know what informal education is under the National Education Law. Article 1(k) defines that informal education means a system of education in which learners who would like to study according to curriculum are facilitated with flexible methods outside formal education and their knowledge is improved. It can be seen that the informal education has characteristics which are occur outside of school provide for gaining knowledge flexible and adaptable methods.

The Ministry of education takes the responsibility of informal education system. Its main functions are to

(1) implement for providing basic literacy knowledge and its subsequent functions

³⁶¹ Section 9 of the Basic Education 1973

³⁶² Section 10 of the Basic Education 1973

³⁶³ Section 11 of the Basic Education 1973

(2) make necessary arrangement for those who could not accomplish respective basic education level to accomplish it and for those who would like to pursue informal education and

(3) carry out level adjustment education programmes in which informal education can be transformed into formal education or technical and vocational education.³⁶⁴

Additionally, the Ministry shall encourage the establishment of informal education by cooperating with community-based association and non-government organization.³⁶⁵ Moreover, it is important that the Ministry shall make necessary arrangement to develop teacher's knowledge for informal education.³⁶⁶

3.1.5 Self-study education

Learning can take the form of self-study education. Self-study education means the procedure in which one studies by himself/herself according to his/her need and interest.³⁶⁷ To provide every citizen with the opportunity of self-study and further study and improve their quality the Ministry shall

(a) create conditions and carry out programmes in which self-study and further studies can be conducted

(b) persuade and encourage individuals or associations to carry out programmes contained in sub-section (a) and permit their activities

(c) broadcast and distribute education programmes through publication of books and using various type of media

(d) encourage private associations and regional associations for development of libraries and museums.³⁶⁸

³⁶⁴ Section 32 of the Basic Education 1973

³⁶⁵ Section 31 of the Basic Education 1973

³⁶⁶ Section 20 of the Basic Education 1973

³⁶⁷ Section 1 (k) of the Basic Education 1973

³⁶⁸ Section 33 of the Basic Education 1973

3.2 Laws relating to labor protection

Myanmar labour laws have a long history and can be traced back to the colonisation era under the British Empire. Some of these laws are promulgated in the form of statutes and codified in the Burma Code for example, Workmen's Compensation Act 1923 and Leave and Holidays Act 1951. Afterwards when the country was ruled by the SPDC the state promulgated Law relating to Overseas Employment 1999. During President Thein Sein's Government promulgated Social Security Law 2012, Minimum Wage Law 2013 and the Employment and Skill Development Law 2013.

These statutes have contributed to a legal system serving as a legal basis for the state to exercise its power to protect the employee's rights, impose duties upon the employer and other business entrepreneurs. Moreover, they impose responsibilities upon state officials who are responsible for labour protection. In other words these statutes serve as a legal basis for exercising of state power to protect labour such as investigation of the employer's performance in compliance with the law. In addition, most of Myanmar labour laws criminalise failure to comply with certain duties imposed upon individuals by laws.

It could be said that Myanmar labour laws begin its scope of protection from unemployed labours. In this regard, the Employment and Skill Development Law 2013 requires establishment of a recruitment centre as a means to enhance employment in Myanmar. Moreover, employment of foreign labours is promoted through the Overseas Employment Act 1999. These labours' basic rights including a right to safety and human rights are guaranteed. Once an employment agreement is signed, Myanmar labour laws place their focus on content of the agreement. Moreover, the Minimum Wage Law 2013 and Leaves and Holiday Act 1951 restrict freedom contract by stipulating clauses or content that parties are required to include in an employment agreement such as minimum wage holidays leaves. In essence, parties are prohibited from agreeing on a clause or term guaranteeing benefits less than those stipulated by laws. Collectively, these laws on labour serve as a legal framework for labour protection.

Scope of labour protection extends to the employment period, post-employment period injury or death caused as a result of work. The Labour Compensation law stipulates compensation to which an employee is entitled and how an employer must

pay such compensation. The Social Security law 2012 recognises the employee's rights to receive compensation for medical treatment compensation for a family of the deceased benefits of those who have suffered from the work benefits of aging people allowance for those living right to shelter and a right to be an owner of an accommodation after a retirement.

It could be noted that the Myanmar labour law highlights importance of employment and skill development. The Employment and Skill Development Law 2013 sets up organization to regulate operation of a training school and the Skill Evaluation Department. In addition, laws on labour make a reference to establishment and management of the Labour Development Fund.

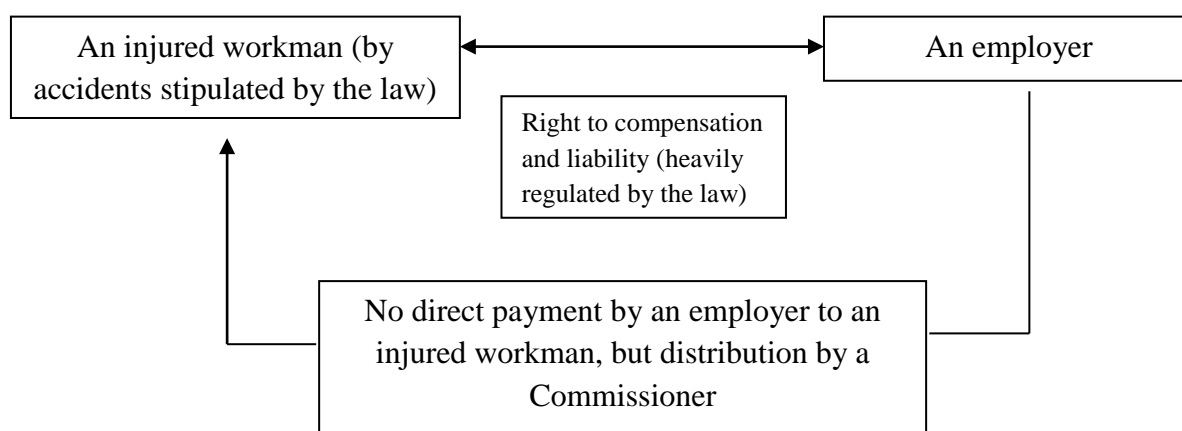
3.2.1 The Workmen's Compensation Act 1923³⁶⁹

The Workmen's Compensation Act 1923 recognises a workman's right to fair compensation in of an injury resulting by employment and correspondingly imposes several liabilities and duties on an employer. To ensure fairness of the compensating process the Act governs and regulates *inter alia* amount of compensation methods of calculation, compensation distribution process and settlement of disputes. However, the Act assigns a Commissioner several tasks to take part in the compensating process such as distributing the compensation deposited by an employer and participating in a dispute settlement. Serving a minimum legal standard of workman's right to compensation the Act nullifies a contract and agreement that a workman relinquishes any right of compensation from an employer for personal injury arising out of or in the course of the employment.³⁷⁰

³⁶⁹ The Workmen's Compensation Act 1923 was enacted prior to Myanmar's impendence, but has remained in force. There are three amendments to this Act by the followings: the Workmen's Compensation Act (Amendment) 1955 [Act No. XVII of 1955] the Workmen's Compensation Act (Amendment) 1957 [Act No. XXII of 1957] and and the Law Amending the Workmen's Compensation Act 1923 (The State Peace and Development Council Law No. 4/2005).

³⁷⁰ Section 17 of the Workmen's Compensation Act 1923 states that: "Any contract or agreement, whether made before or after the 1st July, 1924, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act."

Overview of the Workmen's Compensation Act 1923



3.2.1.1 Key actors of the law 1923

The Workmen's Compensation Act 1923 fundamentally involves four key actors: workman; employer a Commissioner and the President. Under the law an injured workman is entitled to a right to compensation from his or her employer. While the Commissioner is responsible to make sure that the aforesaid compensating process was done in compliance with the law. In addition to sections of this Act the President is responsible to issue subordinate laws (referred to by the law as "Rules") governing and regulating the compensating process under the law.

(1) Workman

Workman means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise.³⁷¹ The aforesaid contract can be expressed or implied and both oral or in writing.³⁷² A workman also includes a person engaged in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under any contract (other than a hire purchase agreement) in consideration of the payment of a fixed sum or a

³⁷¹ Section 2 (1) of the Workmen's Compensation Act 1923

³⁷² Ibid.

share in the earnings or otherwise. However, the following persons are not considered a workman under this law³⁷³

(1) any person employed otherwise than by way of manual labour whose wages exceeds four hundred rupees per month or

(2) a person employed in agriculture that is to say, the cultivation of crops other than those grown on any estate which is maintained for the purpose of growing cinchona rubber coffee or tea and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed or

(3) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, not being a person employed for the purposes of any game or recreation and engaged or paid through a club or

(4) any person working in the capacity of a member of the naval, military or air forces of the Union of Burma or

(5) a member of a police force or

(6) an outworker or

(7) a member of the employer's family dwelling in his house.

(2) Employer

There are three key types of employers under the law. Firstly, employer includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer.³⁷⁴ Secondly, employer under the law includes contractors. When the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him.³⁷⁵ Thirdly, employer also includes the owner of any vehicle or vessel the use of which is obtained from the owner thereof for the purpose of plying for hire

³⁷³ Ibid.

³⁷⁴ Ibid.

³⁷⁵ Ibid.

with the said vehicle or vessel under any contract other than a hire purchase agreement in consideration of the payment of a fixed sum or a share in the earnings or otherwise.³⁷⁶

(3) Commissioner

The President has an authority to appoint a Commissioner for Workmen's Compensation for a local area by means of notification.³⁷⁷ However, in one local area there can be more than one Commissioner.³⁷⁸ An appointed Commissioner may choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.³⁷⁹ Every Commissioner shall be deemed to be a public servant within the meaning of the Penal Code.³⁸⁰ In performing its functions for example, distributing proceedings of recovery compensation and other handling any matter under this law a Commissioner shall do it in the local area where the accident took place which resulted in the injury.³⁸¹

As will be discussed throughout this section, a commissioner is expected to play vital roles in ensuring fairness of the compensating process. The Workmen's Compensation Act 1923 does not only impose responsibilities upon a Commissioner, but also recognises its powers and authorities. A Commissioner has powers of civil Court under the Code of Civil Procedure for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects.³⁸² While exercising these powers, a Commissioner shall be deemed to be a civil Court.³⁸³

³⁷⁶ Ibid.

³⁷⁷ Section 20 (1) of the Workmen's Compensation Act 1923

³⁷⁸ Section 20 (2) of the Workmen's Compensation Act 1923

³⁷⁹ Section 20 (3) of the Workmen's Compensation Act 1923

³⁸⁰ Section 20 (4) of the Workmen's Compensation Act 1923

³⁸¹ Section 21 (1) of the Workmen's Compensation Act 1923

³⁸² Section 23 of the Workmen's Compensation Act 1923

³⁸³ Section 23 of the Workmen's Compensation Act 1923

(4) The President

The Workmen's Compensation Act 1923 governs and regulates a number of activities relating to the compensating process which inevitably involves a wide range of details and requirements. Therefore, in addition to sections of the Act, the relevant parties are also subject to rules issued by the President for the purposes of this Act. According to Section 32 of the Act, these rules involves, for example rules regarding medical certificate and examination³⁸⁴ the procedure to be followed by Commissioners in the disposal of cases under this Act³⁸⁵ the transfer of matters and cases from one Commissioner to another³⁸⁶ the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased workman.³⁸⁷ In addition, Section 33 of the Act recognises the President's power to make rules regulating scales of costs.

3.2.1.2 Employer's liability

One crucial aspect of the Workmen's Compensation Act 1923 concerns employer's liability for compensation in the case of a workman's injury. It stipulates that if personal injury is caused to a workman by accident arising out of and in the course of his employment his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.³⁸⁸ However, the law exclude the below accidents which is directly attributable to

the workman having been at the time thereof under the influence of drink or drugs or

(2) the wilful disobedience of the workman to an order expressly given or to a rule expressly framed for the purpose of securing the safety of workmen or

³⁸⁴ Section 32 (2) (a) - (b) of the Workmen's Compensation Act 1923

³⁸⁵ Section 23 (2) (c) of the Workmen's Compensation Act 1923

³⁸⁶ Section 23 (2) (d) of the Workmen's Compensation Act 1923

³⁸⁷ Section 23 (2) (e) of the Workmen's Compensation Act 1923

³⁸⁸ Section 3 (1) of the Workmen's Compensation Act 1923

(3) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.³⁸⁹

In addition to generally referring to accident arising out of and in the course of employment the Section 3 (2) and (3) of the law specifically mentions the contracting of the disease is deemed to be an injury by accident and compensable by the Employers. Categories and conditions of these injuries are illustrated by Table below

Table: Workman's injuries		
Workman	Injuries	Legal consequences
In the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment	Contracting any disease specified in List A of Schedule III	An injury by accident within the meaning of section 3 (2)
At any time within the twelve months previous to the date of disablement	Contracting of the disease specified in List B of Schedule III, and it is certified by a qualified medical practitioner that the disease is directly due to the nature of any employment in which the workman was employed	An injury by accident within the meaning of this section 3 (3). The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due.

³⁸⁹ Section 3 (1) (i) - (iii) of the Workmen's Compensation Act 1923

In both cases, an employer can dismiss its liability if it can prove that the above condition does not exist. For example, an employer will be dismissed if it can prove that contraction of disease or disablement was not caused by employment.

3.2.1.3 Amount of compensation

The law does not only act a legal basis of the employer's liability, but also amount of compensation to which an employer is liable. Section 4 of the Workmen's Compensation Act divides the compensable injuries into four categories death results from the injury permanent total disablement results from the injury permanent partial disablement results from the injury temporary disablement whether total or partial results from the injury.

(1) Where death results from the injury

In the case of an adult, a sum equal to 36 times the workman's monthly wages calculated in accordance with this Act.³⁹⁰ Where permanent total disablement results from the injury in the case of an adult, a sum equal to 36 times or 140 per cent of the workman's monthly wages calculated in accordance with this Act.³⁹¹ In addition to ratio of compensation the law sets the minimum amount of the given compensation. According to the amendment in 2005, this minimum amount must be prescribed by notification by the Ministry of Labour with the approval of the Government.³⁹² In the other words, the minimum amount is no longer fixed by the Act.

(2) Where permanent partial disablement results from the injury

Where permanent partial disablement results from the injury: (i) in the case of an injury specified in Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury and (ii) in the case of an injury not specified in Schedule I such percentage of the compensation payable

³⁹⁰ Section 4 (1) A (i) of the Workmen's Compensation Act 1923

³⁹¹ Section 4 (1) A (i) of the Workmen's Compensation Act 1923

³⁹² Section 4 (1) A (i) of the Workmen's Compensation Act 1923

in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury.³⁹³

(3) Where temporary disablement, whether total or partial results from the injury

Where temporary disablement, whether total or partial results from the injury a half-monthly payment payable on the sixteenth day from the date of the disablement and thereafter half-monthly during the disablement or during a period of five years whichever period is shorter

(a) in the case of an adult—of a sum equivalent to one-third of the workman's monthly wages calculated in accordance with this Act and

(b) in the case of a minor—of one-half of his monthly wages subject to a maximum of thirty rupees.³⁹⁴

(4) Where temporary disablement results from the injury

Where temporary disablement results from the injury the law further stipulates details on amount of compensation to be given. The given compensation shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from an employer.³⁹⁵ Moreover, the law stipulates addition two compensating methodologies maximum payment and 10-day or less disablement. As regards the former no half-monthly payment shall in any case exceed the amount if any by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.³⁹⁶ As regards the latter no compensation shall be payable in respect of the first four days of the disablement if the period of the workman's disablement is ten days or less.³⁹⁷

³⁹³ Section 4 (1) C of the Workmen's Compensation Act 1923

³⁹⁴ Section 4 (1) D of the Workmen's Compensation Act 1923

³⁹⁵ Section 4 (1) D (a) of the Workmen's Compensation Act 1923

³⁹⁶ Section 4 (1) D (b) of the Workmen's Compensation Act 1923

³⁹⁷ Section 4 (1) D (c) of the Workmen's Compensation Act 1923

3.2.1.4 Methods of calculating wages

According to Section 4 of the Workmen's Compensation Act 1923, calculation of the compensation is based on monthly wages. As a consequent it is necessary to determine the meaning of "monthly wages" under this law. The expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates) and calculated as follows

Table: Methods of calculating wages³⁹⁸		
Workmen	Accident/Time	Legal consequence
The workman who has been in the service of the employer who is liable to pay compensation	During a continuous period of not less than twelve months immediately preceding the accident	The monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period.
The workman was in the service of the employer who is liable to pay the compensation was less than one month.	The whole of the continuous period of service immediately preceding the accident	The monthly wages of the workman shall be deemed to be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed by a workman employed on similar work in the same locality
None of the above		Wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay

³⁹⁸ Section 5 of the Workmen's Compensation Act 1923

Table: Methods of calculating wages ³⁹⁸		
Workmen	Accident/Time	Legal consequence
		compensation, divided by the number of days comprising such period

The Workmen's Compensation Act 1923 addresses review of half-monthly payment. According to Section 6 of the law, either of the employer or of the workman can submit his or her application to the Commissioner explaining that there has been a change in the condition of the workman or on application made without the certificate of a qualified medical practitioner.³⁹⁹ However, this application must be accompanied by certificate of a qualified medical practitioner. The Commissioner is vested with discretionary power to maintain increase decrease or end any half-monthly payment.⁴⁰⁰ Furthermore, the Commissioner can convert half-monthly payment into the lump sum to which the workman is entitled if the accident is found to have resulted in permanent disablement.⁴⁰¹

3.2.1.5 Compensation distribution process

The Workmen's Compensation Act 1923 prohibits an employer from directly paying compensation to an injured workman but requires a Commissioner to act as a median as illustrated by Diagram below. An employer has to deposit his or her payment with a Commissioner.⁴⁰² Once the Commissioner received the deposit, the employer shall be dismissed from his liability.⁴⁰³

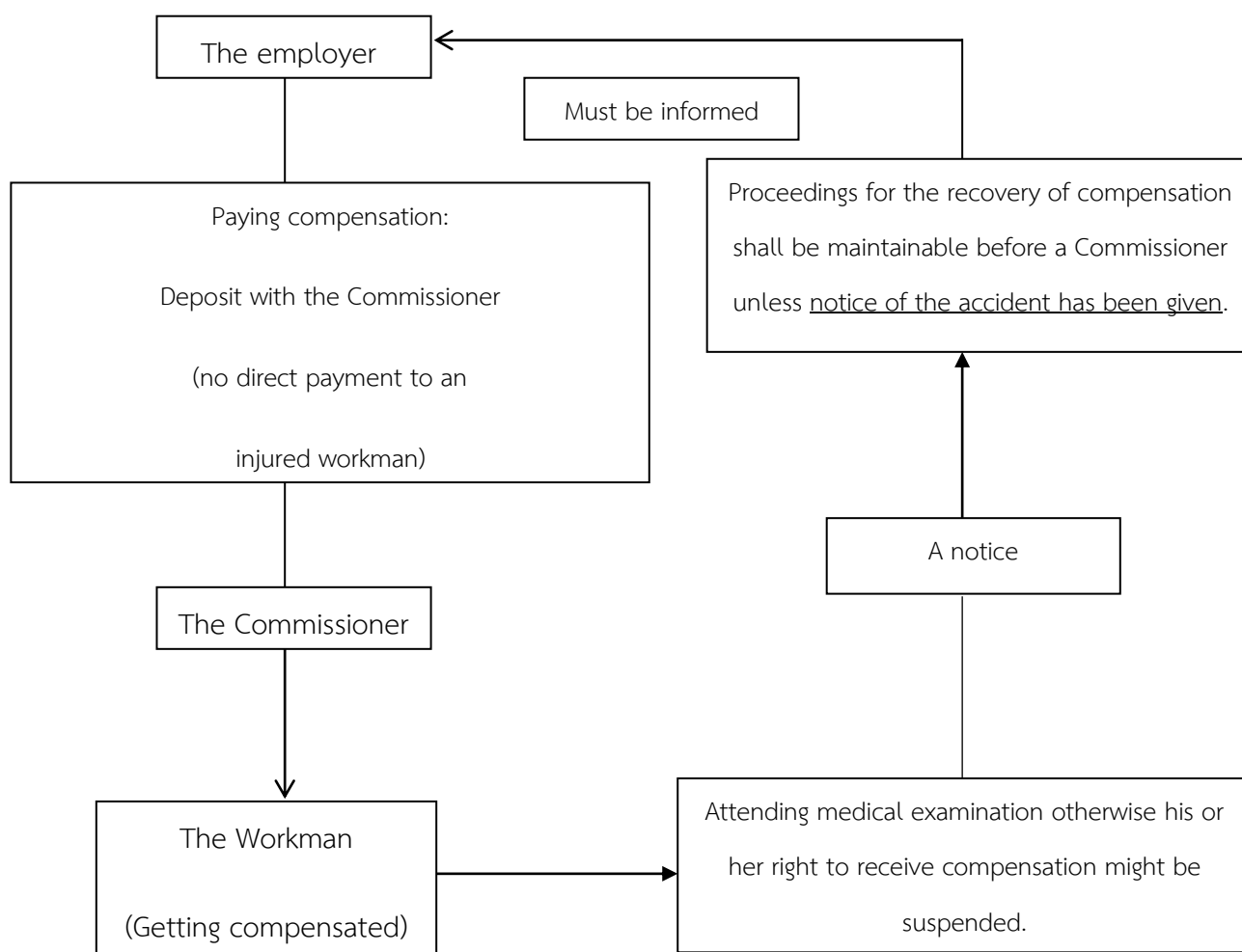
³⁹⁹ Section 6 (1) of the Workmen's Compensation Act 1923

⁴⁰⁰ Section 6 (2) of the Workmen's Compensation Act 1923

⁴⁰¹ Section 6 (2) of the Workmen's Compensation Act 1923

⁴⁰² Section 8 (1) of the Workmen's Compensation Act 1923

⁴⁰³ Section 8 (3) of the Workmen's Compensation Act 1923

Diagram: Deposit and distribution of compensation

However, the Commissioner has no right to maintain proceedings for recovery of compensation unless notice of the accident has been given.⁴⁰⁴ This notice must be given as soon as practicable after the happening thereof and before the workman⁴⁰⁵ has voluntarily left the employment in which he was injured.⁴⁰⁶ Under the law a notice must contain the name and the address of the person injured the cause of injury (in ordinary language) and the date on which the accident happened.⁴⁰⁷ The President of the Union may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice-book in the prescribed form which shall be readily accessible at all reasonable times to any injured workman employed on the premises and

⁴⁰⁴ Section 10 (1) of the Workmen's Compensation Act 1923

⁴⁰⁵ Section 9 of the Workmen's Compensation Act 1923

⁴⁰⁶ Section 10 (1) of the Workmen's Compensation Act 1923

⁴⁰⁷ Section 10 (2) of the Workmen's Compensation Act 1923

to any person acting bond fide on his behalf.⁴⁰⁸ A failure to maintain this notice-book could lead to criminal penalty.⁴⁰⁹ A notice under this section may be served by delivering it at or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served or where a notice-book is maintained by entry in the notice-book.⁴¹⁰

After the notice has been correctly given the Commissioner is responsible to distribute proceedings for the recovery of compensation to the injured workman. However, the workman's right to receive his or her compensation might be suspended if he or she had failed to attend medical examination as stipulated by section 11 of the law. According to section 11 of the law, the employer whom the notice has been given is responsible to offer the injured workman a medical examination by a qualified medical practitioner free of charge.⁴¹¹ If a workman refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same his right to compensation shall be suspended during the continuance of such refusal or obstruction.⁴¹²

3.2.1.6 Commissioner's powers in the case of fatal accidents

The Commissioner can also require from employers statements regarding fatal accidents. From any source, if the Commissioner is aware of death as a resulting of accident arising out of and in the course of employment he may send by registered post a notice to the workman's employer requiring him to submit a statement giving the circumstances attending the death of the workman.⁴¹³ In addition, the Commissioner has to indicate whether or not the employer is responsible to pay compensation.⁴¹⁴ An employer who is required to submit a notice must do so otherwise facing a criminal penalty under section 18 of the Act.⁴¹⁵

⁴⁰⁸ Section 10 (3) of the Workmen's Compensation Act 1923

⁴⁰⁹ Section 18 A (1) of the Workmen's Compensation Act 1923

⁴¹⁰ Section 10 (4) of the Workmen's Compensation Act 1923

⁴¹¹ Section 11 (1) of the Workmen's Compensation Act 1923

⁴¹² Section 11 (2) of the Workmen's Compensation Act 1923

⁴¹³ Section 10 A (1) of the Workmen's Compensation Act 1923

⁴¹⁴ Section 10 A (1) of the Workmen's Compensation Act 1923

⁴¹⁵ Section 18 (1) b of the Workmen's Compensation Act 1923

The Commissioner may aware of death by a notice given by a person possessing premises. Where by any law for the time being in force notice is required to be given to any authority by or on behalf of an employer of any accident occurring on his premises which results in death the person required to give the notice shall within seven days of the death send a report to the Commissioner giving the circumstances attending the death.⁴¹⁶ A person who failed to send the report to the Commissioner could face a criminal penalty under section 18.⁴¹⁷

In the case of fatal accident, a Commissioner may require additional compensation if he thinks that the deposited amount is insufficient.⁴¹⁸ The Commissioner may give a written notice stating his reasons to the employer and requesting the employer to explain why he should not make a further deposit.⁴¹⁹ If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable, and requiring the employer to deposit the deficiency.⁴²⁰

3.2.1.7 Additional considerations on the employer's rights and liability

The Workmen's Compensation Act 1923 acknowledges that paying compensation under the law might not simply involve just one injured worker and the employer. In reality, as illustrated by the below Diagram an injured worker might be hired by the employer's contractor. Moreover, the employer might eventually become bankrupt and, therefore, is not able to pay compensation as stipulated by the law. In the aforesaid cases who shall be responsible to pay the compensation

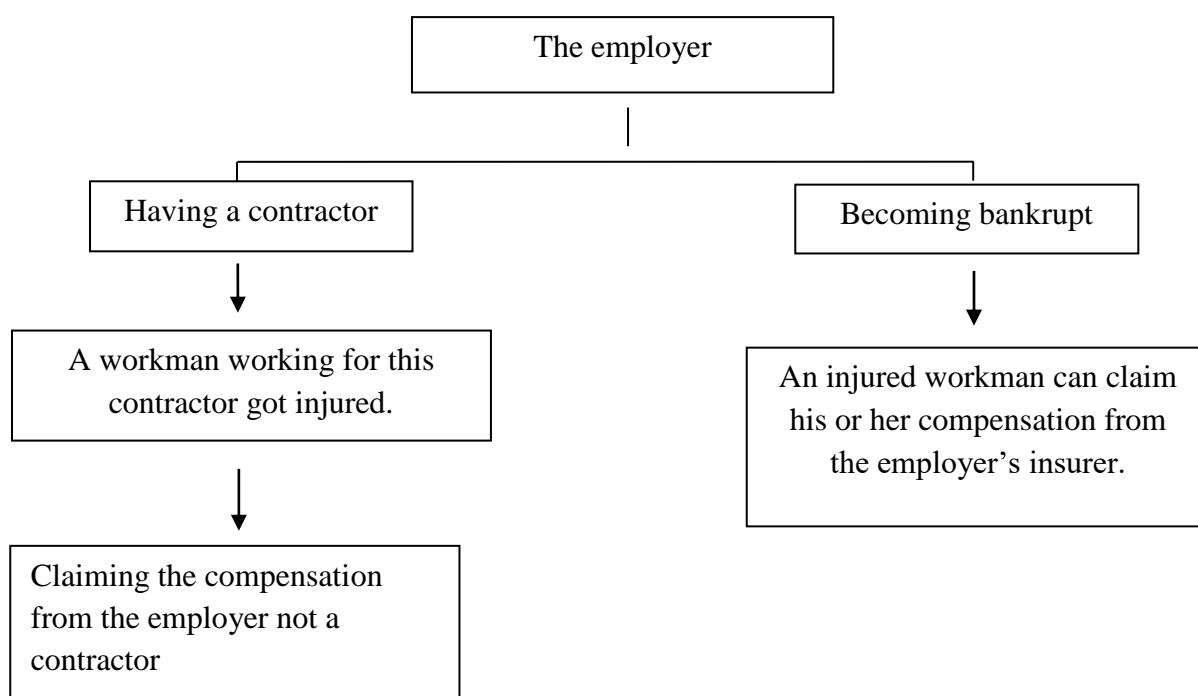
⁴¹⁶ Section 10 B of the Workmen's Compensation Act 1923

⁴¹⁷ Section 18 (1) c of the Workmen's Compensation Act 1923

⁴¹⁸ Section 22 A (1) of the Workmen's Compensation Act 1923

⁴¹⁹ Section 22 A (1) of the Workmen's Compensation Act 1923

⁴²⁰ Section 22 A (2) of the Workmen's Compensation Act 1923

Diagram: Additional employer's rights and liabilities

A person can contract with any other person for the execution by or under the latter of the whole or any part of any work which is ordinarily part of his trade or business. In this case the former is labelled principal whereas the latter is a contractor. The principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him.⁴²¹ Where the principal is liable to pay compensation under this section he shall be entitled to be indemnified by the contractor or any other person from whom the workman could have recovered compensation.⁴²²

If the employer becomes bankrupt, an injured workman may claim his or her compensation from the insurer if the employer has entered into a contract with any insurers in respect of any liability under this Act to any workman.⁴²³ In the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or if the employer is a company in the event of the company having commenced

⁴²¹ Section 12 (1) of the Workmen's Compensation Act 1923

⁴²² Section 12 (2) of the Workmen's Compensation Act 1923

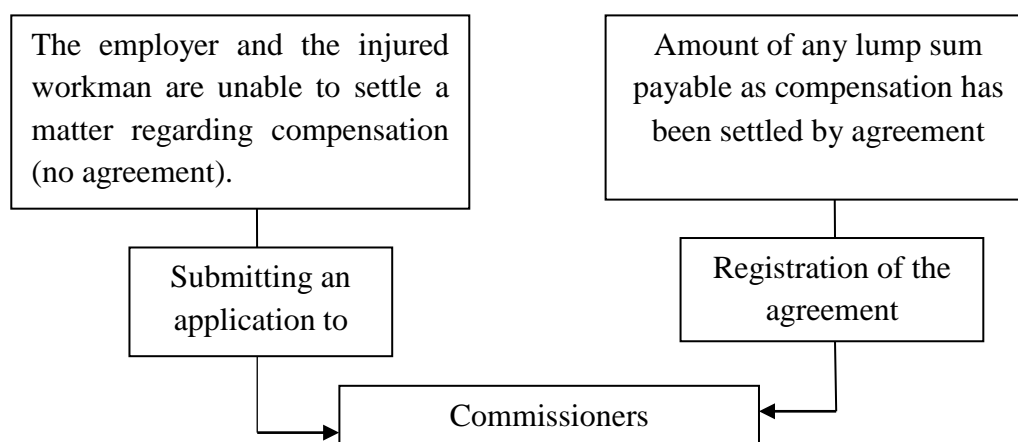
⁴²³ Section 14 (1) of the Workmen's Compensation Act 1923

to be wound up the rights of the employer against the insurers as respects that liability shall be transferred to and vest in the workman.⁴²⁴

3.2.1.8 Dispute settlement by the Commissioners

As stressed earlier the essence of the Workmen's Compensation Act concerns the workmen's right to get fair compensation in the case of his or her injuries resulting from an accident at the workplace. However, the law imposes responsibilities upon Commissioners to participate in the compensation process. In short, compensation payment is not only a matter between the injured workmen and the employers who is responsible to pay compensation but also a responsibility of the Commissioners. As illustrated below the Commissioners are responsible to settle any question relating to compensation in default of an agreement and in the case there is an agreement to accept registration of an agreement.

⁴²⁴ Section 14 (1) of the Workmen's Compensation Act 1923

Diagram: Settlement of questions relating to compensation

(1) Settlement in default of agreement

In absence of an agreement between the employer and the injured workman, these disputing parties can submit an application requesting a Commissioner to determine questions that have arisen between the parties in connection with compensation which they have been unable to settle by agreement.⁴²⁵ This application must contain the following details⁴²⁶

(1) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims

(2) in the case of a claim for compensation against an employer the date of service of notice of the accident on the employer and if such notice has not been served or has not been served in due time, the reason for such omission

(3) the names and addresses of the parties; and

(4) except in the case of an application by dependants for compensation, a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

⁴²⁵ Section 22 (1) of the Workmen's Compensation Act 1923

⁴²⁶ Section 22 (2) (a) - (d) of the Workmen's Compensation Act 1923

(2) Settlement agreement

Where the amount of any lump sum payable as compensation has been settled by agreement a memorandum thereof shall be sent by the employer to the Commissioner who shall on being satisfied as to its genuineness record the memorandum in a register.⁴²⁷ An agreement for the payment of compensation which has been registered under sub-section) shall be enforceable under this Act.⁴²⁸ Where a memorandum of any agreement the registration of which is required by section 28 is not sent to the Commissioner as required by that section the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act.⁴²⁹

3.2.2 The Leave and Holidays Act 1951⁴³⁰

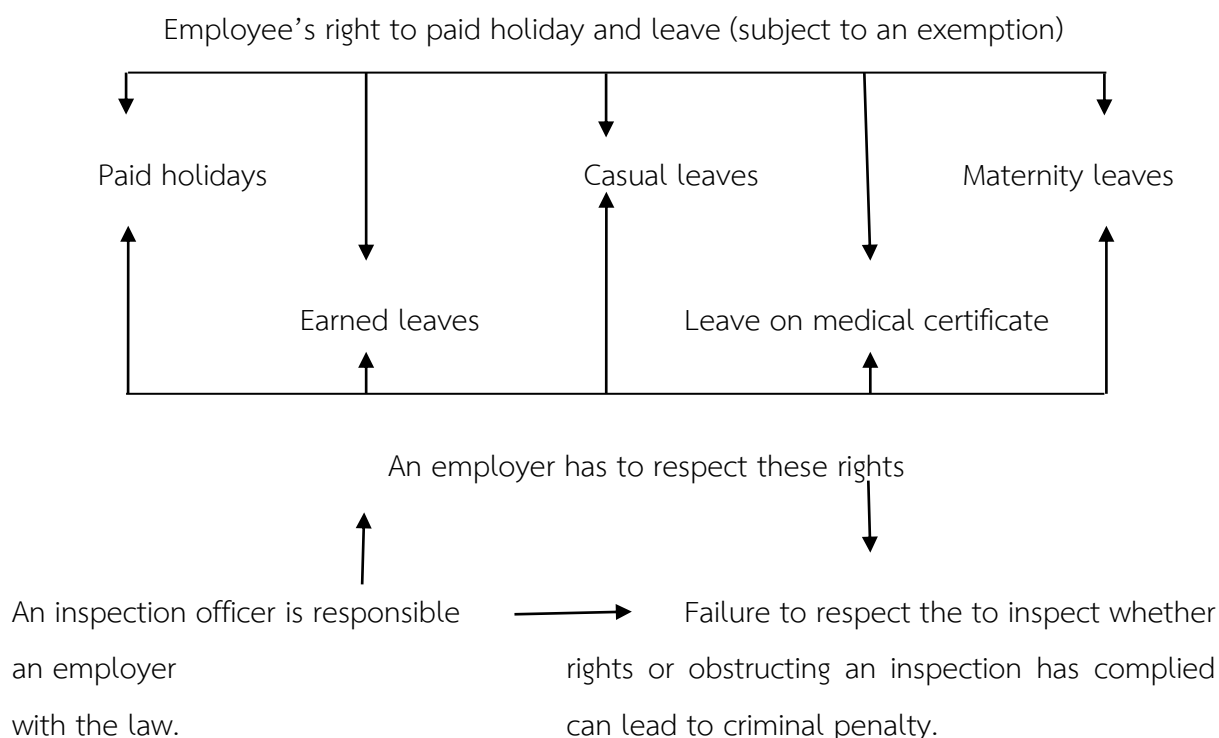
Serving as a minimum standard on leaves and paid holiday, the Leave and Holidays Act recognises employee's right to paid holiday and leaves. Correspondingly an employer is bound by the law to respect the aforesaid employee's rights otherwise facing criminal penalties as stipulated by the law. Apart from establishing rights and duties between employee and employers the law empowers an inspection officer to inspect whether the employer has fully complied with the law. Aims and functions of the Leave and Holidays Act are illustrated by Diagram below.

⁴²⁷ Section 28 (1) of the Workmen's Compensation Act 1923

⁴²⁸ Section 28 (2) of the Workmen's Compensation Act 1923

⁴²⁹ Section 29 of the Workmen's Compensation Act 1923

⁴³⁰ As amended up to 1 March 2015.

Diagram: Aims and functions of the Leave and Holidays Act

3.2.2.1 Definitions

The ultimate objective of the law is to guarantee that employees can enjoy holidays and appropriate leaves under the law.⁴³¹ As such, before discussing what holidays and leaves are it is necessary to define who are employee and employers under the Leave and Holidays Act. “Employee” means any person who works by relying on his or her work force in any business or for a living including employee on daily wage temporary employee and permanent employee.⁴³² “Employer” includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer.⁴³³

⁴³¹ However, Section 13 of the law states that: the Union Minister of the Ministry of Labour, Employment and Security may, by notification, exempt any class of trade, industry or establishment, or any class of employees of any such trade, industry or establishment, from all or any of the provisions of this Act, for such period and subject to such conditions as may be specified therein.

⁴³² Section 2 (4) of the Leave and Holidays Act 1951

⁴³³ Section 2 (5) of the Leave and Holidays Act 1951

However, the Leave and Holidays Act excludes the followings people from being the employee under the law (a) parents husband wife children brothers and sisters of any employer in cases where the latter is carrying on his own trade or industry or establishment (b) persons who are remunerated of the profits of the trade or industry or business or establishment in the shape of shares (c) domestic servants such as cook, house cleaner, babysitter and guard (d) persons employed in government offices in respect of whom leave and holiday are provided with salary or wage according to any law in force.⁴³⁴

3.2.2.2 Employee's right to paid holiday and leaves

The Leave and Holidays Act recognises employees' right to paid holidays. Moreover, as displayed by the above Diagram, it stipulates several types of leaves as followings: earned leave casual leave leave on medical certificate; and maternity leave. The law does not only provide categories of these benefits, but also provides details on what an employer has to do and how an employee can exercise his or her rights.

(1) Paid holiday

Every employee shall be granted by his employer the following public holidays and the public holidays⁴³⁵ annually announced by the Union Government by notification⁴³⁶ with full wages or pay as the case may be⁴³⁷ namely

⁴³⁴ Section 2 (4) (a) - (b) of the Leave and Holidays Act 1951

⁴³⁵ Substituted over "holiday for people" by Section 3 of the Law amending the Leave and Holidays Act 1951, 2014.

⁴³⁶ Substituted over "the holidays for the government officers in the Union of Myanmar" by Section 4 of the Law amending the Leave and Holidays Act 1951, 2014.

⁴³⁷ Section 3 (3) of the Leave and Holidays Act 1951 states that: "Holiday without wages or pay may be granted on the occasion of religious festivals to non-Buddhist employees by mutual agreement between employer and employees."

Public holidays	Days off
1. Independence Day	1 day
2. Full Moon of Tabaung	1 day
3. Thingyan	3 days
4. Burmese New Year	1 day
5. May Day	1 day
6. Full Moon of Kason	1 day
7. Resistance Day	1 day
8. Beginning of Buddhist Lent	1 day
9. Martyrs' Day	1 day
10. End of Buddhist Lent	1 day
11. Full Moon of Tansaungmon	1 day
12. National Day	1 day

If any public holiday⁴³⁸ falls on any weekly day of rest or on any other holiday an alternative holiday shall not be allowed. But that weekly day of rest or holiday as the case may be, on which the public holiday incidentally falls shall be regarded as a public holiday. If however, an employee is required to work on a public holiday he shall be paid basic wages or pay as the case may be at double the usual rate as well as the cost of living allowance, if admissible, at the ordinary single rate.⁴³⁹

(2) Earned leave

Every employee who has completed a period of twelve months continuous service shall be granted earned leave with average wages or average pay for a period of ten consecutive days by his employer during the subsequent period of twelve

⁴³⁸ Substituted over “holiday for people” by Section 3 of the Law amending the Leave and Holidays Act 1951, 2014.

⁴³⁹ Section 3 (2) of the Leave and Holidays Act 1951

months.⁴⁴⁰ Earned leave shall be granted after completion of a period of twelve months continuous service, during which an employee has worked at least twenty days⁴⁴¹ in every month provided that an employee shall forfeit one day from his earned leave for every month in which he has not worked twenty days⁴⁴²

An employer shall fix the time at which earned leave may be taken by his employee within three month from the last date of the period of twelve months in respect of which the earned leave is to be granted. Accumulated earned leave admissible may, however, by mutual agreement between the employer and the employee concerned be granted to the employee at any time during any period not exceeding three years.⁴⁴³

(3) Casual leave

An employee shall be admissible to casual leave with wages or pay as the case may be aggregating six days in a year.⁴⁴⁴ However, such employee can take a casual leave to a maximum casual leave of three days at any one time.⁴⁴⁵ Moreover, an employee cannot combine casual leave with other kind of leave.⁴⁴⁶ If the employee does not take the casual leave with he is entitled to within the year it shall lapse.⁴⁴⁷

(4) Leave on medical certificate

The Leave and Holidays Act 1951 categorises an employee who is admissible to leave on medical certificate into two groups an employee who has been in service for six months and that has been in service for less than six month. The former is allowed to leave on medical certificate with half a usual payment for his usual wage.⁴⁴⁸ This

⁴⁴⁰ Section 4 (1) of the Leave and Holidays Act 1951

⁴⁴¹ Substituted over “twenty-four days” by Section 2 (c) of the Law amending the Leave and Holidays Act 1951, 2006

⁴⁴² Substituted over “twenty-four days” by Section 2 (c) of the Law amending the Leave and Holidays Act 1951, 2006

⁴⁴³ Section 4 (3) of the Leave and Holidays Act 1951

⁴⁴⁴ Section 5 (1) of the Leave and Holidays Act 1951

⁴⁴⁵ Section 5 (1) of the Leave and Holidays Act 1951

⁴⁴⁶ Section 5 (3) of the Leave and Holidays Act 1951

⁴⁴⁷ Section 5 (4) of the Leave and Holidays Act 1951

⁴⁴⁸ Section 6 (1) of the Leave and Holidays Act 1951

employee or his authorised representative can be paid the wages or pay as the case may be due to him weekly during the period of leave on medical certificate at the place where wages or pay are or is usually paid.⁴⁴⁹ Despite having a shorter period of employment the latter can still exercise his or her right to leave on medical certificate. However, an employee who belongs to this category will not be paid during the leave.⁴⁵⁰

Leave on medical certificate with wage or pay is not unlimited. An employee shall be admissible to leave on medical certificate with wages or pay as the case may be not exceeding thirty days in a year.⁴⁵¹ Identical to casual leave, leave on medical certificate shall lapse if the employee does not take the medical leave which he is entitled to within the year.⁴⁵² However, leave on medical certificate may be granted in continuation of earned leave.⁴⁵³

In taking a leave on medical certificate, as suggested by its name, an employee has to present a medical certificate to his or her employer. This medical certificate that an employer is obliged to accept must be a certified one. According to the law, an acceptable certificate must be produced by the medical officer of the trade, industry or establishment, concerned or a doctor approved by the trade, industry or establishment or from a Government medical officer in the case of Government employees or from the Railway medical officer in the case of Railway employees or from any other registered medical practitioner⁴⁵⁴.

(5) Maternity leave

The maternity leave for six weeks before confinement and eight weeks after confinement shall be provided for female pregnant employees with the

⁴⁴⁹ Section 6 (4) of the Leave and Holidays Act 1951

⁴⁵⁰ Section 6 (1) of the Leave and Holidays Act 1951

⁴⁵¹ Section 6 (1) of the Leave and Holidays Act 1951

⁴⁵² Section 6 (5) of the Leave and Holidays Act 1951

⁴⁵³ Section 7 of the Leave and Holidays Act 1951

⁴⁵⁴ Substituted over “medical practitioner included in the registration” by Section 6 of the Law amending the Leave and Holidays Act 1951, 2014.

relevant wage or salary. The maternity leave shall be provided by in relation to the leave on medical certificate.⁴⁵⁵

3.2.2.3 Acting as a minimum standard of employee's right to leave

In this research, a minimum standard of employee's right to leave contains two interrelating meanings: stipulating a legal consequence if an employment agreement runs in contrary to the law; and legally permitting benefits that go beyond what the law stipulated. As regards stipulation of a legal consequence in the case of violation of law the law states that any agreement or contract of service whereby an employee agrees to take leave or holidays on terms less favourable than those provided in this Act shall be null and void in so far as it purports to reduce the liability of an employer.⁴⁵⁶ Put differently a contractual arrangement between an employee and an employer cannot contain a term that is less favourable than employee's right to leave as stipulated in this law.

As regards a minimum standard of employee's right to leave, the law does not reject other employee's benefits that go beyond those stipulated. It states that nothing in this Act shall operate to the prejudice of any rights to which an employee may be entitled under any other law or under the terms of any award agreement or contract of service or under any custom or practice, which provides better rights in respect of leave and holidays with wages or pay as the case may be than those provided in this Act.⁴⁵⁷

3.2.2.4 Inspection officers

As a regulatory mechanism an inspection officer⁴⁵⁸ of factories appointed under the Factories Act shall be an inspection officer⁴⁵⁹ for the purpose of this Act in respect of all factories within the local limits assigned to him.⁴⁶⁰ Alternatively, the

⁴⁵⁵ Section 7 A of the Leave and Holidays Act 1951

⁴⁵⁶ Section 9 of the Leave and Holidays Act 1951

⁴⁵⁷ Section 10 (2) of the Leave and Holidays Act 1951

⁴⁵⁸ Substituted over "inspector" by Section 3 of the Law amending the Leave and Holidays Act 1951, 2006.

⁴⁵⁹ Substituted over "inspector" by Section 3 of the Law amending the Leave and Holidays Act 1951, 2006.

⁴⁶⁰ Section 12 (1) of the Leave and Holidays Act 1951

Union Minister of the Ministry of Labour, Employment and Security⁴⁶¹ may, by notification appoint such other persons as he may deem fit to be an inspection officer⁴⁶² for the purpose of this Act, and may define their functions and the class of employees and trade industry or establishment in respect of which or the area in which they shall exercise their functions.⁴⁶³

The law explicitly recognises authorities of an inspection officer to perform its inspecting functions. An inspection officer may at all reasonable hours enter on any premises and make such examinations of any register or record required to be kept and maintained and take on the spot or later such evidence of any person and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Act.⁴⁶⁴ While carrying out this section every inspection officer⁴⁶⁵ shall be deemed to be a public servant within the meaning of Section 21 of the Penal Code.⁴⁶⁶

3.2.2.5 Determination of employers in certain cases

The Leave and Holidays Act 1951 acknowledges that some employees are not employed by natural persons but a firm or other association of individuals and a company and the Government, or any Board constituted by the Government or any other local authority. Therefore, it provides details on determination of employers when an employee is employed by these non-natural persons. Simply speaking the law answers who can be held liable when an offence has been committed by employers who are not a natural person.

⁴⁶¹ Substituted over “the President” by Section 9 of the Law amending the Leave and Holidays Act 1951, 2014.

⁴⁶² Substituted over “inspector” by Section 3 of the Law amending the Leave and Holidays Act 1951, 2006.

⁴⁶³ Section 12 (2) of the Leave and Holidays Act 1951

⁴⁶⁴ Section 12 (3) of the Leave and Holidays Act 1951

⁴⁶⁵ Substituted over “inspector” by Section 3 of the Law amending the Leave and Holidays Act 1951, 2006.

⁴⁶⁶ Section 12 (4) of the Leave and Holidays Act 1951

(1) A firm or other association of individuals

Where the employer is a firm or other association of individuals any one of the individual partners or members thereof may be prosecuted and punished under this Act for any offence for which the employer is punishable.⁴⁶⁷ In this regard, the firm or association may give notice to the inspection officer⁴⁶⁸ that it has nominated one of its members who is resident in the Republic of the Union of Myanmar⁴⁶⁹ to be the employer for the purpose of this Act, and such individual shall so long as he is so resident be deemed to be the employer for the purposes of this Act until further notice cancelling his nomination is received by the inspection officer⁴⁷⁰ or until he ceases to be a partner or shareholder of the firm or association.⁴⁷¹

(2) A company

Where the employer is a company any one of the directors thereof, or in the case of a private company any one of the shareholders thereof may be prosecuted and punished under this Act for any offence for which the employer is punishable.⁴⁷² In this regard, the company may give notice to the inspection officer⁴⁷³ that it has nominated a director, or in the case of a private company, a shareholder, who is resident in either case in the Republic of the Union of Myanmar⁴⁷⁴ to be the employer for the purposes of this Act, and such director or shareholder, as the case may be shall so long as he is so resident be deemed to be the employer for the purposes of this Act until further notice cancelling his

⁴⁶⁷ 15(1) paragraph 1 of the Leave and Holidays Act 1951

⁴⁶⁸ Substituted over “inspector” by Section 3 of the Law amending the Leave and Holidays Act 1951, 2006

⁴⁶⁹ According to Section 2 of the Constitution of the Republic of the Union of Myanmar (2008)

⁴⁷⁰ Substituted over “inspector” by Section 3 of the Law amending the Leave and Holidays Act 1951, 2006

⁴⁷¹ Section 15 (1) paragraph 2 of the Leave and Holidays Act 1951

⁴⁷² Section 15 (2) paragraph 1 of the Leave and Holidays Act 1951

⁴⁷³ Substituted over “inspector” by Section 3 of the Law amending the Leave and Holidays Act 1951, 2006

⁴⁷⁴ According to Section 2 of the Constitution of the Republic of the Union of Myanmar (2008).

nomination is received by the inspection officer or until he ceases to be a director or shareholder.⁴⁷⁵

(3) The Government, or any Board constituted by the Government or any other local authority

Where the employer is the Government or any Board constituted by the Government or any other local authority any person who has been appointed by the Government such Board or such other local authority as the case may be, as head of the establishment thereunder, who is responsible to the employer for the supervision of the establishment concerned may be prosecuted and punished for any offence for which the employer is punishable under this Act.⁴⁷⁶

3.2.2.6 Cognizance of offences

In addition to stipulating acts of offences the Leaves and Holiday Act 1951 gives details on cognizance of offences. Section 16 (1) states that No presentation for any offence punishable under the provisions of this Act or of any rule made thereunder shall be instituted except by, or with the previous sanction in writing of the inspection officer.⁴⁷⁷ In the other words, there shall be no prosecution without a formal and written notice is given to an employer by an inspection officer. Moreover, Section 16 (2) states that: No Court below that of a Magistrate of the first class shall try any offence under the provisions of this Act or of any rule made thereunder.⁴⁷⁸

3.2.3 Law Relating to Overseas Employment (1999)

The Law Relating to Overseas Employment essentially aims setting for building a modern and developed State to enable those seeking overseas employment to get employment opportunities and to secure such employment systematically and the rights and privileges of workers. Moreover, to enable the systematic utilization within the country of the knowledge experience and skills gained abroad, according to the type of

⁴⁷⁵ Section 15 (2) paragraph 2 of the Leave and Holidays Act 1951

⁴⁷⁶ Section 15 (3) of the Leave and Holidays Act 1951

⁴⁷⁷ Substituted over “inspector” by Section 3 of the Law amending the Leave and Holidays Act 1951, 2006.

⁴⁷⁸ Section 16 (2) of the Leave and Holidays Act 1951

overseas employment undertaken. This Law main is about registration, Service Agent License, appeal, the duties and the rights of workers and Service Agent License Holder.

3.2.3.1 Definitions

The Law Relating to Overseas Employment essentially aims setting for building a modern and developed State to enable those seeking overseas employment to get employment opportunities and to secure such employment systematically and the rights and privileges of workers. Moreover to enable the systematic utilization within the country of the knowledge experience and skills gained abroad, according to the type of overseas employment undertaken. This Law main is about registration Service Agent License appeal the duties and the rights of workers and Service Agent License Holder.

(1) Overseas Employment

Overseas Employment means employment in any foreign country for a limited period of time other than the following employments and also includes employment in the United Nations Organization and any of its Specialized Agencies such as employment of seafarers employment or foreign country of any Government servants or experts assigned by any Government department or organization.

(2) Worker

Under the Law Relating to Overseas Employment, workers are any person who are in worker in any overseas employment or a worker appointed to join overseas employment or a person appointed as an apprentice.

(3) Service Agent

Service Agent means a person or organization, who /which for a prescribed service fee, acts an agent in securing employment for those who seek overseas employment.

(4) The Overseas Employment Central Committee

The Overseas Employment Central Committee or Central Committee comprises of the Minister of Ministry of Labour and others. The main of functions and duties of the Overseas Employment Central Committee are laying down policy relating

to Overseas Employment⁴⁷⁹ communicating and coordinating with local and foreign government departments organizations and persons concerned, to implement the policy laid down in respect of securing overseas employment opportunities and obtaining employment⁴⁸⁰ and with Government departments organizations and persons concerned to ensure that there is no loss of the rights and privileges of workers and that they receive the rights they are entitled to⁴⁸¹. And giving guidance and supervision for the systematic utilization within the county of the knowledge experience and skills gained abroad according to the type of overseas employment undertaken.⁴⁸² Moreover the Central Committee can determine and declare the countries, employment organizations and types of work for which overseas employment is not allowed.⁴⁸³ And gives guidance on matters relating to the issuance; cancellation or revocation subject to a time limit of the license of Service Agents,⁴⁸⁴prescribes the type of overseas employment the amount of service fee and the Service Agent⁴⁸⁵ or other duties and functions which the Government may assign from time to time⁴⁸⁶.

(5) The Overseas Employment Supervisory Committee

The Overseas Employment Supervisory Committee or Supervisory Committee has the Director General of the Department of Labour as the Chairman who is formed by the Ministry of Labour , suitable persons from the relevant Government departments and organizations as well as persons who are expert in labour matters as members to supervise the systematic functions of overseas employment and the chairman may determine a Vice - Chairman and a Secretary, also reconstitute the Supervisory Committee as may be necessary. And may prescribe the honorarium which a Supervisory Committee member who is a non – government servant may receive.⁴⁸⁷

⁴⁷⁹ Section 6 (a) of the Law Relating to Overseas Employment 1999

⁴⁸⁰ Section 6 (b) of the Law Relating to Overseas Employment 1999

⁴⁸¹ Section 6 (c) of the Law Relating to Overseas Employment 1999

⁴⁸² Section 6 (d) of the Law Relating to Overseas Employment 1999

⁴⁸³ Section 6 (e) of the Law Relating to Overseas Employment 1999

⁴⁸⁴ Section 6 (f) of the Law Relating to Overseas Employment 1999

⁴⁸⁵ Section 6 (g) of the Law Relating to Overseas Employment 1999

⁴⁸⁶ Section 6 (h) of the Law Relating to Overseas Employment 1999

⁴⁸⁷ Section 7 of the Social Security Law, 2012

The duties and functions are implemented in accordance with the policy laid down by the Central Committee communicating with local and foreign governmental organizations and persons, in order to avoid difficulties regarding access to overseas employment opportunities, securing of overseas employment and ensuring rights and privileges of the workers and damages arising out of employment. Moreover the Supervisory Committee can recruit and select workers under arrangements of the Department and providing them with skill and training with the assistance of the Government departments and organizations and other persons and job proficiency training for overseas employment or any Service Agent and if necessary conducting such training under arrangements of the Department. Moreover, Supervisory Committee can give decisions on matters relating to the issuance, cancellation or revocation subject to a time limit, the license of Service Agents, form and assign duties to sub - committees for inspecting , communicate and coordinate with the relevant Government departments and organizations to prevent workers from taking up overseas employment without having registered under this Law and passports and entry visas for workers. On the other hands the supervisory committee can prevent unsuitable workers who are found by the Inspections Sub – Committees give assistance for facilitating the systematic utilization and inform the relevant Government departments organizations and Service Agents of overseas employment opportunities and supervise the collection of service fees and perform the functions and duties assigned by the Ministry of Labour from time to time.⁴⁸⁸

3.2.3.2 Institutional frameworks

The Law Relating to Overseas Employment 1999 provides the legal and institutional frameworks as followed

(1) Registration

Overseas employment seekers shall be registered at the Department of Labour under the Ministry of Labour. The Department shall communicate with local and foreign governments, organizations and persons to seek overseas employment and the persons registered as and the overseas employment seeker then he shall be registered as a worker with the Department. An overseas employment seeker requires compulsory

⁴⁸⁸ Section 8 of the Social Security Law, 2012

registration as overseas employment seeker shall register as worker with the Department. However, the overseas employment prior to coming into operation of this Law shall be registered as a worker with the Department in accordance with the stipulations and the Department shall issue a certificate of registration to a worker prior to his departure.

(2) Service Agent License

A person who wishes to be a service agent shall apply to the Department for issue of Service Agent License. The Department must scrutinize the application if pass with the confirmation of Supervisory Committee and they will give the conditions to him and he paid for the fee already that mean he got the prior to issue of Service Agent License. In the other hands if necessary the Department maybe make the investigation committee or appoint any appropriate officer to make the necessary investigations with regard to application for Agent License before give the license.

The Supervisory Committee will can cancel or revoke it subject to a time limit to the holder if found to have infringed about violation of any condition of' the Service Agent Licence, failure to perform as promised by the Service Agent for the employment seeker or for the worker, transfer the Service Agent License without the permission of the Department charge service fees in excess of the prescribed amount and failure to submit to the Department the accounts and information regarding overseas employment in accordance with the stipulations.

The Ministry of Labour shall determine by notification the Service Agent License tenure licence fee late fee penalty and insurance premium. A person who is not satisfied with the following order or decision may appeal to the Minister of the Ministry of Labour within 60 days from the date of the order or the decision and the decision of the Minister for Labour shall be final and conclusive.

(3) The Duties and Rights of Workers

A worker before going abroad shall obtain a health certificate and by the Supervisory Committee and a certificate of registration issued by the Department and a worker who has returned to Myanmar after join oversea employment. A registered worker who has gone abroad and has been working there shall report any unusual condition of work to the Service Agent. If it is not a case of working there after communicating with the

Service Agent he shall report to the Myanmar Embassy or to the Consular Office. If there are no such offices he shall report to the Department. A worker shall pay the service fees determined by the Central Committee either to the Department or to the Service Agent and has the right to claim through the Service Agent full compensation or damages to which he is entitled for injury sustained at a foreign worksite and to take civil or criminal action for loss of his rights and privileges relating to overseas employment.

(4) Duties and Rights of Service Agent License Holder

A Service Agent License holder shall observe the conditions⁴⁸⁹, pay the Service Agent License fees⁴⁹⁰ where there is a written agreement, carry out his duties, as agreed upon in the document for the worker. Moreover the holder shall communicate with the overseas employer concerned and undertake responsibility for obtaining in full the rights and privileges in the case of loss of rights and privileges of workers and shall submit to the examination by the investigation committee or a person assigned by the Supervisory Committee or by the Department and the accounts and information relating to overseas employment to the Department in accordance with the stipulations. The holder shall inform in writing to the Department of any change of address of place of work or any change of his deputed administrative manager, moreover work for obtaining enhanced overseas employment opportunities.

The workers without the Service Agency Licence, shall on conviction be punished with imprisonment for a term which may extend to 7 years and shall also be liable to a fine. 27. Any Service Agent Licence holder who charges service fees in excess of the amount prescribed and who transfers the Service Agent Licence without the permission of the Department, shall, on conviction be punished with imprisonment for a term may extend to 3 years and shall be liable to a fine. If any holder who transfers the Service Agent License without the permission of the Department, shall, on conviction be punished with imprisonment for a term may extend to 3 years and shall be liable to a fine and who violates any of the rules, procedures, orders or directives issued under this Law shall, on conviction be punished with imprisonment for a term which may extend to 1 year or with fine of Kyats 5,000 or with both.

⁴⁸⁹ Section 25 (a) of the Law Relating to Overseas Employment 1999

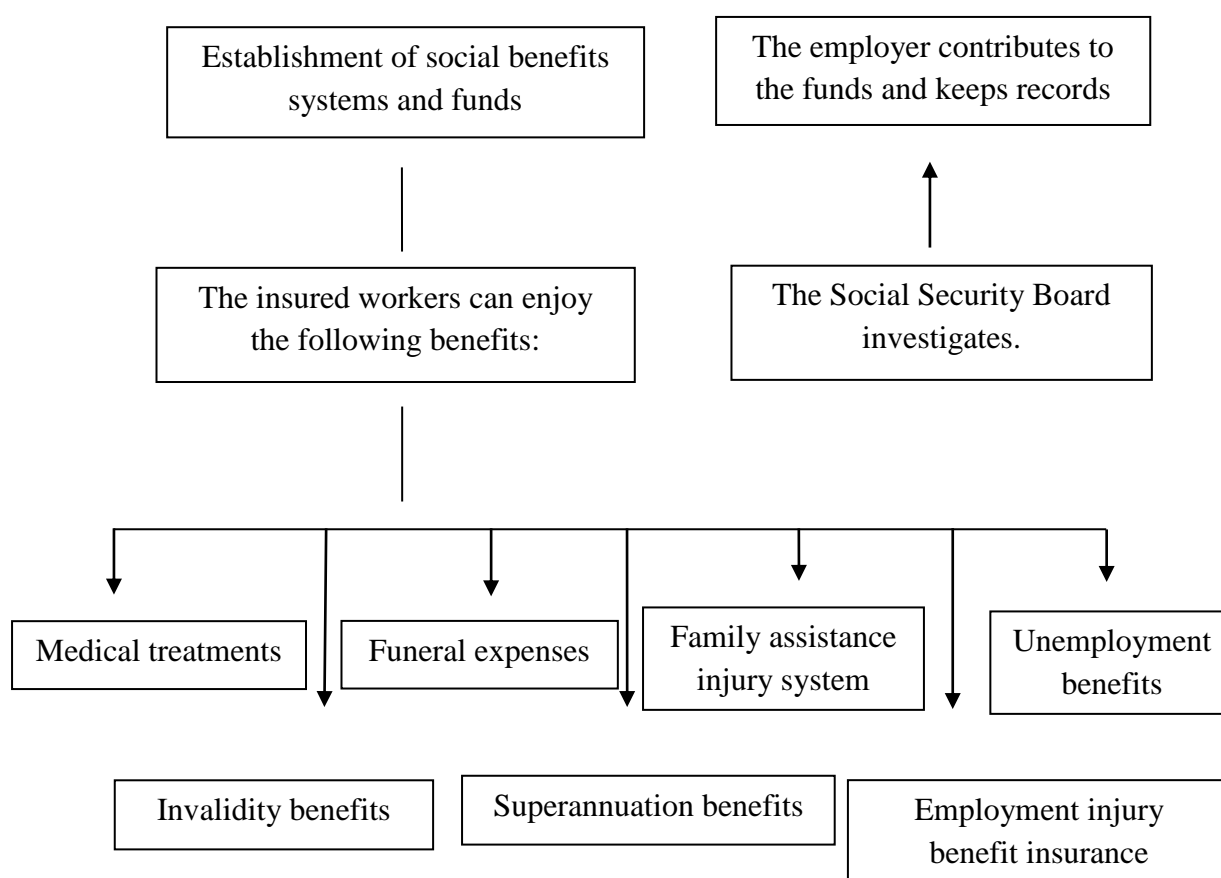
⁴⁹⁰ Section 25 (b) of the Law Relating to Overseas Employment 1999

3.2.4 The Social Security Law 2012

The Social Security Law 2012 aims at guaranteeing and promoting social life and health care of workers through establishment of several social benefit funds and recognition of the employee's rights to enjoy benefits including, medical treatment, family assistance benefit, invalidity benefit, superannuation benefit, survivors' benefit unemployment benefit, the right to residency and ownership of housing after retirement.⁴⁹¹ The employer⁴⁹² on the other hand, is bound by several duties to pay contributions of the established funds as well as to provide the insured workers with the benefits they are entitled to under the law. However, the law does not only rely on the employer but also the National Social Security Board as a regulatory vehicle. Essence of the Social Security Law 2012 is illustrated by Diagram below

⁴⁹¹ Section 3 (e) of the Social Security Law, 2012

⁴⁹² Employer means a person who is responsible to pay wage to a worker, who employs a worker by employment agreement, who manages on behalf of the employer. Unless otherwise provided in this Law, such expression includes a person who carries out private enterprise or joint venture enterprise, inheritor, successor or legal representative when the employer is deceased.

Diagram: Overview of the Social Security Law 2012

3.2.4.1 Definitions and coverage of the law

Ultimate objectives of the Social Security Law 2012 involve guaranteeing of the worker's benefits. Worker means a person who employs permanently or temporarily in any establishment and who earns a living with wage obtained by using physical or mental capacity. In such expression it also includes apprentices and trainees whether they obtain the wage or not.⁴⁹³ However, it does not include family members of the employer who live together and depend upon the employer.⁴⁹⁴

However, it must be noted that not every worker under the abovementioned definition is qualified to enjoy the social security benefits. A beneficiary must be an insured worker. The Insured means a worker who is working at any

⁴⁹³ Section 3 (e) of the Social Security Law, 2012

⁴⁹⁴ Section 2 (a) of the Social Security Law, 2012

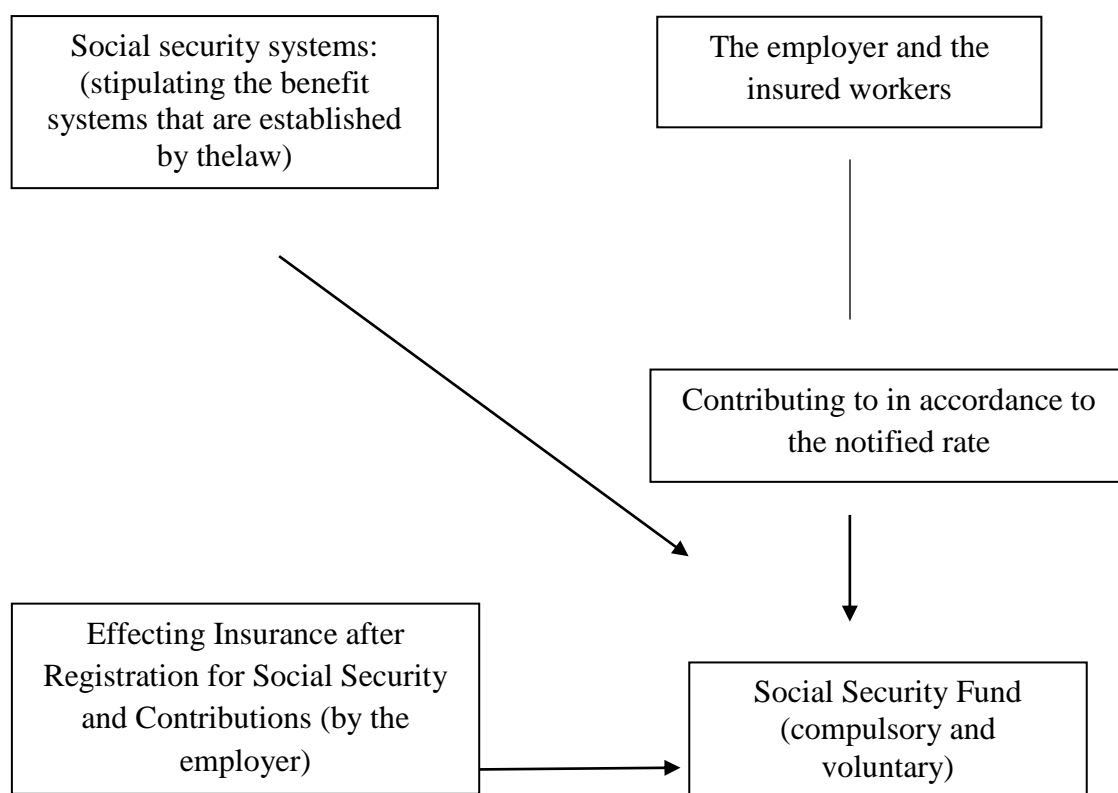
establishment relevant to this Law and who has insured through registration under the Social Security System and Employment Injury Benefit Insurance System or a worker who is responsible to insure or a person who effects insurance voluntarily under the Social Security System and Employment Injury Benefit Insurance System although he is not working at any establishment relevant to this Law.

A definition of the beneficiary will be incomplete without an explanation of the establishments for which the insured works. The Social Security Law 2012 labels the following establishments as establishments that have to compulsorily register for social security system and benefits contained in this Law industries which carry out business Government departments Government organizations and regional administrative organizations which carry out business development organizations and regional administrative organizations which carry out business financial organizations companies associations organizations and their subordinate departments and branch offices which carry out business shops commercial establishments, public entertaining establishments Government departments and Government organizations which carry out business or transport businesses constructions and businesses carried out with foreign investment or citizen investment or joint ventured businesses.⁴⁹⁵

3.2.4.2 Operation of the social security systems

Benefits of the insured worker come from the social security systems and funds. These funds are contributed by the employer and the insured workers. Rate of the contributions are to be notified by the Ministry of Labour. Moreover, the employer is responsible to effect insurance after registration for social security and contributions.

⁴⁹⁵ Section 11 (a) of the Social Security Law, 2012

Diagram: Operation of the social security systems

(1) Social security systems

Section 13 of the Social Security Law 2012 establishes 5 different social security systems for enjoyment of social security benefits by the insured.

Firstly, the Health and Social Care Insurance System consists of (i) medical treatment and cash benefit for sickness (ii) medical treatment and cash benefits for maternity and confinement (iii) medical treatment for the insured after retirement; and (iv) funeral benefit for decease due to any cause.⁴⁹⁶

The Family Assistance Insurance System consists of (i) scholastic stipend benefit for the children of the insured who earns less than the stipulated amount of

⁴⁹⁶ Section 13 (a) (i) - (iv) of the Social Security Law, 2012

income (ii) health care and aid benefit in time of natural disaster and (iii) suitable benefit for dependent family.⁴⁹⁷

The Invalidity Benefit, Superannuation Benefit and Survivors' Benefit Insurance System consists of invalidity benefit superannuation benefit; and (iii) survivors' benefit arising out of decease not owing to work.⁴⁹⁸

Unemployment Benefit Insurance System consists of (i) health care to persons who are entitled to unemployment benefit and (ii) cash benefit for unemployment.⁴⁹⁹

Other Social Security System consists of (i) the right to live, hire, purchase, own or use the Social Security Housings established under housing plans to the insured in accord with the stipulations (ii) Social Security System of compulsory registration and contribution stipulated by the Ministry of Labour, by notification, in co-ordination with the Social Security Board with the approval of the Union Government or other social security systems of voluntary contribution.⁵⁰⁰

(2) Social Security Fund

According to Section 15 of the Social Security Law 2012, Social Security Fund include the following funds (i) health and social care fund (ii) family assistance fund (iii) invalidity benefit superannuation benefit and survivors' benefit fund; (iv) unemployment benefit fund; (v) other social security fund for social security system of compulsory registration and contribution stipulated by the Ministry of Labour, in coordination with the Social Security Board, under clause (ii) of subsection (e) of section 13 (vi) other social security fund stipulated that contribution may be paid after voluntary registration under clause (ii) of sub-section (e) of section 13 and (vii) Social Security Housing Plan fund.⁵⁰¹

⁴⁹⁷ Section 13 (b) (i) - (iii) of the Social Security Law, 2012

⁴⁹⁸ Section 13 (c) of the Social Security Law, 2012

⁴⁹⁹ Section 13 (d) (i) - (ii) of the Social Security Law, 2012

⁵⁰⁰ Section 13 (e) (i) - (ii) of the Social Security Law, 2012

⁵⁰¹ Section 15 (a) (i) - (vii) of the Social Security Law, 2012

(3) Contributors and effecting insurance

The employers and workers are contributors to the Social Security Fund whether the compulsory or the voluntary one. The employers and workers of establishments shall pay contributions after effecting compulsory registration to the fund contained in section 2.4.1.2 above.⁵⁰² The employers and workers of establishments may pay contribution voluntarily to the funds contained in clauses (vi) and (vii) of sub-section (a).⁵⁰³ The rates of contribution which shall be paid into various social security funds contained in section 15 by employer and worker are determined by the Ministry of Labour.⁵⁰⁴ Willfully failure to pay contribution shall, on conviction be punished with imprisonment for a term not exceeding one year or with fine, or with both.⁵⁰⁵

The following employers shall effect insurance for the workers working at their establishments to enable to enjoy social security benefits by contributing to the social security fund contained in clauses (i) (iii) (iv) and (v) of sub-section (a) of section 15 in accord with the stipulations after registering the compulsory registration at the relevant township social security office

(i) employers of establishments

(ii) employers of establishments employing the stipulated number of workers and above under sub-section(a) of section 11 including at least one worker and the relatives of the employers except wife, husband, children and parents depending on the employer and

(iii) employers of unpaid apprentices and trainees.⁵⁰⁶ Any employer who fails to comply with any responsibility to register and effect insurance shall, on conviction, be punished with imprisonment for a term not exceeding one year, or with fine, or with both.⁵⁰⁷

⁵⁰² Section 15 (b) of the Social Security Law, 2012

⁵⁰³ Section 15 (c) of the Social Security Law, 2012

⁵⁰⁴ Section 17 of the Social Security Law, 2012

⁵⁰⁵ Section 93 of the Social Security Law, 2012

⁵⁰⁶ Section 16 (a) of the Social Security Law, 2012

⁵⁰⁷ Section 94 of the Social Security Law, 2012

3.2.4.3 The Insured's right to insurance system benefits

At heart of the social security system is the insured's right to insurance system benefits. These benefits consist of medical treatments; benefit of funeral expenses family assistance insurance system benefits invalidity benefits and superannuation unemployment benefit.

(1) Medical treatments and cash benefits

A right to medical treatments involves three interrelating issues length of treatments places of treatments and expenses incurred. In time of sickness an insured worker who had paid contribution to health and social care fund has the right to take medical treatment at the permitted hospital or clinic for a period up to 26 weeks starting from the date of treatment.⁵⁰⁸ However, for recurrent sickness, chronic disease and suffering more than one disease or sickness of special importance, an insured has the right to take medical treatment up to 52 weeks or to a period specifically stipulated by the Social Security Board.⁵⁰⁹ Secondly, the insured has the right to take health care and medical treatment at the hospitals and clinics owned by the Social Security Board or at State owned or private hospitals and clinics concluded agreement with that Board, or at hospitals and clinics arranged by the employer.⁵¹⁰ Thirdly, the insured worker has the right to enjoy expenses from the health and social care fund in accord with the stipulations in respect of expenses of taking health care and medical treatment under section 21 and this section.⁵¹¹

In time of sickness, the insured worker is entitled to a right to get cash benefits under the following conditions. He had worked at the establishment for a minimum of six months before sickness and had paid contribution for a minimum of four months during the said six months.⁵¹² The insured worker has the right to enjoy 60 percent of average wage of the previous four months as cash benefit relating to sickness up to 26 weeks.⁵¹³ However, the law stipulates some circumstances suspending the insured worker's

⁵⁰⁸ Section 22 (a) of the Social Security Law, 2012

⁵⁰⁹ Section 22 (a) of the Social Security Law, 2012

⁵¹⁰ Section 22 (b) of the Social Security Law, 2012

⁵¹¹ Section 22 (d) of the Social Security Law, 2012

⁵¹² Section 23 (a) of the Social Security Law, 2012

⁵¹³ Section 23 (b) of the Social Security Law, 2012

right to get cash benefits. These are for example deliberate making of self-sickness sickness as a result of his punishable act and deliberate failure without sufficient cause to take medical treatment or to follow the instruction of the medical practitioner who gives medical treatment.⁵¹⁴

(2) Medical treatments and cash benefits in case of pregnancy

The female insured worker has the right to take free medical treatment at the permitted hospital and clinic in cases of pregnancy and confinement.⁵¹⁵ In addition to taking care of the mother, the law takes care of the child's health. The insured female worker has the right to take medical treatment for her child up to one year after confinement.⁵¹⁶ In exercising her rights, she can enjoy maternity leave for six weeks before confinement and a minimum of eight weeks after confinement, up to a minimum of 14 weeks in total.⁵¹⁷

Apart from receiving medical treatments, the insured workers, both male and female, can enjoy benefits if they have worked a minimum of one year at the relevant establishment before enjoying leave and paid contribution for a minimum of six months within the said one year.⁵¹⁸ After presenting the medical certificate, the female insured worker is entitled to 70 per cent of average wage of a year as benefit relating to maternity for the period of maternity leave.⁵¹⁹ In relation to delivery, the ratios of benefits are the followings: 50 per cent of average wage of a month as maternity expenses for single delivery, 75 per cent of average wage of a month for twin delivery, and 100 per cent of average wage of a month for triplet delivery.⁵²⁰

(3) Benefit of funeral expenses

If the insured is deceased of occupational injury or any other cause, for a person nominated by the insured or if there is no such nomination, dependent of that

⁵¹⁴ Section 24 (a) - (c) of the Social Security Law, 2012

⁵¹⁵ Section 25 (a) of the Social Security Law, 2012

⁵¹⁶ Section 25 (b) of the Social Security Law, 2012

⁵¹⁷ Section 25 (c) of the Social Security Law, 2012

⁵¹⁸ Section 26 of the Social Security Law, 2012

⁵¹⁹ Section 27 (a) of the Social Security Law, 2012

⁵²⁰ Section 27 (b) of the Social Security Law, 2012

person or a person who claimed for the expenses which he incurred for the funeral, he is entitled to enjoy up to a maximum of five times of the average wage of a month within the last four months of that deceased person in accord with the stipulations.⁵²¹

(4) Family assistance insurance system benefits

This assistance concerns two benefits: scholastic stipend for children; and benefits in case of natural disaster. As regards the former, if an insured who has paid contribution for a minimum of 36 months and who earns less than the stipulated amount of income has the children learning a full time education, he is entitled to enjoy scholastic stipend from family assistance fund in accord with the stipulations.⁵²² As regards the latter, when the insured and the family encounter natural disaster, he is entitled to the right to take medical treatment if suffered from physical and mental injury or if contracted disease due to natural disaster.⁵²³ However, the insured worker is only eligible to enjoy this right if the contribution had been paid for a minimum of 36 months prior to natural disaster and his own properties are lost due to the natural disaster.

(5) Invalidity benefits

An insured is entitled to enjoy invalidity benefit under the medical certificate if he is totally incapable to work due to any other cause including sickness and maternity not owing to employment injury.⁵²⁴ When the insured becomes totally incapable to work permanently, he is entitled to enjoy the following benefits from the fund for invalidity benefit superannuation benefit and survivors' benefit.⁵²⁵ The rates of the aforesaid are summarised by Table below.

⁵²¹ Section 30 of The Social Security Law, 2012

⁵²² Section 31 (a) (i) of the Social Security Law, 2012

⁵²³ Section 31 (b) (i) of the Social Security Law, 2012

⁵²⁴ Section 32 of the Social Security Law, 2012

⁵²⁵ Section 33 (a) of the Social Security Law, 2012

Table: Cash Benefit for Invalidity ⁵²⁶	
Contributions	Benefits
if contribution has been paid for 180 months before permission of medical certificate for invalidity	15 times of average wage of a month obtained by him during the period of such contribution in instalment or in lump sum according to his desire
if contribution has been paid for more than 180 months	(relating to such period of contribution in excess) additional benefit to the above
in case where contributions has been paid for 12 months and above but under 180 months	40 per cent of contribution paid by the employer and by that insured together with interest
where contribution has been paid for less than 12 months	right to withdraw the money contributed by that person in lump sum

(6) Superannuation and cash benefit

The age for superannuation of the insured shall be as stipulated by the Ministry of Labour in co-ordination with the Social Security Board with the approval of the Union Government.⁵²⁷

When the insured retires for superannuation, the following benefits are entitled from the fund for invalidity benefit, superannuation benefit and survivors' benefit in accord with the stipulations

⁵²⁶ Section 33 (a) (i) - (iv) of the Social Security Law, 2012

⁵²⁷ Section 34 of the Social Security Law, 2012.

Table: Superannuation and Cash Benefit⁵²⁸	
Contributions	Benefits
if contribution has been paid for 180 months before superannuation	15 times of an average wage of a month for the period contributed of that insured in instalment or in lump sum according to his desire
if contribution has been paid for more than 180 months	(relating to such period of contribution in excess) the right to enjoy additional benefit to the above
where contribution has been paid for 12 months and above but under 180 months	40 per cent of the contribution paid by the employer and by that insured together with interest in accord with the stipulations
where contribution has been paid for less than 12 months	The right to withdraw the money contributed by that insured in lump sum

The above discussion shows that superannuation will be paid when the insured worker has retired. However, what is a consequence if he or she passed away before a retirement? The Social Security Law 2012 stipulates a consequence in the case the death is caused by any cause not owing to employment injury. A person nominated by the insured is entitled to enjoy survivors' benefit which is the same as the invalidity benefits contained in section 33.⁵²⁹ If there is no nominated person dependents of the insured worker⁵³⁰ are entitled to enjoy the survivors' benefit.⁵³¹

⁵²⁸ Section 35 (a) (i) - (iv) of the Social Security Law, 2012

⁵²⁹ Section 36 of the Social Security Law, 2012

⁵³⁰ Dependents of the deceased are the followings respectively (1) wife or husband of the deceased (2) if there is no wife or husband, children of the deceased (3) if there is no wife, husband and children, mother and father of the deceased.

⁵³¹ Section 16 (b) of the Social Security Law, 2012

(7) Unemployment Benefit

The insured worker is entitled to enjoy unemployment benefits if he has paid contribution for a minimum of 36 months and is involved with the followings (a) being unemployed for dismissal or termination because of permanent closedown of work but not voluntary resignation (b) not being a person dismissed from work of occupational punishment or not being a person dismissed or removed from work for misappropriation, violation of Civil Service Regulations or intentionally failing to abide by the workplace regulations (c) being a person of good health, capable to work and willing to work and (d) being a person registered at the relevant Township Labour Exchange Office in accord with the stipulations and report monthly his unemployment to that office and Township Social Security Office.⁵³²

Like other benefits, the Social Security Law 2012 stipulates rate of benefits to be enjoyed by the unemployed insured. If he has paid contribution up to 36 months, he is entitled to enjoy 50 percent of average wage for a month within the previous one year as the unemployment benefit monthly up to two months. If he has paid contribution for more than 36 months unemployment benefit shall be entitled to enjoy additional one month each for every additional 12 months of contribution. However, total period of unemployment benefit shall be entitled to six months only.⁵³³

In addition to the benefits during the period of unemployment as noted above, the Social Security Law 2012 recognises some other benefits during this period of time. Firstly, if he is married at the time of unemployment, additional cash awarded by the Social Security Board which is not exceeding 10 per cent of unemployment benefit.⁵³⁴ If he suffers illness, he is entitled to enjoy the right of health care, medical treatment and cash benefit.⁵³⁵ For maternity and confinement, the unemployed insured shall be entitled to

⁵³² Section 37 of the Social Security Law, 2012

⁵³³ Section 38 (a) of the Social Security Law, 2012

⁵³⁴ Section 38 of the Social Security Law, 2012

⁵³⁵ Section 38 (c) of the Social Security Law, 2012

enjoy the right of health care, medical treatment, and cash benefit.⁵³⁶ Moreover, the insured has the right to attend trainings permitted by the Social Security Board.⁵³⁷

Unemployment benefits do not last forever. They shall be terminated if any of the following situations arises (a) rejecting the job informed by the relevant township labour exchange office or by the relevant township social security office without sufficient cause (b) rejecting to attend vocational course as directed by the Social Security Board without sufficient cause (c) being employed a new job (d) being convicted with imprisonment for the commission of any criminal offences under any criminal law (e) leaving for good to foreign or going foreign to work.⁵³⁸

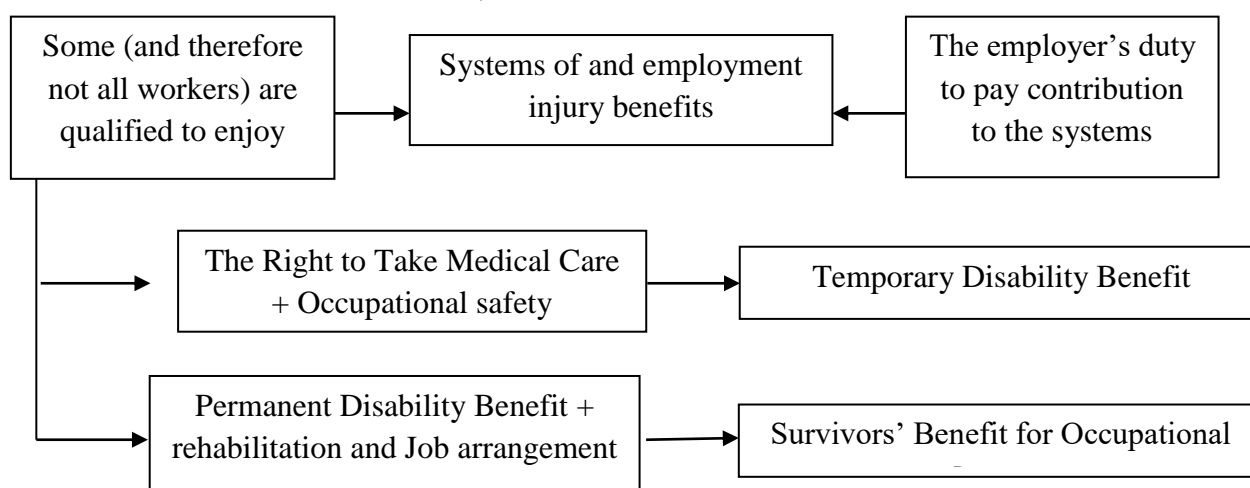
3.2.4.4 Employment Injury Benefit Insurance

Chapter 6 of the Social Security Law 2012 provides description and functions employment injury systems and benefits. As depicted by Diagram below it states to whom this benefit system is applied; types of benefits to be enjoyed; the employer's duty to contribute to the benefit systems and the insured worker's right to enjoy different types of benefits and their details.

⁵³⁶ Section 38 (d) of the Social Security Law, 2012

⁵³⁷ Section 38 (e) of the Social Security Law, 2012

⁵³⁸ The Social Security Law, 2012, Section 40.

Diagram: Employment Injury Benefit Insurance

The Employment Injury Benefit Insurance is applicable to workers at establishments applicable to social security system who have registered compulsorily and contributed to the social security funds contained in clauses (i) (iii) (iv) and (v) of sub-section (a) of section 15.⁵³⁹ In addition, the Ministry of Labour may issue a notification declaring some workers who are applicable to provisions of compulsory registration for occupational injury benefit insurance system.⁵⁴⁰

Under the Social Security Law 2012, the above workers can enjoy the following benefits (a) medical treatment (b) temporary disability benefit (c) permanent disability benefit and (d) survivors' benefit for decease owing to occupation.⁵⁴¹ The employer shall effect insurance by registering at the relevant township social security office in order to get employment injury benefit by the workers.⁵⁴² Moreover, the employers are bound to pay contribution to these benefits.⁵⁴³ Rates of these contributions are determined by the Ministry of Labour.⁵⁴⁴ Any employer who fails to comply with any responsibility to register and effect shall on conviction be punished with imprisonment for a term not exceeding one year or with fine or with both.⁵⁴⁵

⁵³⁹ Section 45 (a) of the Social Security Law, 2012

⁵⁴⁰ Section 45 (b) of the Social Security Law, 2012

⁵⁴¹ Section 47 of the Social Security Law, 2012

⁵⁴² Section 48 (a) of the Social Security Law, 2012

⁵⁴³ Section 48 (a) of the Social Security Law, 2012

⁵⁴⁴ Section 48 (a) of the Social Security Law, 2012

⁵⁴⁵ Section 94 (a) of the Social Security Law, 2012

(1) Employment injury

As illustrated by Diagram above, the employment injury benefit insurance system fundamentally involves different types of the insured workers' rights. Firstly, the insured has the right, if the employment injury occurs, to take medical care in accord with the stipulations and to enjoy other benefits.⁵⁴⁶ Apart from being compensated, the insured should work in a safer environment. Acknowledging this issue, the Social Security Law 2012 imposes a duty on the employers to cooperate with their workers shall co-ordinate in respect of keeping plans for safety and health in order to prevent employment injury, contracting disease and decease owing to occupation and in addition to safety and educational work of the workers and accident at the establishment.⁵⁴⁷ Moreover, the employer assumes a duty to report immediately to the relevant township social security office if a serious occupational accident has been occurred to his insured worker.⁵⁴⁸

(2) Temporary disability

Secondly, the law concerns temporary disability benefit. The insured who suffers reduction or cessation of earnings by reason of incapable to work of employment injury shall enjoy free medical treatment in addition to temporary disability benefit of 70 per cent of average wage within four months prior to occupational accident.⁵⁴⁹ The length of this right commences from the date of incapacity for work to a maximum of 12 months under medical certificate.⁵⁵⁰

(3) Permanent partial disability

Thirdly, the insured is entitled to the cash benefit for permanent partial disability if there is likely to cause permanent partial loss of capacity for work and is entitled to the cash benefit for permanent total disability if there is likely to cause permanent total loss of capacity for work due to employment injury. As regards that benefit cash benefit calculated based upon 70 per cent of average wage of a month within four months before employment injury occurs with percentage of permanent loss of capacity for

⁵⁴⁶ Section 52 (a) of the Social Security Law, 2012

⁵⁴⁷ Section 53 (a) of the Social Security Law, 2012

⁵⁴⁸ Section 54 (a) of the Social Security Law, 2012

⁵⁴⁹ Section 55 of the Social Security Law, 2012

⁵⁵⁰ Section 55 of the Social Security Law, 2012

work decided by the Medical Board as a month benefit .⁵⁵¹ Calculation of the cash benefit shall be done in accordance with the below ratio

Table: Calculation of permanent disability benefit ⁵⁵²	
Loss of capacity for work is 20 per cent and under	the right to enjoy monthly cash benefit entitled to such person for five years in lump sum
Loss of capacity for work is from over 20 per cent to 75 per cent	the right to enjoy monthly cash benefit entitled to such person for seven years in instalment or in lump sum according to the desire of that person
Loss of capacity for work is over 75 per cent	the right to enjoy monthly cash benefit entitled to such person for nine years in instalment, or in lump sum, or in monthly instalment until death according to the desire of that person
if the medical certificate is submitted that permanently disabled person presented above requires the constant attendance of another person	the right to enjoy the supplement of 10 per cent of his benefit in instalment, or in lump sum, or in monthly instalment until death according to the desire of that person in addition to the abovementioned benefit

In addition to cash benefit, the Social Security Law 2012 pays attention to rehabilitation and job arrangement in the case if the insured have lost their limbs owing to employment injury. However, this responsibility is assumed by the employer, but the Social Security Board. For the purpose of rehabilitating and making them capable of

⁵⁵¹ Section 57 of the Social Security Law, 2012

⁵⁵² Section 58 of the Social Security Law, 2012

work from being incapable, the Social Security Board shall (a) carry out the making fixing and providing instruments to operate, substitute and fix upon medical certificate (b) carry out training courses relating to work and nurturing measures to be compatible with community.⁵⁵³

(4) Decease of employment injury

Fourthly, when the insured is deceased of employment injury, a person nominated by the insured shall be entitled to enjoy survivors' benefit as follows in instalment or in lump sum, according to the desire of that person.⁵⁵⁴ Calculation of the aforesaid benefit is based on contribution period and shall be done in accordance with the below ratio

Table: Calculation in the case the insured is deceased of employment injury ⁵⁵⁵	
If it is contributed 60 months and under	30 times of an average wage for a month
If it is contributed over 60 months to 120 months and under	50 times of an average wage for a month
If it is contributed over 120 months to 240 months and under	60 times of an average wage for a month
If it is contributed over 240 months	80 times of an average wage for a month

If there is no nominated person, persons who have depended upon the earnings of that insured shall enjoy the survivors' benefit in instalment or in lump sum according to the desire of that person. These dependents are respectively the followings: (1) wife or husband of the deceased; (2) if there is no wife or husband of the deceased, children

⁵⁵³ Section 60 (a) and (b) of the Social Security Law, 2012

⁵⁵⁴ Section 62 (a) of the Social Security Law, 2012

⁵⁵⁵ Section 62 (a) (i) - (iv) of the Social Security Law, 2012

of that person (3) if there is no wife, husband and children of the deceased mother and father of that person.⁵⁵⁶

3.2.4.5 The employer's duties

In order to systematically guarantee the employee's benefits as stipulated by the law, the Social Security Law 2012 imposes several duties on the employer. These duties involve payment of the benefits, prohibitions of employment, and keeping and submitting records on contribution and benefit. As regards keeping and submitting records the Social Security Law 2012 imposes an authority on the Social Security Board to investigate the employer's compliance.

(1) Payments of the benefits and prohibitions of employment

The employer is prohibited to pay the following benefits simultaneously (i) sickness benefit and maternity benefit (ii) sickness benefit and temporary disability benefit (iii) maternity benefit and temporary disability benefit and (iv) sickness, maternity, temporary disability benefits and unemployment benefit.⁵⁵⁷ In cases in which two of among the aforementioned benefits are payable if the amounts are different, the beneficiary shall be paid the larger of the two amounts.⁵⁵⁸

As regards prohibitions of employment, the employer shall not dismiss or terminate the insured from work or demote to lower wage level during the period which an insured is enjoying any of the sickness or maternity or temporary disability benefits owing to employment injury under this Law.⁵⁵⁹ Moreover, the employer shall not reduce or deduct wages and fees of his worker due to liability for contribution payable under this Law.⁵⁶⁰

The employer may choose to provide medical treatment to his insured workers by establishing private hospital and clinic in accord with the existing law.⁵⁶¹

⁵⁵⁶ Section 62 (b) (i) - (iii) of the Social Security Law, 2012

⁵⁵⁷ Section 63 (a) of the Social Security Law, 2012

⁵⁵⁸ Section 63 (b) of the Social Security Law, 2012

⁵⁵⁹ Section 66 (a) (i) of the Social Security Law, 2012

⁵⁶⁰ Section 66 (a) (ii) of the Social Security Law, 2012

⁵⁶¹ Section 67 (a) of the Social Security Law, 2012

However, this establishment requires permission and terms and conditions of the Social Security Board.⁵⁶² The Social Security Board shall carry out to enable to open clinics according to the proportion of labour force at the establishments which have many insured and have stipulated number.⁵⁶³ Apart from enabling an opening of clinics, the Social Security Board shall support the necessary pharmaceutical and expenses for doctors and nurses in accord with the stipulations at the hospitals and clinics.⁵⁶⁴

(2) Keeping and Submitting Records on Contribution and Benefit

The employer of each establishment applied by this Law shall keep record of contributions paid to the Social Security Fund and Employment Injury Benefit Fund for himself and his insured workers.⁵⁶⁵ Moreover, he shall keep the record of benefits received for each insured and open account for each insured. Those records and accounts shall be submitted to the relevant township social security office in accord with the stipulations.⁵⁶⁶

Apart from record on contributions and benefit, the employers of establishments applied by this Law shall prepare and keep the following records and lists correctly and submit to the relevant township social security office in accord with the stipulations (i) records and lists of workers' daily attendance (ii) records on appointment of new workers, employing worker by changing of work, termination, dismissal and resignation (iii) records on promotion and paying remuneration and (iv) records and lists of employer, manager, and administrator and records on change of them.⁵⁶⁷ In addition, the employer is responsible to inform the relevant township social security office if the following matters arise (i) changes in number of workers and address of establishment (ii) change of employer, change of business, suspension of work, and closedown of work and (iii) employment injury, decease and contracting diseases.⁵⁶⁸

⁵⁶² Section 67 (a) of the Social Security Law, 2012

⁵⁶³ Section 67 (b) of the Social Security Law, 2012

⁵⁶⁴ Section 67 (c) of the Social Security Law, 2012

⁵⁶⁵ Section 74 of the Social Security Law, 2012

⁵⁶⁶ Section 74 of the Social Security Law, 2012

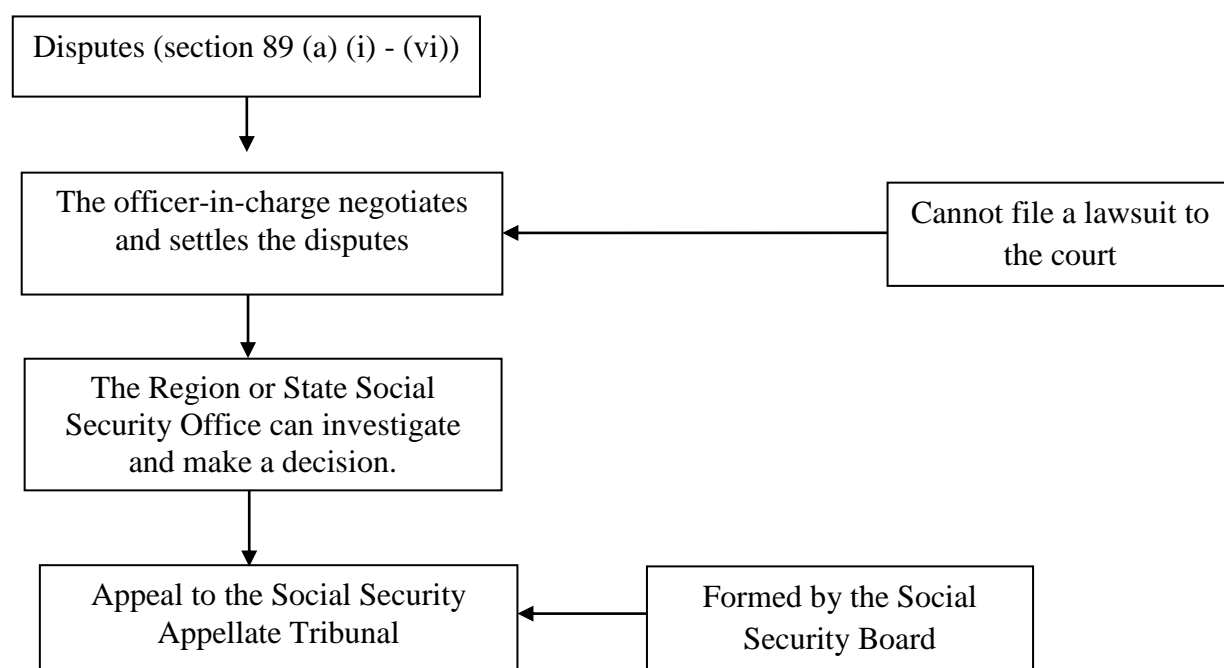
⁵⁶⁷ Section 75 of the Social Security Law, 2012

⁵⁶⁸ Section 75 (b) of the Social Security Law, 2012

3.2.4.6 Settlement of disputes and appeal

The relevant township social security office is responsible to settle (i) matter whether or not any establishment is applied to this Law (ii) matter whether or not the employer and the worker are applied to this Law (iii) matter relating to the liability for contribution and amount of contribution, amount of defaulting fees under this Law (iv) matter whether or not it is entitled to benefits (v) matter whether or not the benefit is received in full, the amount of cash benefit or means of awarding such benefit; and (vi) matter submitted by the insured relating to the injury due to violation of prohibition contained in sub-section (a) of section 66 by the employer.⁵⁶⁹ These disputes shall be settled as the following processes

Diagram: Dispute settlement process



⁵⁶⁹ Section 89 (a) of the Social Security Law, 2012

The officer-in-charge of the township social security office shall initially negotiate and settle the disputes relating to social security and any employment injury benefit and the dispute relating to injury caused by violation of prohibitions of employment by the employer on mutual consent by summoning the persons in dispute.⁵⁷⁰ If this negotiation process cannot lead to a settlement, the officer-in-charge of the township social security office shall submit the records of investigation together with remarks on the matter.⁵⁷¹ The Region or State Social Security Office may conduct or cause to conduct further investigation as may be necessary.⁵⁷² After carrying out the aforesaid investigation and allowing the persons in dispute to defend and after hearing both parties, the Region or State Social Security Office may make a decision as appropriate.⁵⁷³

The person who dissatisfies with the decision of the Region or State Social Security Office may appeal to the Social Security Appellate Tribunal⁵⁷⁴ in accord with the stipulations within 60 days from the day of such decision.⁵⁷⁵ The Social Security Appellate Tribunal may, after hearing the appeal, approve, cancel or revise the decision of the Region or State Social Security Office or may cause to re-submit further investigation as may be necessary and make the decision.⁵⁷⁶

Apart from settling the above disputes, the Region or State Social Security Office is responsible to prosecuting for wilful default to pay contribution and defaulting fees. Under the Social Security Law 2012, the employer is bound to pay contributions and defaulting fees. Failure to comply with this duty could lead to prosecution by the relevant township social security office. Causes of prosecution in this respect comprises: failing to pay contribution and defaulting fees by the employer within 30 days from the last date stipulated by the township social security office due to failure to pay the contribution and defaulting fees expiry of appealable period by the employer under sub-

⁵⁷⁰ Section 89 (b) of the Social Security Law, 2012

⁵⁷¹ Section 89 (c) of the Social Security Law, 2012

⁵⁷² Section 90 (a) of the Social Security Law, 2012

⁵⁷³ Section 90 (b) of the Social Security Law, 2012

⁵⁷⁴ The Social Security Board shall form the Social Security Appellate Tribunal comprising suitable persons in order to hear the appeal against the decision of the Region or State Social Security Office.

⁵⁷⁵ Section 91 (b) of the Social Security Law, 2012

⁵⁷⁶ Section 91 (c) of the Social Security Law, 2012

section (b) of section 91 and failing to pay contribution and defaulting fees by the employer although the Social Security Appellate Tribunal has decided to pay such contribution and defaulting fees after hearing the appeal of the employer under sub-section (b) of section 91.⁵⁷⁷

3.2.4.7 The right to draw from the relevant Social Security Fund

When the insured voluntarily resigns from work or transfers to any other establishment not applied by this Law before the completion of age stipulated for superannuation benefit, he or she shall enjoy the following benefits

Table: The right to draw from the relevant Social Security Fund ⁵⁷⁸	
if an insured has paid contribution for up to 180 months to the fund for invalidity benefit	superannuation benefit and survivors' benefit, he has the right to enjoy 12 times of a month's average wage of the period of contribution in instalment or in lump sum according to his desire
if the insured has paid contribution more than 180 months, in addition to the abovementioned benefits	he has the right to draw 40 per cent of contribution paid by the employer within that period and contribution paid in excess by him together with interest in accord with the stipulations
if the insured has paid contribution to the fund contained in the first roll over 36 months to under 180 months	he has the right to draw 40 percent of contribution paid for him by the employer to the fund for invalidity benefit, superannuation benefit, and survivors' benefit and contribution paid by him within such period together with interest from that fund in accord with the stipulations

⁵⁷⁷ Section 92 (a) - (c) of the Social Security Law, 2012

⁵⁷⁸ Section 70 (a) of The Social Security Law, 2012

Table: The right to draw from the relevant Social Security Fund ⁵⁷⁸

the employer has the right to draw 25 per cent of contribution paid by him for the insured to the fund for invalidity benefit	Superannuation benefit, and survivors' benefit for 36 months and above together with interest from that fund in accord with the stipulations
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In case of permanent total disability or decease of an insured owing to employment injury, an insured is entitled a right to draw from the relevant Social Security Fund. The insured or a person nominated before his decease or if there is no such nomination, his dependent has the right to draw the contribution paid by the insured to the fund for invalidity benefit, superannuation benefit and survivors' benefit for 36 months and above, and 40 per cent of contribution paid by the employer together with interest in accord with the stipulations.⁵⁷⁹ The employer has the right to draw 25 per cent of contribution paid for 36 months and above to the fund contained in clause (i) for an insured together with interest in accord with the stipulations.⁵⁸⁰

In case of voluntary resignation or transfer to any other establishment which is not applied by this Law or taking superannuation or becoming invalidity or permanent total disability owing to employment injury, or decease resulting from any cause of an insured, the insured or, a person nominated after the decease of the insured or if there is no such nomination, his dependent has the right to draw contribution paid by the insured to the unemployment benefit fund for 36 months and above together with interest in accord with the stipulations.⁵⁸¹ In this case, the employer has the right to draw contribution paid for that insured to the fund for unemployment benefit for 36 months and above together with interest in accord with the stipulations.⁵⁸²

⁵⁷⁹ Section 70 (b) (i) of the Social Security Law, 2012

⁵⁸⁰ Section 70 (b) (ii) of the Social Security Law, 2012

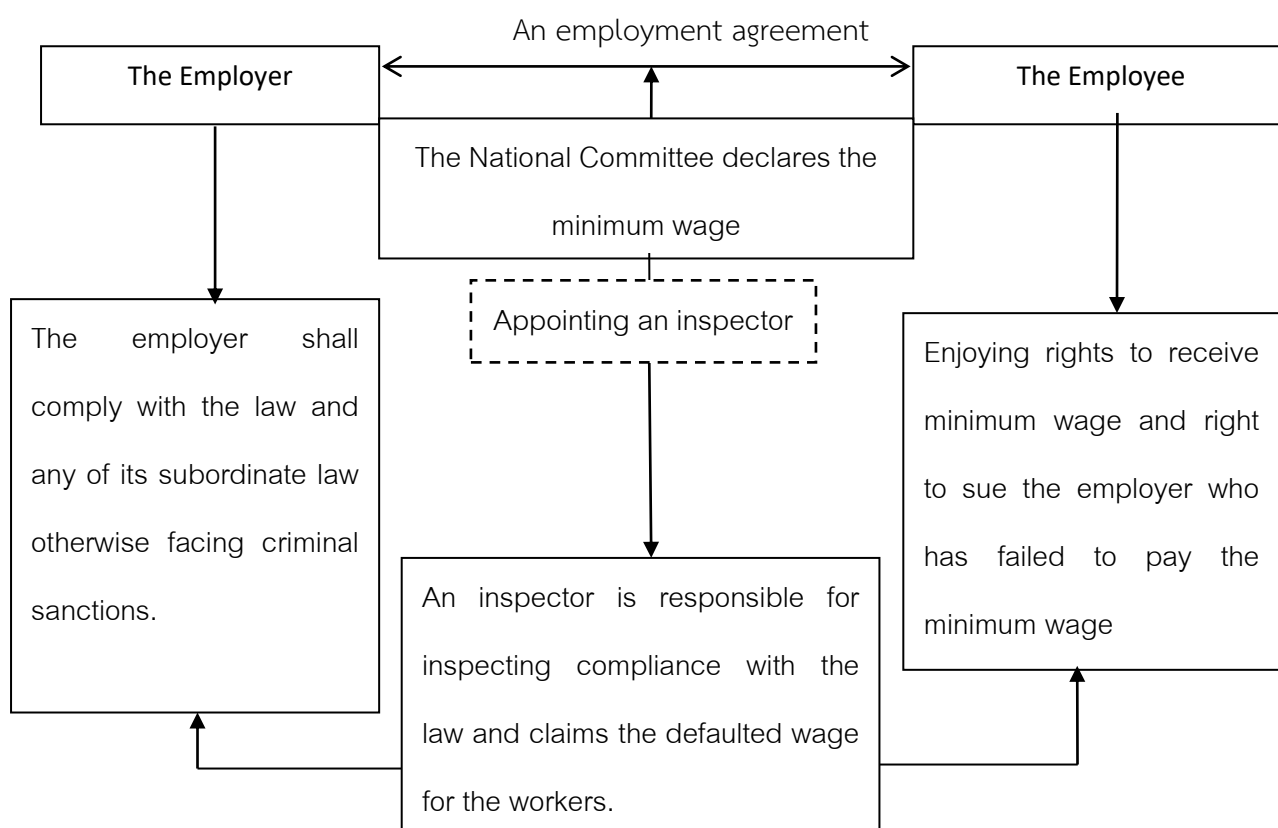
⁵⁸¹ Section 70 (c) (i) of the Social Security Law, 2012

⁵⁸² Section 70 (c) (ii) of the Social Security Law, 2012

3.2.5 Minimum wage law 2013

The Minimum wage law serves as a legal framework stipulating minimum wage of the employee under any commercial employment contract, production contract, agricultural contract, and livestock contract.⁵⁸³ In performing this function, the law establishes the national minimum wage committee and empowers it with powers and authorities to promulgate notifications regarding minimum wage of each type of employment for the employer to comply with in order to actualise spirit and objectives of the law. This national committee is vested with powers to review legality and validity of an employment agreement. In addition, the law stipulates prohibitions for the employer and criminal sanction in the case of any violation. The below diagram illustrates essence of the Minimum Wage Law

Diagram: Structure and essence of the Minimum Wage Law



⁵⁸³ The Minimum Wage Law (2013) repeals the following Acts: The Minimum Wage Act, 1949 (No. 66/49); and The Agricultural Worker Minimum Wage Act (No. 44/48). Please see Section 37 of the Minimum Wage Law (2013).

3.2.5.1 Definitions

The Minimum Wage Law essentially aims at setting minimum wage of workers in commercial business, production and service business. On the other hand, it imposes several duties upon the employer to comply with the stipulated minimum wage. Given these aims and functions of the law, it appears necessary to define the wage, the workers, and the Employer under the law.

(1) Wage

Wage means the fee, wage, or salary entitled to be obtained by the worker for carrying out hourly work, daily work, weekly work, monthly work or any other part-time work of the employer. This expression includes overtime fee or bonus given by the employer for the good work or character, or other remunerations or benefits which may be determined as income. However, it does not include the followings (i) travelling allowances (ii) pension salary and gratuity for service (iii) social security cash benefits; (iv) allowances for accommodation and meal, electricity charges, water service charges and duties and taxes (v) medical treatment allowances and recreation allowances (vi) damages for dismissal from work and compassionate allowance (vii) Other fees stipulated by the Ministry of Labour, Employment, Social Securities, by notification, with the approval of the Union Government that it does not applied by the wage contained in this Law.

(2) The workers

Under the Minimum Wage Law, workers are any person who earns living by wage obtained by carrying out the work of permanent work, temporary work using his physical or intellectual power by conclusion of employment agreement with employer to work at any commercial, production and service, agricultural and livestock breeding business.⁵⁸⁴ This definition of workers include workers apprentices and trainees, clerks and staff, outside workers, house maids and drivers, security men, guards and sanitary workers and staff.⁵⁸⁵ However, it does not include the following workers and staff: (i) Wife, husband, children, parents and blood brothers and sisters who are the members of employer and

⁵⁸⁴ Section 2 (a) of the Minimum Wage Law 2013

⁵⁸⁵ Ibid.

doing the work of employer by depending upon and living with the employer (ii) Civil service personnel (iii) Seafarers.

(3) The Employer

An employer means a person who is responsible to pay such worker after employing one or more workers under the employment agreement at the commercial, production and service, agricultural and livestock breeding business. In addition a person paying *per se*, employers under the Minimum Wage Law include (1) persons as the employer the Administrative representative of the employer (2) the person who is responsible, on behalf of the employer, to manage or pay remuneration to the worker (3) heir, successor or legal representative of the employer when he die.⁵⁸⁶

Not only govern natural-person employers but also juristic persons including, a partnership firm, a company, and a cooperative society. If it is a partnership firm, each or all partners or the person who is delegated by the partnership firm to manage the work is the employer.⁵⁸⁷ If it is a company established under the Myanmar Companies Act, Board of Directors or directors or the person who is delegated by the company to manage the work in accord with law, is the employer.⁵⁸⁸ If it is a cooperative society formed under the Cooperative Society Law, members of the executive committee or directors of the cooperative society are the employers.⁵⁸⁹

3.2.5.2 Institutional framework

Formed by the President, the National Committee is a tripartite committee formed with government representative, employer representative, and worker representative.⁵⁹⁰ In detail, this tripartite committee is consisted of the relevant Government Departments, Government Organizations, labour Organizations or representatives of Workers, Employer Organizations or representatives of Employer and other persons who are experienced, expert and fair in matters related to wage prescription.⁵⁹¹

⁵⁸⁶ Section 2 (b) (i) - (iii) of the Minimum Wage Law 2013

⁵⁸⁷ Section 2 (b) (iv) of the Minimum Wage Law 2013

⁵⁸⁸ Section 2 (b) (v) of the Minimum Wage Law 2013

⁵⁸⁹ Section 2 (b) (vi) of the Minimum Wage Law 2013

⁵⁹⁰ Section 2 (h) of the Minimum Wage Law 2013

⁵⁹¹ Section 3 (a) of the Minimum Wage Law 2013

As key actors of the National Committee, the representatives of the Government Departments and Organizations shall be the persons who are responsible persons relating to labour affairs, agriculture, livestock breeding, economics, commerce, production and social affairs.⁵⁹² On the other hand, the representatives of the worker and employer shall be: the persons who are desirous to carry out for the interest of relevant organization or, for the interest of employer and workers; and shall be in equal number in accord with the stipulation and the right to express the desire of such representatives shall also be equal.⁵⁹³

The National Committee is vested with an authority to declare rate of minimum wage that to which the employers have to adhere.⁵⁹⁴ In exercising this authority, the National Committee has to take into account suggestions made by Union Committee, Region Committees or State Committees.⁵⁹⁵ Moreover, it is responsible to determine the categories of works and businesses that are subject to the minimum wage. Moreover, the National Committee is responsible to form and prescribe duties of Union Committee, Region Committees or State Committees comprising the representatives of the Government Departments, Government Organizations, representatives of worker and employer, and experts.⁵⁹⁶

3.2.5.3 Declaration of minimum wage

As illustrated by Diagram 2 below, declaration of minimum wage essentially involves three key processes: suggestions, publication and objection, and declaration. To begin with, the relevant Union Committee, Region and State Committees are responsible to submit suggestions on the minimum wage rates to the National Committee for their consideration. The National Committee has to publish the suggested rate and wait if there is an objection on those suggestions. Final declaration of the minimum rate must be approved by the Union Government.

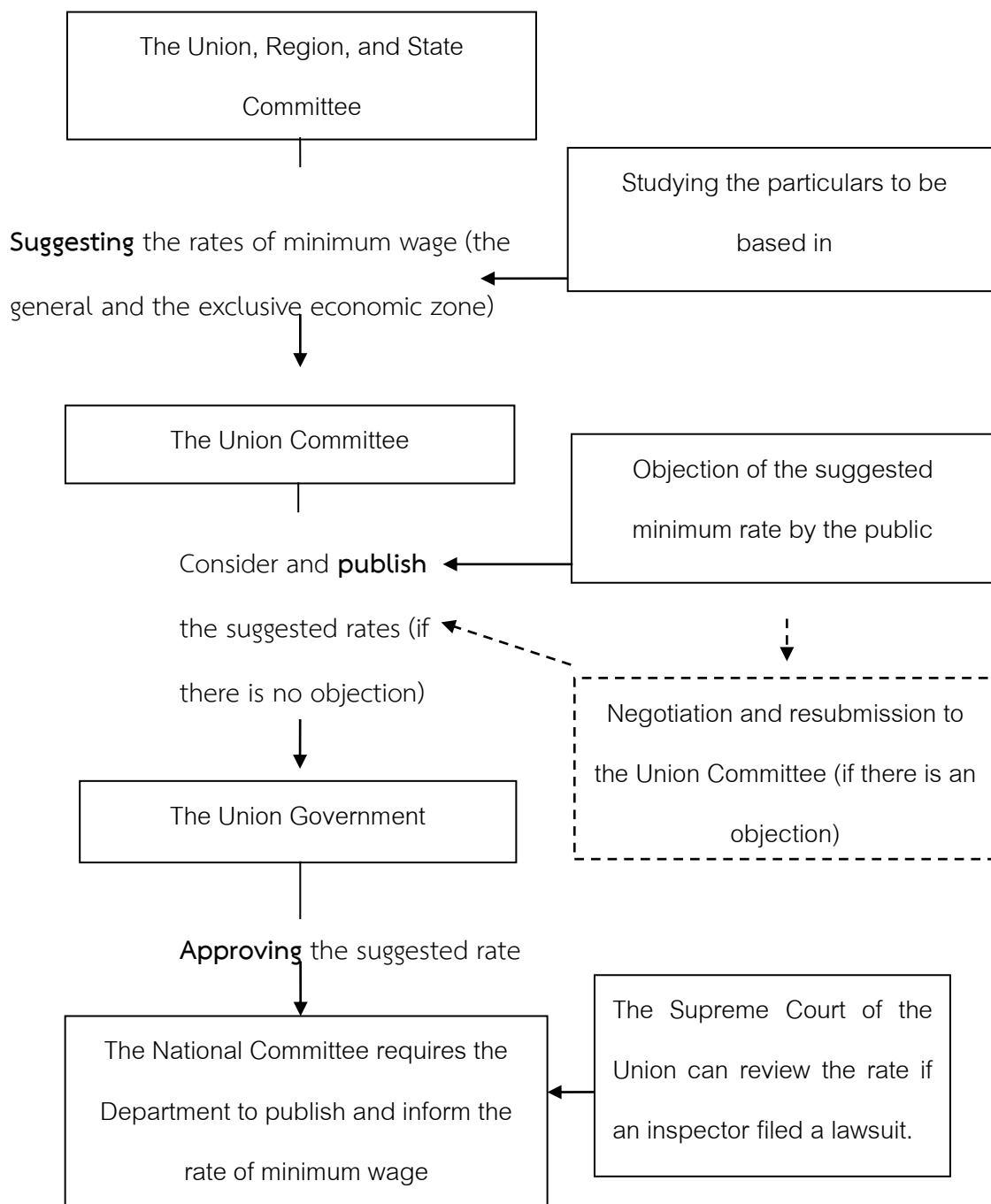
⁵⁹² Section 4 (a) of the Minimum Wage Law 2013

⁵⁹³ Section 4 (b) of the Minimum Wage Law 2013

⁵⁹⁴ Section 5 (h) of the Minimum Wage Law 2013

⁵⁹⁵ Section 8 of the Minimum Wage Law 2013

⁵⁹⁶ Section 5 (b) of the Minimum Wage Law 2013

Diagram : Process of formulating minimum wage

(1) Suggestions on the minimum wages rates by relevant

Committees

To begin with, the relevant Committees have to suggest the minimum wage for two different zones the general zone and the Special Economic Zone. For the general zone, the relevant Union Committee, Region and State Committees have to submit suggestions on the rates which should be prescribed, after studying the particulars to be based in determining minimum wage and the particulars to be included and considered, to the National Committee in conformity with stipulated means.⁵⁹⁷ For the Special Economic Zone, the Committees are responsible to suggest the minimum wage rate in accordance with accordance with the category of investment in the Special Economic Zone.⁵⁹⁸

(2) Publication of suggestions by the National Committee

The next step involves publication of the suggested minimum rates by the National Committee. Once receiving the suggested minimum wage rates, the National Committee has to publish the proposed notification for determining the minimum wage in the State's gazette and the newspapers in advance of a minimum of 60 days. The published suggestions are subject to public objection. If there is no objection on the rate of minimum wage, the National Committee will pass the suggested rates to the Union Government for its approval.⁵⁹⁹ If there is an objection is expressed, the National Committee shall ask the Union Committee, Region or State Committees to negotiate and resubmit the proposed rate.⁶⁰⁰ The tripartite representatives of the National Committee have to scrutinize the re-proposed rate of minimum wage and, in turn, submit the new proposal to the Union Government for its approval.⁶⁰¹

⁵⁹⁷ Section 8 of the Minimum Wage Law 2013

⁵⁹⁸ Section 9 of the Minimum Wage Law 2013

⁵⁹⁹ Section 10 (b) of the Minimum Wage Law 2013

⁶⁰⁰ Section 10 (c) of the Minimum Wage Law 2013

⁶⁰¹ Section 10 (d) of the Minimum Wage Law 2013

(3) Informing the approved the rate of minimum wage

After obtaining the approval from the Union Government, the National Committee is responsible to assign duty to the Department to publish and inform the rate of minimum wage to be known by the public in the State's gazette and the newspapers in advance of a minimum of 60 days.⁶⁰² Moreover, this publication is required to be known by the relevant organizations, employer and workers.⁶⁰³ The person who is dissatisfied with the rate of minimum wage stipulated by the National Committee including the rates of the Special Economic Zone may apply to the Supreme Court of the Union to issue any writ and amend in accord with the Constitution of the Republic of the Union of Myanmar and the Union Judiciary Law.⁶⁰⁴

On 28 August 2015, the National Minimum Wage Determination Committee issued Notification 2/2015 announcing the Stipulation of Minimum Wage. It announced that the Minimum Wage determined uniformly for the entire country without differentiation in respect of location or type of enterprise is to be Kyat 3,600 per day with eight working-hours, being a rate of Kyat 450 per hour.⁶⁰⁵ However, such determination shall not apply to small enterprises and family-owned self-managed enterprises with 15 or less employees.⁶⁰⁶

The minimum wage notification must be adhered to by the Employer.⁶⁰⁷ An employer who: violated any term and condition contained in the minimum wage notification or failed to inform the workers relating to the rates of minimum wage concerning to his workers among the rates of minimum wage stipulated under this Law and announce at the place where the workers are able to see it in the work centre and workplace will be punished with imprisonment for a term not exceeding six months or with fine not exceeding Kyat 300,000 or with both.⁶⁰⁸

⁶⁰² Section 10 (e) of the Minimum Wage Law 2013

⁶⁰³ Section 10 (e) of the Minimum Wage Law 2013

⁶⁰⁴ Section 11 of the Minimum Wage Law 2013

⁶⁰⁵ Republic of the Union of Myanmar National Minimum Wage Determination Committee Notification No. 2/2015, August 28, 2015, Paragraph 5

⁶⁰⁶ Ibid.

⁶⁰⁷ Section 24 of the Minimum Wage Law 2013

⁶⁰⁸ Section 25 of the Minimum Wage Law 2013

3.2.5.4 The Duties of the Employer

The Minimum Wage Law imposes several duties upon on the Employer. These duties could be categorised into three different groups: paying minimum wage in cash (with a few exceptions) informing the workers and keeping records allowing sick and funeral leaves. Failure of the Employer to perform these duties could lead to criminal penalties.

(1) Paying minimum wage in cash

Regarding Section 14 of the law, the Employer shall not pay wage to the worker less than the minimum wage stipulated under this Law,⁶⁰⁹ but can go beyond the minimum rate.⁶¹⁰ Generally, payments must be made in cash.⁶¹¹ If the specific benefits, interests or opportunities are to be paid, it may be paid in cash or partly in cash and partly in property, with prevailing regional price, jointly according to the desire of the worker.⁶¹² However, the aforesaid payment-in-cash rule is subject to an exception for workers in the agricultural and livestock business. Minimum wage of workers in these businesses can be paid in cash and some property at prevailing regional price may be paid jointly according to local custom or desire of the majority of workers or collective agreement.⁶¹³ A failure to perform this duty could lead to criminal penalties including, imprisonment for a term not exceeding one year or with fine not exceeding Kyat 500,000 or with both.⁶¹⁴

(2) Informing the workers and keeping records

The Employer is responsible for the Employee's awareness on the stipulated minimum wage. The Employer shall inform the workers the rates of minimum wage relating to the business among the rates of minimum wage stipulated under this Law

⁶⁰⁹ Section 28 of the Minimum Wage Law states that: "The agreement relating to the minimum wage, contained in the employment agreement, employment oral contract or constructive contract less than the minimum wage stipulated under this Law before or after the coming into force of this law, shall be void as far as it is contrary to this Law."

⁶¹⁰ Section 12 (a) and (b) of the Minimum Wage Law 2013

⁶¹¹ Section 12 (d) of the Minimum Wage Law 2013

⁶¹² Section 12 (d) of the Minimum Wage Law 2013

⁶¹³ Section 12 (e) of the Minimum Wage Law 2013

⁶¹⁴ Section 22 and 23 of the Minimum Wage Law 2013

and advertise it at the workplace to enable to be seen by the relevant workers.⁶¹⁵ In addition to informing the workers, the Employer is required to prepare and maintain the lists, schedules, documents and wages of the workers correctly.⁶¹⁶ These lists, schedules, and documents must be reported to the relevant Department.⁶¹⁷ Moreover, they are subject to inspection by the inspection officer under the law.⁶¹⁸

A duty to maintain accuracy of these lists, schedules, and documents of wages of the Workers belongs to the Employer. The Employer shall not make false entry, deceitful recording or false and deceitful reporting shall not fail to report to the relevant department in accord with the stipulations shall not fail to produce [what??] when required by the inspection officer.⁶¹⁹ Identical to criminal penalties for a failure to pay minimum wage, an Employer who failed to perform these duties shall be punished with imprisonment for a term not exceeding one year or with fine not exceeding Kyat 500,000 or with both.⁶²⁰

(3) Allowing sickness and funeral leaves

In addition, the Minimum Wage Law imposes addition duties regarding sickness and funeral on the Employer. If the workers cannot work due to sickness, shall give them holiday for medical treatment in accord with the stipulations.⁶²¹ If the funeral matter of the member of the family of worker or his parent occurs, shall give holiday without deducting from the minimum wage, in accord with the stipulations.⁶²² Identical to the above two, failure of the Employer to perform these duties such as deducting wage of a worker who attended a funeral of his or her parent could lead to criminal penalties including imprisonment for a term not exceeding one year or with fine not exceeding Kyat 500,000 or with both.⁶²³

⁶¹⁵ Section 13 (a) of the Minimum Wage Law 2013

⁶¹⁶ Section 13 (b) of the Minimum Wage Law 2013

⁶¹⁷ Section 13 (c) of the Minimum Wage Law 2013

⁶¹⁸ Section 13 (d) and (e) of the Minimum Wage Law 2013

⁶¹⁹ Section 22 (c) of the Minimum Wage Law 2013

⁶²⁰ Section 23 of the Minimum Wage Law 2013

⁶²¹ Section 13 (f) of the Minimum Wage Law 2013

⁶²² Section 13 (g) of the Minimum Wage Law 2013

⁶²³ Section 22 and 23 of the Minimum Wage Law 2013

3.2.5.5 The Rights of the Workers Relating to the Minimum Wage

In brief, the Minimum Wage Law recognises a worker's right to enjoy the minimum wage as approved by the Union Government without gender discrimination.⁶²⁴ As enshrined in Section 14 of the Minimum Wage Law, this right involves several benefits that the workers are entitled to including a right to receive higher than the stipulated wage protection of part-time works and holidays; a right to receive wages in cash a right to receive wages in cash and its exceptions and a legal remedy in the case of employee's non-performance.

(1) A right to receive higher than the stipulated wage

However, a worker is entitled to the right to enjoy higher wage than the stipulated minimum wage.⁶²⁵ A worker has the right to continue to enjoy the pay paid more, if the pay received is more than the minimum wage stipulated under this Law, before the coming into force of this Law.⁶²⁶ In the case the minimum wage as stipulated in an agreement is lower than the minimum wage, a worker is entitled to a right to enjoy minimum wage stipulated under this Law.⁶²⁷ In the other words, the law shall prevail over an agreement in the case the contractually-agreed wage is less than what law stipulates.

(2) Protection of part-time works and holidays

The Minimum Wage Law also protects a worker having more than one works and a worker doing part-time works. A worker has the right to enjoy not less than the minimum wage stipulated for each work where he is working when working in two or more works.⁶²⁸ Moreover, the law stipulates that the stipulated minimum wage covers the part-time and hourly job.⁶²⁹ As regards holidays, the Minimum Wage Law recognises the workers' right to enjoy a holiday per week and right to receive a full wage. For the former, a worker who receives a salary is entitled to a right to enjoy a holiday per week.⁶³⁰ If he is

⁶²⁴ Section 13 (h) of the Minimum Wage Law 2013

⁶²⁵ Section 14 (a) of the Minimum Wage Law 2013

⁶²⁶ Section 14 (b) of the Minimum Wage Law 2013

⁶²⁷ Section 14 (c) of the Minimum Wage Law 2013

⁶²⁸ Section 14 (d) of the Minimum Wage Law 2013

⁶²⁹ Section 14 (e) of the Minimum Wage Law 2013

⁶³⁰ Section 14 (f) of the Minimum Wage Law 2013

employed in such holiday, he shall have the right to obtain over-time fee in accord with the existing law.⁶³¹ For the latter, if working less than the working hours per day stipulated in a daily-waged job is not due to reduced working according to the desire of the worker, or if work has to be paused due to the failure of employer to give job, the full wage shall be paid as if the work is done full-time.⁶³²

(3) A right to receive wages in cash and its exceptions

As regards payment in cash, the Minimum Wage Law makes clear that the workers are entitled to a right to receive their wage in cash. This general rule is applied to most of the businesses namely, the commercial, production and service business.⁶³³ Moreover, if the specific benefits, interests or opportunities are to be paid, it may be paid in cash or partly in cash and partly in property at prevailing regional price jointly according to the desire of the worker.⁶³⁴ However, the law allows wage to be paid in cash and property for a worker working in the agricultural and livestock breeding business.⁶³⁵ This exception is allowed when at prevailing regional price jointly according to local custom or desire of the majority of workers or collective agreement for the worker and his family in accord with the stipulations.⁶³⁶

(4) A legal remedy in the case of employer's non-performance

A worker whose rights to receive minimum wage has been infringed can choose to may submit to the relevant Union Committee, Region or State Committee and Department within one year from the day he is entitled to obtain such injured wages and other benefits.⁶³⁷ This request does not prohibit this worker from bringing a case to the court.⁶³⁸ Moreover, there can be a situation where an employer is convicted by a court for his failure to pay the minimum wages; but, an employer is yet to receive his or her full

⁶³¹ Section 14 (f) of the Minimum Wage Law 2013

⁶³² Section 14 (g) of the Minimum Wage Law 2013

⁶³³ Section 14 (i) of the Minimum Wage Law 2013

⁶³⁴ Section 14 (i) of the Minimum Wage Law 2013

⁶³⁵ Section 14 (j) of the Minimum Wage Law 2013

⁶³⁶ Section 14 (j) of the Minimum Wage Law 2013

⁶³⁷ Section 15 (a) of the Minimum Wage Law 2013

⁶³⁸ Section 15 (b) of the Minimum Wage Law 2013

wage. For this situation, the conviction does not prohibit such employee to institute civil proceeding.⁶³⁹

Under the Minimum Wage Law, rights to enjoy minimum wage as stipulated by the law and minimum wage notifications belongs to the workers, but its enforcement is a responsibility of the inspection officer. An individual who has suffered from any non-compliance of the law cannot file a lawsuit against an employer. Under the Minimum Wage Law, the offences under this Law may be prosecuted at the relevant court only by the inspection officer assigned duty by the Department.⁶⁴⁰

3.2.5.6 Assigning Duty to the Inspection Officer, Inspection and Taking Legal Action

As a regulatory means to ensure compliance with the Minimum Wage Law, the Ministry is bound to assign the officers of the relevant department to inspect the commercial, production and service business, agricultural and livestock breeding businesses.⁶⁴¹ An objective of this inspection is to examine whether or not they comply with and carry out in conformity with the rule, regulation, by Law, notification, order, directives and procedures under this law.⁶⁴² In performing this function, these inspectors

(1) has the right to enter and inspect the relevant commercial, production and service workplaces, agricultural and livestock breeding workplaces and inspect whether or not they comply with and carry out in accord with the rules, notifications, orders, directives and procedures under this Law, whether or not the lists, schedules and documents, wages relating to the workers are prepared correctly, and whether or not such lists, schedules and documents are reported to the Department in accord with the stipulations

(2) may summon, inspect the relevant persons under the assignment of duty by the Department, asking and copying for the relevant lists, schedules and documents

⁶³⁹ Section 16 of the Minimum Wage Law 2013

⁶⁴⁰ Section 32 of the Minimum Wage Law 2013

⁶⁴¹ Section 17 of the Minimum Wage Law 2013

⁶⁴² Section 17 of the Minimum Wage Law 2013

(3) if there are outside workers at employer, has the right to inspect information relating to such outside workers, their names and addresses and the right to ask for and copy their lists and documents and lists relating to minimum wage

(3) in carrying out under sub-section (a), (b) and (c) relating to inspection, if required by the employer to produce the document, shall show the civil service identify card issued by the relevant department

(4) report to the Department in accord with the stipulations relating to the finding under sub-sections (a), (b) and (c), and documents and papers called for.⁶⁴³

The Employee is required to cooperate with the inspection done in compliance with the law. If an inspector carried out his or her duties in good faith under the law, the Employer will have no right to file a lawsuit whether civil proceeding or criminal proceeding against the inspector.⁶⁴⁴ Furthermore, failure to cooperate with an inspector could lead to criminal penalties. If an employer ignored the inspection officer's summon or obstructed or interfered with the inspection officer who comes and inspects on duty, such employer will face imprisonment for a term not exceeding one year or with fine not exceeding Kyat 500,000 or with both.⁶⁴⁵

As a consequence of an inspection, failure to pay the stipulated minimum wage could be identified. In this case, the Department is responsible to claim and pay the minimum wages entitled by the worker from the employer who fails to pay minimum wage stipulated under this Law or the employer who is in arrears to pay minimum wage.⁶⁴⁶ Failure of the employer to respond to the aforesaid Department's request could lead to a lawsuit. An officer, whom is assigned by the Department, is responsible to institute such lawsuit under an approval of the relevant Union Committee, Region or State Committee.⁶⁴⁷

⁶⁴³ Section 18 (a) - (e) of the Minimum Wage Law 2013

⁶⁴⁴ Section 34 of the Minimum Wage Law 2013

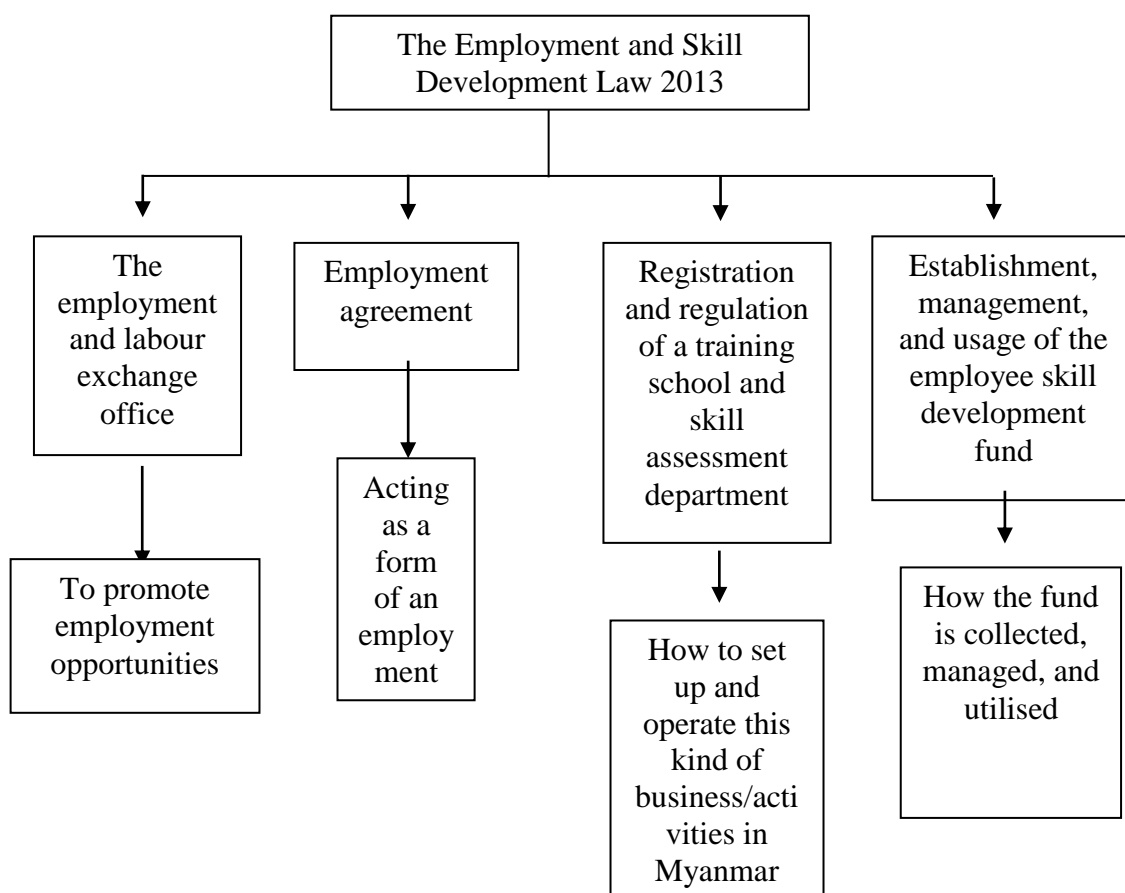
⁶⁴⁵ Section 23 of the Minimum Wage Law 2013

⁶⁴⁶ Section 19 of the Minimum Wage Law 2013

⁶⁴⁷ Section 20 of the Minimum Wage Law 2013

3.2.6 Employment and Skill Development Law 2013

The Employment and Skill Development Law 2013 essentially concerns four issues comprising: establishment and operation of the employment and labour exchange office form of employment agreement registration and regulation of a training school and a skill assessment department and Establishment, management, and usage of the employee skill development fund as illustrated by Diagram below. In achieving its objectives, the law relies on three key state organisations: the central body for employment and skill development, the employment development team, and the skill development team. In a nutshell, the Employment and Skill Development Law 2013 empowers designated state actors to interfere with employment through the employment and labour exchange office and stipulating a form of employment agreement. The law acts as a legal basis of the state's authority to regulate operation of a training school and a skill assessment department. Moreover, the law stipulates how the employee skill development fund is established, managed, and utilised.

Diagram : Overview of the Employment and Skill Development Law 2013

3.2.6.1 The employment and labour exchange office

Under the Employment and Skill Development Law 2013, employment is not merely a commercial matter between the employer⁶⁴⁸ and the job seeker, but a matter that the state actively intervenes. One aspect of the state intervention is promotion of employment opportunities. In this regard, the Ministry shall arrange easy opportunities and jobs to assist in the job seeker to select job suitable to his age, capability, to get the job, to be stable in the job and to develop in the skill, to assist in the employer to get the suitable and compatible with the job.⁶⁴⁹

⁶⁴⁸ Section 2 (a) of the Employment and Skill Development Law 2013 defines Employer as the person who has the right to appoint the employee or the person who is delegated to appoint this employee in the Government department and Organization, the Co-operative society in which permanent or temporary employees of above the limited.

⁶⁴⁹ Section 3 of the Employment and Skill Development Law 2013

The Minister of Labour, Employment and Social Security shall set up the employment and labour exchange office as necessary.⁶⁵⁰ This office shall carry out the necessary arrangement to reveal the employment opportunities, to assist in the employment seeker and to assist in the employer to get the employee⁶⁵¹ who is suitable and compatible with the employment, to open government employment and labour exchange office, to allow the local private employment agency companies which are providing free service to the employment seekers, and other means.⁶⁵² Moreover, the Ministry shall arrange to ask the employer for informing the vacant employment in his business to the relevant employment and labour exchange office in accord with the stipulations.⁶⁵³

However, it must be noted that conducting employment exchange business is a regulated business. A person desiring to run this business is required to obtain permission from the Ministry. If anyone is convicted of committing the conducting of employment exchange business without the permission of the ministry or receiving the fees from the employees, he shall be punished with imprisonment for not more than three years or with a fine or with both.⁶⁵⁴ Moreover, if anyone is convicted of submitting the false statement or false saying knowing that it is not true, to any employment and labour exchange office or any representatives doing for the said office work to get the employment or employee, he shall be punished with imprisonment for not more than one year or with a fine or with both.⁶⁵⁵

An employment seeker is not compelled to accept an offer provided by the employment and labour exchange office. This seeker may refuse to accept the employment offered by the employment and labour exchange office because the reason

⁶⁵⁰ Section 4 (a) (1) of the Employment and Skill Development Law 2013

⁶⁵¹ Section 2 (a) of the Employment and Skill Development Law 2013 defines Employee as the person who works for remuneration of skill job, fairly skill job, non-skill job in the Government department and Organization, the Co-operative society, Private or Joint-Venture, any Organization, the Company. In this expression the apprentice is also included.

⁶⁵² Section 4 (a) (2) of the Employment and Skill Development Law 2013

⁶⁵³ Section 4 (c) of the Employment and Skill Development Law 2013

⁶⁵⁴ Section 35 of the Employment and Skill Development Law 2013

⁶⁵⁵ Section 37 of the Employment and Skill Development Law 2013

that regarding the said employment there is a dispute between the employee and employer or the remuneration earned by the other is more than the similar employment for him. If there the offer is rejected because of the aforesaid reasons, he shall have the right to enjoy the other benefit and opportunities available in the said Labour Office.⁶⁵⁶

3.2.6.2 Employment agreement

Beyond promoting employment opportunities, the Employment and Skill Development Law 2013 concerns signing and content of employment agreement. If the employer has appointed the employee to work for an employment, the employment agreement shall be made within 30 days.⁶⁵⁷ If any employer is convicted of failing to sign an employment agreement within 30 days, he shall be punished with imprisonment for not more than six months or with a fine or with both.⁶⁵⁸ This requirement is not applied to a permanent employment related with government department and organization.⁶⁵⁹ The following particulars shall be included in the employment agreement

- (1) The type of employment
- (2) The probation period
- (3) Wage, salary
- (4) Location of the employment
- (5) The term of the agreement
- (6) Working hour
- (7) Day off, holiday and leave
- (8) Overtime
- (9) Meal arrangement during the work hour
- (10) Accommodation
- (11) Medical treatment

⁶⁵⁶ Section 4 (b) of the Employment and Skill Development Law 2013

⁶⁵⁷ Section 5 (a) (1) of the Employment and Skill Development Law 2013

⁶⁵⁸ Section 38 (a) of the Employment and Skill Development Law 2013

⁶⁵⁹ Section 5 (a) (1) of the Employment and Skill Development Law 2013

- (12) Ferry arrangement to worksite and travelling
- (13) Regulations to be followed by the employees
- (14) If the employee is sent to attend the training, the limited time agreed by the employee to continue to work after attending the training
- (15) Resigning and termination of service
- (16) Termination of agreement
- (17) The obligations in accord with the stipulation of the agreement
- (18) The cancellation of employment agreement mutually made between employer and employee
- (19) Other matters
- (20) Specifying the regulation of the agreement, amending and supplementing and
- (21) Miscellaneous.

The worksite regulations contained in the employment agreement shall be in compliance with any existing law and the benefits of the employee shall not be less than those of the any existing law.⁶⁶⁰ In addition to compliance, the worksite regulations and benefits contained in the employment agreement mutually made between the employer and employee or among the employees shall be amended as necessary, in accord with the existing law.⁶⁶¹

According to the employment agreement, the Ministry shall issue the notification for paying the stipulated compensation to the employee by the employer, if the work is completed earlier than the stipulated period or the whole work or any part of it have to be terminated due to unexpected condition or the work has to be terminated due to various conditions.⁶⁶² Despite being a contractual arrangement, parties to an employment agreement must be strictly adhered to. Anyone who is convicted of violating any matters

⁶⁶⁰ Section 5 (c) of the Employment and Skill Development Law 2013

⁶⁶¹ Section 5 (f) of the Employment and Skill Development Law 2013

⁶⁶² Section 5 (d) of the Employment and Skill Development Law 2013

contained in the employment agreement, he shall be punished with imprisonment for not more than three months or with a fine or with both.⁶⁶³

3.2.6.3 Employment and skill development organisations

In achieving its objectives, the Employment and Skill Development Law 2013 rely on different state organisation including, the central body for employment and skill development, the employment development team, and the skill development team. The Central Body is formed by the Union Government and consists of (1) The Union Minister Chairman Union Ministry of Labour, Employment and Social Security (2) The Union Minister Member The relevant Ministries (3) The City Mayor Member Nay Pyi Taw, Yangon and Mandalay City Development Committees (4) The relevant Minister Member Region or State Government (5) Chairman Member Union of Myanmar Federation of Chamber of Commerce And Industry (6) Chairman Member Union of Myanmar Labour Organizations (7) Chairman Member Union of Myanmar Employers Organizations and (8) Deputy Minister Secretary The Ministry of Union Labour, Employment and Social Security.⁶⁶⁴ This organisation is responsible to lay down the policies towards: creating employment opportunities reducing unemployed persons promoting the disciplines and capability of the employees and promoting the skill development of the employees.⁶⁶⁵

Apart from laying down the above policies, the Central body shall form the employment development team consisting of the following personnel with the approval of the Union Government

(1) The Deputy Minister Chairman Union Labour, Employment and Social security Ministry

(2) The Deputy Minister Member The relevant Union Ministries

(3) The Director General or Managing Director Member The relevant department or enterprise

(4) The representative Member Union of Myanmar Federation of Chamber of Commerce and Industry

⁶⁶³ Section 39 of the Employment and Skill Development Law 2013

⁶⁶⁴ Section 6 (a) of the Employment and Skill Development Law 2013

⁶⁶⁵ Section 7 (a) - (d) of the Employment and Skill Development Law 2013

(5) The representative Member Myanmar Labour Organizations

(6) The representative Member Myanmar Labour Organizations

(7) The representative Member Myanmar Employer Organizations and

(8) Director General Secretary Labour Directorate.⁶⁶⁶ This team is responsible for creating employment opportunities in the country acquiring the employment for those who want to work reducing unemployed persons; and promoting the discipline and capability of the workers.⁶⁶⁷

Moreover, the Central Body is required to skill development team consisting of the following personnel with the consent of the Union Government (1) The Deputy minister Chairman The Union Ministry which is empowered by the Union Government (2) Director General or Managing Director The relevant Department or Enterprise (3) The Representative Member The Union of Myanmar Federation of Chamber of Commerce And Industry (4) The Chairman Member The Technical Organizations; (5) The representative Member Myanmar Labour Organizations (6) The representative Member Myanmar Employer Organizations and (7) Deputy Director General Secretary The Labour Directorate.⁶⁶⁸

The duties and responsibilities of the skill development teams are as follows (a) classification of employment skill norm, drawing and enacting (b) priority classification for the skill development of the employees and laying down the policies relating to the skill training (c) prescribing the arrangement relating to the skill assessment (d) issuing the registered certificate to the training school or skill assessment departments (e) laying down the arrangement relating to the issuing of skill assessment certificate (f) managing after forming the skill development fund for the employees and (g) supervising the committees and sub-committees formed by it.⁶⁶⁹ The skill development team shall form the following committees to perform the duties (1) The committee for skill norm to be specified and training (2) The committee for skill norm assessment and acknowledgement.⁶⁷⁰

⁶⁶⁶ Section 8 (a) - (h) of the Employment and Skill Development Law 2013

⁶⁶⁷ Section 9 (a) - (d) of the Employment and Skill Development Law 2013

⁶⁶⁸ Section 10 (a) of the Employment and Skill Development Law 2013

⁶⁶⁹ Section 11 of the Employment and Skill Development Law 2013

⁶⁷⁰ Section 12 (a) of the Employment and Skill Development Law 2013

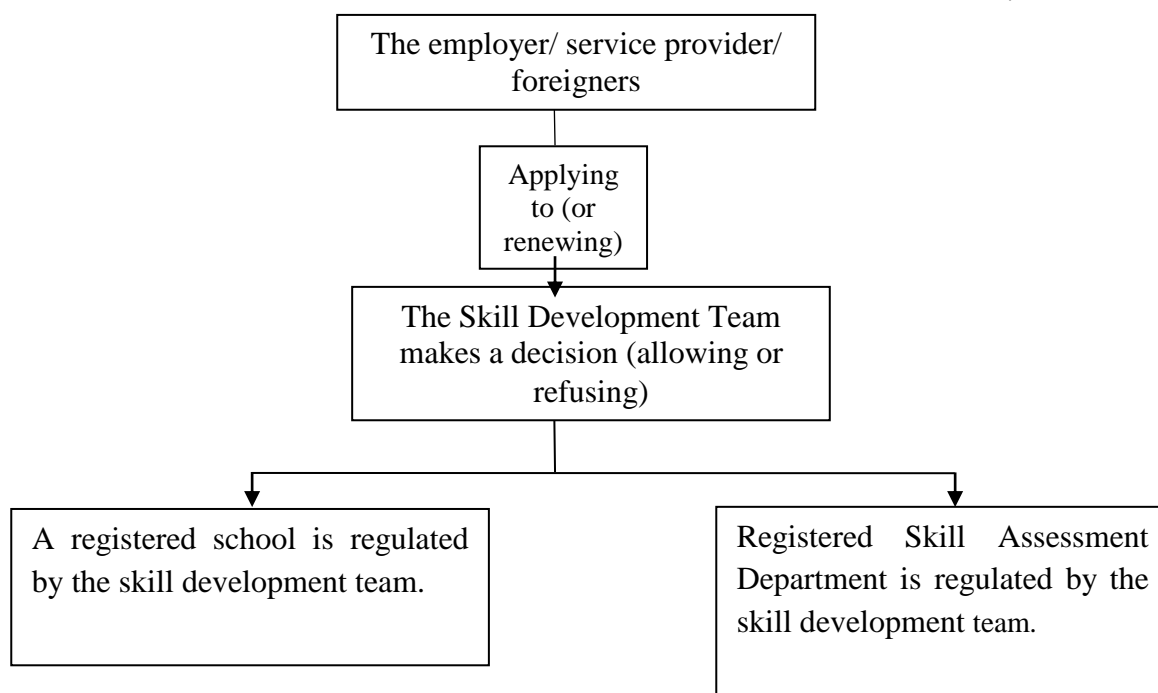
The skill development team and its committee play vital roles in registration and regulation of a training school and a skill assessment department as discussed in the next subsection.

3.2.6.4 Registration and regulation of a training school and a skill

assessment department

Under the Employment and Skill Development Law, running a training school⁶⁷¹ and skill assessment department⁶⁷² is an activity that is subject to state permission and regulation. As illustrated by Diagram the permission process begins by a person applying for a certificate registration of a training school or a skill assessment department. After obtaining this certificate, the registered training school and Skill Assessment Department can conduct their business, but are subject to several obligations as stipulated by the law.

Diagram: Registration and regulation of training schools and Skill Assessment Departments



⁶⁷¹ Section 2 (f) of the Employment and Skill Development Law 2013 defines “Training School” means the school founded and opened to give training for meeting the technical skill norm for the employment seekers and employees.

⁶⁷² Section 2 (k) of the Employment and Skill Development Law 2013 defines “Technical Skill Assessment Department” as the department recognized and power is entrusted by the technical skill development committee, as it meets the specified norm.

(1) Application for registration

Running a training school and a Skill Department begins by submitting an applying to the Skill Development Team. Conducting these businesses without the skill development team's permission could lead to penal sanction.⁶⁷³ The employer or the service provider shall apply to the skill development team to acquire the registration certificate in accord with the stipulations.⁶⁷⁴ Moreover, the foreigner who comes and wants to open the training school or any skill assessment department, he shall apply through the relevant committees to the skill development team to acquire the registration certificate in accord with the existing laws.⁶⁷⁵

After receiving the application, the skill development team shall allow or refuse to issue the registration certificate after asking the relevant committees formed under section 12.⁶⁷⁶ If it decided to allow, the Skill Development Team shall issue the registration certificate to the applicant after paying for the registration fees in accord with the stipulated regulations, if it is permitted to issue it.⁶⁷⁷ In the case of refusing, the Team shall allow the applicant to re-apply within 30 days, if it is refused to issue the registration certificate.⁶⁷⁸

It should be noted that the registered certificate holding training school and skill assessment departments can be renewed by the skill development team, if the certificate holder desires to continue his business.⁶⁷⁹ Apart from renewing the expired registered certificate, the skill development team can cancel the registered certificate of the said training school or the skill assessment department, if it is found that they are not in compliance with the stipulations contained in the registered certificate.⁶⁸⁰

⁶⁷³ Section 34 of the Employment and Skill Development Law 2013

⁶⁷⁴ Section 16 (a) of the Employment and Skill Development Law 2013

⁶⁷⁵ Section 16 (b) of the Employment and Skill Development Law 2013

⁶⁷⁶ Section 17 (a) of the Employment and Skill Development Law 2013

⁶⁷⁷ Section 17 (b) of the Employment and Skill Development Law 2013

⁶⁷⁸ Section 17 (c) of the Employment and Skill Development Law 2013

⁶⁷⁹ Section 18 of the Employment and Skill Development Law 2013

⁶⁸⁰ Section 19 of the Employment and Skill Development Law 2013

(2) Regulation of the business

After obtaining a registered certificate, a certificate holder cannot start training⁶⁸¹ immediately, but has to obtain consent from the skill development team for the following issues (1) the skill norm (2) the syllabus (3) the statement for the location of the training school, the building and apparatus; (4) the name of the instructor and his qualification (5) the training period (6) the training system for using in the training, the training aids (7) the training certificate (8) the training fee (9) the other particulars prescribed by the committee for the skill norm to be specified and training.⁶⁸²

In addition to obtaining the above consent, a certificate holder is responsible to sign the agreement relating to the trainee and the training, and maintain the curriculum vitae of the trainees.⁶⁸³ Moreover, a certificate holder has to submit the report relating to the training to the skill development team within 15 days after completing the training.⁶⁸⁴ If the training school is required to transfer to another person who wants to open the training school, a certificate holder is required to submit to the skill development team minimum 30 days in advance before transferring.⁶⁸⁵ If the training school is required to close, a certificate holder has to transfer the trainees with the remaining training expenses to any other work similar training school.⁶⁸⁶

Identical to a training school, a registered skill assessment department⁶⁸⁷ is regulated by the Employment and Skill Development Law 2013 through

⁶⁸¹ Section 21 of the Employment and Skill Development Law stipulates that: The founder of the registered training school shall have the right to appoint the foreign experts and instructors who receive work permit issued by the relevant ministry. Moreover, he or she shall have the right to import the teaching aids in accord with the existing laws.

⁶⁸² Section 20 (a) (1) - (9) of the Employment and Skill Development Law 2013.

⁶⁸³ Section 20 (b) and (c) of the Employment and Skill Development Law 2013.

⁶⁸⁴ Section 20 (d) of the Employment and Skill Development Law 2013

⁶⁸⁵ Section 20 (e) of the Employment and Skill Development Law 2013

⁶⁸⁶ Section 20 (f) of the Employment and Skill Development Law 2013

⁶⁸⁷ Similar to Section 21 of the Employment and Skill Development Law, Section 23 stipulates that: The registered skill assessment department shall have the right to appoint the foreign experts and assessors who received the work permit issued by the relevant ministry. Moreover, it shall have the right

the skill development team. A certificate holder is required to obtain consent of the skill development team for the following matters (1) the assessment program based on the recognized skill norm (2) the statement of the location of the department, the building and the apparatus (3) the names of the assessors and their qualification (4) the assessment period (5) the assessment aids for using in the assessment department (6) the status of the questions to be assessed (7) the skill norm and method using in the assessment (8) the fees to be collected from the assessed persons and (9) other particulars prescribed by the committee for skill assessment.⁶⁸⁸

In addition to obtaining the above consent, a certificate holder is responsible to fix the stipulated regulations for the applicant whose skill to be assessed and assessment program to be specified and to maintain the curriculum vitae of the assessed persons.⁶⁸⁹ After assessing skill, the registered Department is required to submit the report to the skill development team within 15 days.⁶⁹⁰ If the assessed person passed the skill assessment, the registered skill assessment department has to issue recognized certificate to him with the approval of the skill development team.⁶⁹¹

If the skill assessment department is required to terminate, the registered skill assessment department has to transfer the assessed persons with the remaining expense to other similar type of skill assessment department.⁶⁹² However, in the case of transferring, the skill assessment department has to submit to the skill development team minimum 30 days in advance before transferring the skill assessed persons to other skill assessment department.⁶⁹³

to import the assessed aids in accord with the existing laws as well as the right to apply to the relevant skill assessment department to be assessed.

⁶⁸⁸ Section 22 (a) (1) - (9) of the Employment and Skill Development Law 2013

⁶⁸⁹ Section 22 (b) and (c) of the Employment and Skill Development Law 2013

⁶⁹⁰ Section 22 (d) of the Employment and Skill Development Law 2013

⁶⁹¹ Section 22 (e) of the Employment and Skill Development Law 2013

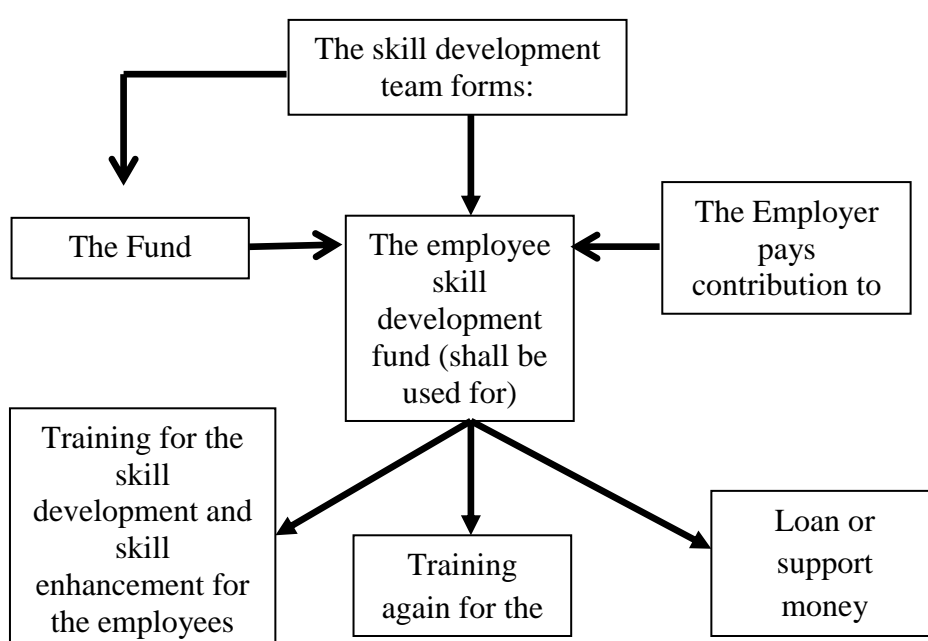
⁶⁹² Section 22 (f) of the Employment and Skill Development Law 2013

⁶⁹³ Section 22 (g) of the Employment and Skill Development Law 2013

3.2.6.5 Establishing and using the employee skill development fund

As a supporting mechanism of the employee skill development, the skill development team is responsible to establish and utilise the employee skill development fund. Moreover, it has to form the Fund management committee to manage the fund. The fund shall be contributed to by the employer of the industry and service business as illustrated by Diagram below

Diagram: Establishment, management, and usage of the employee skill development fund



The skill development team has to establish a fund for the skill development of the employees of industry and services business.⁶⁹⁴ Moreover, it is entitled to a right to use the fund for the following purposes (a) training for the skill development and skill enhancement for the employees (b) training again for the required skill for the employees who are terminated from service due to any reason and want to change any other work (c) loan or support money for the matters under sub-section (a) and (b).⁶⁹⁵

⁶⁹⁴ Section 26 of the Employment and Skill Development Law 2013

⁶⁹⁵ Section 26 (a) - (b) of the Employment and Skill Development Law 2013

The employer of the industry and service business shall put in to the fund monthly as put in fees without fail for the total wages of the subordinates and the supervisors' salary for not less than 0.5 per cent.⁶⁹⁶ This contribution must not be deducted from the wage and salary of the employees.⁶⁹⁷ Moreover, detail of the contribution to be paid by the employer shall be specified by the skill development team.⁶⁹⁸ However, the skill development team has the right to exempt from putting into the fund if any employer can submit secure reason.⁶⁹⁹ If any employer is convicted of failing to pay put in money, he shall be punished with imprisonment for not more than six months or with a fine or with both.⁷⁰⁰

To manage the employee skill development fund, the skill development team shall form the Fund management committee comprising of the government, the employer and the employee representatives.⁷⁰¹ The duties and responsibilities of the fund management committee are as follows (a) supervising the put in fees regularly to the fund (b) managing the fund with the consent of the skill development team (c) depositing the investing money out of the fund in any bank in accord with the financial regulations or buying and saving the debentures (d) receiving the donation with the approval of skill development committee if there is any donor and (e) auditing to be received relating to putting in and using the fund.⁷⁰²

The fund management committee shall have the right to use the fund for: sending to any part time or full time training for the skill development of the employee; opening the training and supporting or giving loan to the employer who shall extend the training program paying the expenses incurred relating to the training for the said employees and performing other matters stipulated by the skill development team.⁷⁰³

⁶⁹⁶ Section 30 (a) of the Employment and Skill Development Law 2013

⁶⁹⁷ Section 30 (b) of the Employment and Skill Development Law 2013

⁶⁹⁸ Section 31 (a) of the Employment and Skill Development Law 2013

⁶⁹⁹ Section 31 (b) of the Employment and Skill Development Law 2013

⁷⁰⁰ Section 38 (b) of the Employment and Skill Development Law 2013

⁷⁰¹ Section 27 of of the Employment and Skill Development Law 2013

⁷⁰² Section 28 of of the Employment and Skill Development Law 2013

⁷⁰³ Section 29 of of the Employment and Skill Development Law 2013

3.3 Laws relating to Public Health

3.3.1 The Eye Donation Law 1996

Myanmar ruled was by the Military. Under the military's supremacy, the country has made tentative steps towards democracy and greater openness, meaning significant progress and improvements for its people⁷⁰⁴. Myanmar is one of Asia's poorest countries⁷⁰⁵. After years of neglect, the eye health sector is weak – and avoidable blindness is one of the key health challenges facing the country⁷⁰⁶. However, to focus on eye health are increasingly Myanmar created the Eye Donation Law in 1996 or B.E. 2539⁷⁰⁷, summarized the law as follows.

3.3.1.1 Definition

The following expressions contained in this Law such as the meaning of Eye⁷⁰⁸, Eye Bank, Eye Donor, Person authorized to procure the eye and Removal of the eye, etc.

3.3.1.2 Objectives⁷⁰⁹

The objectives of this Law are to give extensive treatment to persons suffering from eye diseases, who may regain their sight by corneal transplantation to remove systematically the eyes of the donor. This Law carry out effective treatment of eye diseases through systematic storage and distribution of the donated eyes from the Eye Bank and carry out successfully the functions of the Eye Bank with the assistance and cooperation of the Government Departments. Government Organizations, International Organizations, local and foreign Non-Governmental Organizations, local and foreign Companies and local and foreign individuals.

⁷⁰⁴ www.hollows.org cited 20 November B.E. 2558

⁷⁰⁵ Recently cited.

⁷⁰⁶ Recently cited.

⁷⁰⁷ The Eye Donation Law 1996

⁷⁰⁸ Section 2 of the Eye Donation Law 1996

⁷⁰⁹ Section 3 of the Eye Donation Law 1996

3.3.1.3 Eye Bank Committee⁷¹⁰

The Government shall form the National Eye Bank Committee consisting of the Minister Ministry of Health as a Chairman, Representatives from the relevant Government Departments and Government Organizations and Non-governmental Organizations and Appropriate experts and professional personnel as Members, Secretary is a person assigned responsibility by the Chairman. Members of the National Eye Bank Committee who are not Government servants are entitled to receive remunerations prescribed by the Ministry of Health.⁷¹¹

The functions and duties of the National Eye Bank Committee⁷¹² are laying down the policy for carrying out successfully the Eye Bank functions in accordance with the objectives of this Law, giving guidance for carrying out incitement and educative measures in order to enhance the number of eye donors, giving guidance for proper procurement, quality control, storage and distribution of the eye tissue including stipulating conditions for exporting eye tissue to other countries and importing eye tissue from other countries and supervising, carrying out measures to nurture expert personnel and technicians and giving guidance for conducting works of research relating to the functions of the Eye Bank and obtaining assistance from the Government Departments, International Organizations, local and foreign Companies.

3.3.1.4 Eligibility Criteria for Eye Donation

A person who has attained the age of 18 or a person under 18 who has received the consent of his guardian may donate the eyes⁷¹³. The Eye Bank, on accepting the eye donation shall register the donor's name and particulars and issue eye donor card to the donor. The eye donor may inform the Eye Bank to cancel eye donation and surrender the eye donor card by remove the name of the donor from the eye donor's register.⁷¹⁴

⁷¹⁰ Section 4 of the Eye Donation Law 1996

⁷¹¹ Section 5 of the Eye Donation Law 1996

⁷¹² Section 6 of the Eye Donation Law 1996

⁷¹³ Section 9 of the Eye Donation Law 1996

⁷¹⁴ Section 14 of the Eye Donation Law 1996

3.3.1.5 Eye transplant

The **transplant** will be made when the donor is death and has been transferred to the eyes of those who signed were donated to them. If the eye donor dies in a hospital or dispensary, the responsible officer in-charge thereof shall inform the Eye Bank immediately about the death⁷¹⁵ but if the eye donor dies in a place other than a hospital or dispensary, the relative shall inform the Eye Bank immediately about the death.⁷¹⁶

Those who have the power to remove the eye off the donor's death Must be a person who is otherwise required by law. This is to prevent organ trading. A persons are authorized to remove the eye is ophthalmologist, resident ophthalmologist, doctor, nurse or technician who is assigned responsibility, a person who has completed the training course relating to removal of the eye and police surgeon.⁷¹⁷

No suit or prosecution shall lie against any person who is authorized to remove the eye, for anything which is done in good faith under this Law.⁷¹⁸

The Eye Bank shall store the locally removed eyes and those imported in accordance with the prescribed procedures⁷¹⁹. After that the Eye Bank shall distribute the stored eyes in accordance with the prescribed procedures⁷²⁰.

3.3.2 The Body Organ Donation 2004

A law regulating organ donation for those desiring to transplant their organs – the Body Organ Donation Law 2004 – has been in place since 2004. This legislation is meant to avoid the illegal organ trading⁷²¹. However, scholars have criticized that this law contains provisions which do not reflect reality, such as a prohibition of **kidney transplantation in the case** if a donor is not a family member of a donee. **Some** scholars

⁷¹⁵ Section 15 of the Eye Donation Law 1996

⁷¹⁶ Section 13 of the Eye Donation Law 1996

⁷¹⁷ Section 15 of the Eye Donation Law 1996

⁷¹⁸ Section 20 of the Eye Donation Law 1996

⁷¹⁹ Section 18 of the Eye Donation Law 1996

⁷²⁰ Section 19 of the Eye Donation Law 1996

⁷²¹ <http://www.mmtimes.com/index.php/component/content/article/86-main/6687-leading-doctors-call-for-rethink-on-transplant-laws.html> cite 20 November B.E.2558

say that this kind of restrictions could negatively affect a life span of a donee⁷²². Moreover, there have been a movement campaigning for amendments of other several provisions of this law. The Body Organ Donation Law 2004 could be summarized as follows:

3.3.2.1 Definition⁷²³

This law provides a definition such as a Body Organ means any part of the body composed in the human body. This expression also includes the whole of the human body or the Death means the condition of termination of all brain functions of a person, and also define the other as a Body Organ Donor, Person who is Authorized to Procure the Body Organ, Removal of the Body Organ, Receiving Unit and Committee.

However, since the eye is part of the body organ. However, with a particular eye donation law, including The Eye Donation Law 1996, thereby It shall be carried out in accordance with the provisions contained in the Eye Donation Law⁷²⁴.

3.3.2.2 Objectives⁷²⁵

The aims of this Law are to enable saving the life of the person who is required to undergo body organ transplant by application of body organ transplant extensively and to cause rehabilitation of disabled persons due to disfunctioning of body organ through body organ transplant. In addition, the law creates a system to enable carrying out research and educational measures related to body organ transplant. Increasing the number of body organ donors. This is to cooperate and to obtain assistance from government departments and organizations, international organizations, local and international non-governmental organizations, companies and individuals in body organ transplant.

⁷²² Recently cited.

⁷²³ Section 2 of the Body Organ Donation Law 2004

⁷²⁴ Section 23 of the Body Organ Donation Law 2004

⁷²⁵ Section 3 of the Body Organ Donation Law 2004

3.3.2.3 Committee

Myanmar has not established Unlike the Eye Donation with the establishment of Eye Bank. Only the Commission, which regulates organ donation and forced to comply with the law.

The Committee relating to Donation of Body Organ⁷²⁶ consisting of the Ministry of Health is a chairman, the member is the person representatives from the relevant Government Members developments and organizations and Appropriate experts and professional personnel, the secretary is A person assigned responsibility by the Minister Secretary of the Ministry of Health. A member of the Committee relating to Donation of Body Organ who is not a Government servant is entitled to receive remuneration prescribed by the Ministry of Health.⁷²⁷

The functions and duties⁷²⁸ of the Committee are laying down the policy for carrying out successfully the work of donation of body organ in accordance with the aims of this Law, giving guidance for carrying out educative measures in order to enhance the number of body organ donors, carrying out measures to nurture expert and research personnel and technicians for body organ transplant, obtaining assistance from the government departments and organizations, international organizations, local and international non-governmental organizations, local and foreign companies, individuals and accepting donations and equipment, maintaining systematically, allocating and permitting use of them. The Committee may direct the relevant Department to determine the receiving units in areas needing the same.⁷²⁹

3.3.2.4 Donation of Body Organ

A person who has attained the age of 18⁷³⁰ may donate his own body organ, and a patient cannot receive a kidney if the donor is outside the immediate

⁷²⁶ Section 4 of the Body Organ Donation Law 2004

⁷²⁷ Section 5 of the Body Organ Donation Law 2004

⁷²⁸ Section 6 of the Body Organ Donation Law 2004

⁷²⁹ Section 7 of the Body Organ Donation Law 2004

⁷³⁰ Section 9 of the Body Organ Donation Law 2004

family⁷³¹, including the surviving wife, husband, son or daughter, parent, brother, sister or one of the relatives⁷³² may donate the deceased's body organ if there is no objection in the family with no objection from their family.

The receiving unit on accepting the donation of the body organ shall register the donor's name and particulars in the body organ donors register. The body organ donor may, by surrendering the body organ donor card inform the receiving unit to cancel the donation of the body organ⁷³³, it shall cancel the name of the donor from the body organ donors register.⁷³⁴

3.3.2.5 Organ transplant

Organ transplant is divided into two cases. If the donor can donate organs while alive, such as donating a kidney or a liver and partial. The organ donor's death or near death. The latter case, if the donor died in a hospital or clinic⁷³⁵. If the donor died at another place, a relative person shall inform the nearest receiving unit immediately⁷³⁶ and the receiving unit shall arrange to remove or take away the body organ within the prescribed time. Only the expert or technician who is prescribed by the Ministry of Health is authorized to remove the body organ.⁷³⁷

A person who is authorized to remove the body organ⁷³⁸ has the right to remove the body organ of any of the following persons⁷³⁹

1. person who donated his body organ
2. unclaimed body of the deceased

⁷³¹ <http://www.mmtimes.com/index.php/component/content/article/86-main/6687-leading-doctors-call-for-rethink-on-transplant-laws.html> cite 20 November B.E.2558

⁷³² Section 10 of the Body Organ Donation Law 2004

⁷³³ Section 12 of the Body Organ Donation Law 2004

⁷³⁴ Section 14 of the Body Organ Donation Law 2004

⁷³⁵ Section 13 of the Body Organ Donation Law 2004

⁷³⁶ Section 13 of the Body Organ Donation Law 2004

⁷³⁷ Section 18 of the Body Organ Donation Law 2004

⁷³⁸ Section 15 of the Body Organ Donation Law 2004

⁷³⁹ Section 16 of the Body Organ Donation Law 2004

3.the deceased person whose body organ has been donated by the surviving wife, husband, son or daughter, parent, brother, sister or one of the relatives under section 10.

The police surgeon shall, if requested by the person who is authorized to remove the body organ, permit the removal of the body organ of the deceased person involved in any crime⁷⁴⁰. However, it shall not permit on the occurrence of any of a person who prior to his death has written a letter of having no desire to donate the body organ or incompleteness of the post-mortem examination by the relevant police surgeon of the body organ to be removed or objection by the surviving wife, husband, son or daughter, parent, brother, sister or one of the relatives.

Relative to the end of this Law states that no suit or prosecution shall lie against the person who is authorized to remove the body organ for any activity which is done in good faith under this Law.⁷⁴¹

The receiving unit shall store the body organ which is removed in accordance with the stipulations⁷⁴². After that the receiving unit shall carry out the following in accordance with the body organ that has been received for transplant and the body organ which is of no use in transplant for educational purpose or research.⁷⁴³

3.3.2.6 The penalty for organ trading

The law is meant to prevent the illegal trading of human organs that Whoever sells or buys the body organ for consideration shall, on conviction, be punished with imprisonment for a term which may extend to three years and may also be liable to a fine, and Whoever abets the commission of the offence provided in section 21 shall on conviction, be punished with imprisonment for a term which may extend to three years⁷⁴⁴, and may also be liable to a fine.⁷⁴⁵

⁷⁴⁰ Section 13 of the Body Organ Donation Law 2004

⁷⁴¹ Section 26 of the Body Organ Donation Law 2004

⁷⁴² Section 19 of the Body Organ Donation Law 2004

⁷⁴³ Section 20 of the Body Organ Donation Law 2004

⁷⁴⁴ Section 21 of the Body Organ Donation Law 2004

⁷⁴⁵ Section 22 of the Body Organ Donation Law 2004

3.3.3 The Control of Smoking and Consumption of Tobacco Product Law 2006⁷⁴⁶

Myanmar is bound by the Tobacco Products Control of the World Health Organization or WHO Framework Convention on Tobacco Control (FCTC). This Convention was ratified by the Myanmar government on April 21, 2004. As a consequence, Myanmar promulgated domestic the law implementing the Convention. This law⁷⁴⁷ consists of nine parts, which can be summarized as follows.

3.3.3.1 Definition⁷⁴⁸

The following expressions contained in this Law shall have the meanings given hereunder

Cigar means any cigarette, cheroot, cigar, smoking pipe and any other similar material prepared by any means for inhalation of smoke emitted from the burning of tobacco product.

Tobacco product means any material prepared for the purpose of smoking or consumption of the whole or part of the tobacco plant, leaf or stalk of the same

In addition to the definition of tobacco products, but also provides a short definition of a word that might be interpreted as cigar package, Central Board, Supervisory Body, school (Non-Smoking Areas), etc.

3.3.3.2 Objectives⁷⁴⁹

This law is meant to make the public aware of the harms of smoking and tobacco types. To protect non-smokers and trying to create a smoke-free environment. The protection of children and youth access to tobacco products as well.

Myanmar is this legislation in order to implement the law in line with the FCTC has been undertaken. In some section is a concept from the Convention.

⁷⁴⁶ The Control of Smoking and Consumption of Tobacco Production Law 2006.

⁷⁴⁷ <http://apps.who.int/fctc/implementation/database/parties/myanmar> cited 20 November B.E.2558.

⁷⁴⁸ Section 2 of the Control of Smoking and Consumption of Tobacco Production Law 2006

⁷⁴⁹ Section 3 of the Control of Smoking and Consumption of Tobacco Production Law 2006

3.3.3.3 The Central Board

The Central Board of the Control of Smoking and Consumption of Tobacco Product⁷⁵⁰. comprising Minister of the Ministry of Health as Chairman, Deputy Minister of the Ministry of Health as Vice-Chairman, Director-General of the Department of Health as Secretary, a person assigned with duty to lead the task for control of smoking and consumption of tobacco product as joint secretary and service personnel and experts from the relevant government department and organizations as members as may be necessary.

The functions and duties of the Central Board are as follows ⁷⁵¹

1. Laying down policy to implement the objectives of this law
2. Carrying out measures to create tobacco smoke-free environment for protecting the public from the dangers of tobacco smoke
3. Giving guidance to lay down and carry out tobacco cessation programs
4. Giving guidance to carry out educative work to let the public be aware extensively that smoking and consumption of tobacco product are dangerous to health
5. Giving guidance to hold exhortative exhibitions, seminars, workshops and health talks for reduction of smoking and consumption of tobacco product
6. Giving guidance to carry out research works in respect of smoking and consumption of tobacco product
7. Co-operation and co-ordination with the relevant Government departments and organizations for enabling the control of smoking and consumption of tobacco product
8. Communicating with international organizations, regional organizations, local and foreign nongovernmental organizations for carrying out effectively the control of smoking and consumption of tobacco product

⁷⁵⁰ Section 4 of the Control of Smoking and Consumption of Tobacco Production Law 2006

⁷⁵¹ Section 5 of the Control of Smoking and Consumption of Tobacco Production Law 2006

9. Formation of the supervisory bodies at the State, Division and Township levels and determining the functions and duties thereof for carrying out the control of smoking and consumption of tobacco product

10. Formation of necessary committees and determining their functions and duties to implement them.

3.3.3.4. Non-Smoking Areas

This law defines the Non-Smoking Areas in 2 case as places are non-smoking areas and specific places where smoking is allowed, shall be arranged in such areas.

First case are places are non-smoking⁷⁵² such as hospital buildings, clinics, offices, stadium, playgrounds, teaching buildings, colleges, cinema halls, department stores, museums, public libraries, elevators, motor vehicles and aircrafts for passenger transport or other public compounds, buildings and places prescribed through notification by the Ministry of Health.

Second case are places where smoking is allowed⁷⁵³, shall be arranged in such areas such as offices, factories, hotels, railway stations, airports, ports, restaurants, trains or other public buildings, rooms and places prescribed through notification by the Ministry of Health.

3.3.3.5 Other significant prohibitions.

This law states prohibit actions which promote tobacco are several deals together, each has a criminal penalty if there is a violation and a fine of up to 200,000 kyats, or about 5600 baht⁷⁵⁴ and imprisonment up to two years, or both, which concluded with the prohibition as follows

⁷⁵² Section 6 of the Control of Smoking and Consumption of Tobacco Production Law 2006 Section 6.

⁷⁵³ Section 7 of the Control of Smoking and Consumption of Tobacco Production Law 2006 Section 7.

⁷⁵⁴ Calculated on 20 November 2558.

	<u>Prohibition/Principle</u>	<u>Imprisonment</u>	<u>Fine</u>
Section 11⁷⁵⁵	<p>1. Setting up signboard of advertisement, advertising by drawing, hanging the advertisement or advertising by other means.</p> <p>2. Broadcasting or displaying by radio, film, television and video or by communication system.</p> <p>3. Describing by publishing in newspapers, journals, magazines and pamphlets or distributing the Same.</p> <p>4. Distributing free of charge, handing out or giving as present goods containing the label of cigar and tobacco product.</p> <p>5. Sponsoring or rendering service to hold athletic game or any welfare activity.</p> <p>6. Describing the label of cigar and tobacco product on any personal goods.</p>	extend to 2 years	<p>21,111-51,111 kyats for the first offence and</p> <p>51,111-211,111 kyats for second and subsequent offences</p>
Section 13⁷⁵⁶	<p>1. The package of tobacco must have the caption of warning that smoking can seriously affect health and other necessary</p>	extend to 1 years	<p>11,111-31,111 kyats for the first offence and</p> <p>31,111-111,111</p>

⁷⁵⁵ Section 11 of the Control of Smoking and Consumption of Tobacco Production Law 2006.

⁷⁵⁶ Section 13 of the Control of Smoking and Consumption of Tobacco Production Law 2006.

	<u>Prohibition/Principle</u>	<u>Imprisonment</u>	<u>Fine</u>
	<p>warnings.</p> <p>2 .Tobacco product must be mentioning that the toxic chemical potency is less than the amount prescribed.</p> <p>3 .Tobacco product must have label for commercial purpose.</p> <p>4. No sale of toys, edibles or wares made in the form of cigar.</p>		kyats for second and subsequent offences
Section 14⁷⁵⁷	<p>1. No selling cigar within the compound and within 100 yards from the compound of a school.</p> <p>2. No selling the cigar by vending machine.</p> <p>3. No selling or giving cigar to a person who has not attained the age of eighteen.</p> <p>4. No employing a person who has not attained the age of eighteen in distributing or selling cigar.</p> <p>5. Destroying the caption and mark showing the place where smoking is not allowed.</p>	extend to 1 years	11,1110-31,111 kyats for the first offence and 31,111-111,111 kyats for second and subsequent offences
Section 15⁷⁵⁸	1. No sale of cigarette singly or in a package containing less than	-	1,111-3,111 kyats for the first

⁷⁵⁷ Section 14 of the Control of Smoking and Consumption of Tobacco Production Law 2006.

⁷⁵⁸ Section 15 of the Control of Smoking and Consumption of Tobacco Production Law 2006.

	<u>Prohibition/Principle</u>	<u>Imprisonment</u>	<u>Fine</u>
	<p>20.</p> <p>2. Must have the caption of warning in Myanmar language that smoking can seriously affect health.</p> <p>3. Must have the caption informing in Myanmar language that sale is not made to a person who has not attained the age of eighteen.</p>		<p>offence and</p> <p>3,111-11,111 kyats</p> <p>for second and subsequent offences</p>

In conclusion, Myanmar has legislation to control tobacco consumption which is the modern international obligations is a Framework Convention on Tobacco Control or FCTC's legislation.⁷⁵⁹ Therefore, measures will need to look at the laws of Myanmar to resolve the issue.

3.4 Laws relating to Social welfare

The Union of Myanmar entered into the Convention on the Rights of the Child: CRC in 1991, which is the most internationally accepted human rights treaty. Most countries have ratified this Convention, except Somalia, South Sudan, and the United States⁷⁶⁰. Afterwards, Myanmar incorporated principle of international law on child protection into its domestic legal system in the form of the Child Law 1993, which came into force on 14 July 1993. Despite promulgation of the Child Law, Myanmar is still facing a series of child rights violation problems. This section discusses the Child Law and problems arising from enforcement of the aforesaid law.

⁷⁵⁹ Rise in Cigarette Smoking Doesn't Bother Burma Government, The New York Times, "http://www.nytimes.com/1998/12/17/news/17iht-smoke.t.html," cite 21 November B.E.2558

⁷⁶⁰ Convention on the right of the Child (CRC) <http://www.unicef.org/thailand/tha/overview_၆၈၆၆.html accessed 25 May 2015

3.4.1 The Child Law 1993

The Child Law 1993 can be summarized as follows

3.4.1.1 Definition of “Child”

“Child” means a person who has attained the age of 16 years ⁷⁶¹

“Youth” means a person who has attained the age of 16 years but has not attained the age of 18 years⁷⁶²

3.4.1.2 Objectives⁷⁶³

This law seeks to implement the rights of the child recognized in the United Nations Convention on the Rights of the Child; protect the rights of the child; to protect in order that children may enjoy fully their rights in accordance with law; to carry out measures for the best interests of the child depending upon the financial resources of the State. In addition, this law establishes a special justice procedure for the Child. According to the law, the Child shall receive custody and care of children in need of protection by the State or voluntary social workers or nongovernmental organizations. Apart from the pre-trial stage, this law enables a separate trial of a juvenile offence and to carry out measures with the objective of reforming the character of the child who has committed an offence.

3.4.1.3 The National Committee on the Rights of the Child

(1) Composition of the Committee

Members of the National Committee on the Rights of the Child are appointed by the Myanmar government and shall consist of the Minister of Social Welfare Heads of relevant Government departments Members representatives from non-governmental Members organizations who are carrying out work in the interests of children; voluntary social workers who are interested in the affairs of children Members; and a person assigned responsibility by the Secretary Chairman.⁷⁶⁴

⁷⁶¹ Article 2 (a) of the Child Law 1993

⁷⁶² Article 2 (b) of the Child Law 1993

⁷⁶³ Article 3 of the Child Law 1993

⁷⁶⁴ The Child Law 1993, Article 4.

(2) Duties and powers

The Committee is vested with duties and powers, for example, to: protecting and safeguarding the rights of the child; give guidance as may be necessary in order that the relevant Government departments and organizations may implement effectively and successfully the provisions of this Law; co-operate and co-ordinate as may be necessary activities of government departments and organizations, voluntary social workers and non-governmental organizations relating to a child review from time to time the progress made; and obtain assistance and co-operation of the United Nations Organizations international organizations, voluntary social workers or non-governmental organizations for the interests of the child.⁷⁶⁵

3.4.1.4 Rights of the child

This law stipulates that the child shall be entitled to fundamental rights at the level not lower than the international law standard, covering four main categories of rights as follows⁷⁶⁶

- (1) Right to survival
- (2) Right to development
- (3) Right to protection and care
- (4) Right to be heard and given due weight of consideration to his opinion

Apart from categorizing rights of the Child, the law provides their details as follows

- 1) Every child has the inherent right to life⁷⁶⁷
- 2) The parents or guardian shall register the birth of the child in accordance with law⁷⁶⁸
- 3) Every child shall have the right to citizenship in accordance with the provisions of the existing law⁷⁶⁹

⁷⁶⁵ The Child Law 1993, Article 5.

⁷⁶⁶ The Child Law 1993, Article 8.

⁷⁶⁷ Article 9 (a) of the Child Law 1993

⁷⁶⁸ Article 9 (b) of the Child Law 1993

4) Maintenance, custody and care of children, cultivating and promoting the all-round physical intellectual and moral development of the child shall be the primary responsibility of parents or guardian⁷⁷⁰

5) Every child shall have the right to live with and be brought up by both parents or by any one parent if they are alive

- Every child shall not be separated forcibly from his or her parents, except in a case where in accordance with law, separation is necessary for the best interests of the child⁷⁷¹

- Every child shall have the right to maintain contact on a regular basis with parents lawfully separated, if it is not prejudicial to the interests of the child⁷⁷²

6) Right to protection and care

- Every child who is capable of expressing his or her own views in accordance with his age and maturity has the right to express his own views in matters concerning children. The views of the child shall be given due weight in accordance with his age and maturity, by those concerned⁷⁷³

- Every child shall, irrespective of race, religion, status, culture, birth or sex: (a) be equal before the law (b) be given equal opportunities.⁷⁷⁴

- Every child has the right to freedom of speech and expression in accordance with law⁷⁷⁵

- Every child has the right to freedom of thought and conscience and to freely profess any religion⁷⁷⁶

⁷⁶⁹ Article 10 of the Child Law 1993

⁷⁷⁰ Article 11 of the Child Law 1993

⁷⁷¹ Article 12 (a) (b) of the Child Law 1993

⁷⁷² Article 11 (c) of the Child Law 1993

⁷⁷³ Article 13 (a) (b) (c) of the Child Law 1993

⁷⁷⁴ Article 15 (a) of the Child Law 1993

⁷⁷⁵ Article 15 (a) of the Child Law 1993

⁷⁷⁶ Article 14 of the Child Law 1993

- In order that every child shall not be subjected to arbitrary infringement of his honor personal freedom and security, relevant Government departments and organizations shall provide protection and care in accordance with law⁷⁷⁷ Security of the property of every child shall be protected by law.⁷⁷⁸

7) A right to be adopted

- Every child shall have the right to be adopted in accordance with law. The adoption shall be in the interests of the child. The adoptive parents shall be responsible for the care and custody of the child to ensure that there is no abduction to a foreign country sale or trafficking unlawful exploitation unlawful employment maltreatment pernicious deeds and illegal acts.⁷⁷⁹

8) A mentally or physically disabled child shall be appropriately protected.⁷⁸⁰

- He or she shall have the right to acquire basic education (primary level) or vocational education at the special schools established by the Social Welfare Department or by a voluntary social worker or by a non-governmental organization.

- He or she shall have the right to obtain special care and assistance from the State. In actualizing the aforesaid right, the Social Welfare Department shall lay down and carry out measures as may be necessary in order that mentally or physically or disabled children may participate with dignity in the community, stand on their own feet and promote self-reliance

9) The state is responsible for providing the Child with health facilities

- The Ministry of Health shall lay down and carry out measures for the survival of the child, immunization of child, breast-feeding of the child, family planning, adequate nutrition for the child, elimination of iodine deficiency disease, school health and family health⁷⁸¹

⁷⁷⁷ Article 16 (a) of the Child Law 1993

⁷⁷⁸ Article 16 (b) of the Child Law 1993

⁷⁷⁹ Article 17 of the Child Law 1993

⁷⁸⁰ Article 18 of the Child Law 1993

⁷⁸¹ Article 19 (b) (i) of the Child Law 1993

- The Ministry of Health shall lay down and carry out appropriate measures for the gradual abolition of traditional practices prejudicial to the health of the child⁷⁸²

- The Ministry of Health shall carry out measures to minimize the child mortality rate and to maximize the population of healthy children.⁷⁸³

10) A right to education

- Every child shall have opportunities of acquiring education⁷⁸⁴

- The Ministry of Education shall have an objective of implementing the system of free and compulsory primary education. In case of the Child's inability to join the education system the Ministry shall make arrangements for literacy of children who are unable for various reasons to attend schools opened by the States.⁷⁸⁵

- Every child shall have the right to maintain his or her own cherished language, literature and culture, to profess his or her own religion and to follow his or her own traditions and customs⁷⁸⁶

11) A right to literature

- The Ministry of Information shall produce and disseminate children's books which are of cultural benefit to children, which promote and keep alive patriotism which are aimed at the promotion of the children's moral well-being; encourage the production and dissemination of children's books by non-governmental organizations and private publishers; collect and maintain by special arrangement children's books at the libraries established by the Information and Public Relations Department⁷⁸⁷

- The Ministry of Information shall educate and disseminate by mass media to ensure that children and their parents or guardians are made familiar with the

⁷⁸² Article 19 (b) (ii) of the Child Law 1993

⁷⁸³ Article 19 (b) (iii) of the Child Law 1993

⁷⁸⁴ Article 20 (a) (i) (ii) of the Child Law 1993

⁷⁸⁵ Article 20 (b) (3) of the Child Law 1993

⁷⁸⁶ Article 2 of the Child Law 1993

⁷⁸⁷ Article 22 (b) (i) of the Child Law 1993

rights and ethics of the child and that children have access to national and international news and information concerning them.⁷⁸⁸

12) Every child has the right to: rest and leisure and to engage in play; participate in sports activities appropriate to his age; participate in cultural and artistic activities.⁷⁸⁹

13) As regards employment, every child has the right to engage in work in accordance with law and of his own volition. The Ministry of Labor shall protect and safeguard in accordance with law to ensure safety of children employees at the place of work and prevention of infringement and loss of their rights.⁷⁹⁰

14) Criminal liability and punishment

- Any action of a Child under 7 years of age shall not be held criminally liable and punished.⁷⁹¹

- Nothing is an offence which is done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.⁷⁹²

- No action shall be taken under any Criminal Law against any child who has escaped from a training school, temporary care station or a custodian.⁷⁹³

15) The law does not only recognizing the Child's rights, but also referring to ethics and discipline. Every child shall abide by the following ethics and discipline, according to his age:⁷⁹⁴ upholding and abiding by the law; obeying the advice and instruction of parents or guardian; obeying the instruction of teachers and pursuing education peacefully; abiding by the school discipline, work discipline and community discipline; cherishing and preserving the race, language, religion, culture, customs and

⁷⁸⁸ Article 22 (b) (ii) of the Child Law 1993

⁷⁸⁹ Article 23 of the Child Law 1993

⁷⁹⁰ Article 24 of the Child Law 1993

⁷⁹¹ Article 28 (a) of the Child Law 1993

⁷⁹² Article 28 (b) of the Child Law 1993

⁷⁹³ Article 29 of the Child Law 1993

⁷⁹⁴ Article 30 of the Child Law 1993

traditions concerned with him; and abstaining from taking alcohol, smoking, using narcotic drugs or psychotropic substances, gambling and other acts which tend to affect the moral character.

16) Child in need of Protection and Care are defined as follows:

- (a) one who has no parents or guardian
- (b) one who earns his living by begging
- (c) one who is of so depraved a character that he is uncontrollable by his parents or guardian
- (d) one who is in the custody of a cruel or wicked parents or guardian
- (e) one who is of unsound mind
- (f) one who is afflicted with a contagious disease
- (g) one who uses a narcotic drug or a psychotropic substance
- (h) one who is determined as such from time to time by the Social Welfare Department.⁷⁹⁵

- The Social Welfare Officer shall make investigations in the manner prescribed to determine whether or not the child needs the protection and care of the State and submit his findings together with his opinion to the Director General⁷⁹⁶

17) Procedures for a Child who committed a crime

As discussed earlier, a crime committed by a child less than 7 years of age shall not be held criminally liable. This rule applies a child having age from 7 to 12 years of age who is innocent. Moreover, a Police Officer or a person authorized to take cognizance shall abide by the following when arresting a child accused of having committed an offence⁷⁹⁷

- (a) shall not handcuff the child or tie with a rope
- (b) shall not keep the child together with adult prisoners; if it is

⁷⁹⁵ Article 32 of the Child Law 1993

⁷⁹⁶ Article 32 of the Child Law 1993

⁷⁹⁷ Article 37 (a) - (h) of the Child Law 1993

a girl, shall keep her, with a woman guard

(c) shall not maltreat or threaten the child

(d) shall not send the child together with adult prisoners from one place to another; if it is a girl, shall send her with a woman guard

(e) shall inform the parents or guardian concerned as soon as possible

(f) shall send up the arrested child to the relevant juvenile court as soon as possible

(g) shall release the child on execution of a bond, if the child cannot be sent up as soon as possible to the juvenile court under sub-section (f)

(h) shall send the child to a temporary care station or to another appropriate place if the child is not released on a bond under sub-section

18) The Police's action on the Child

- The Police shall send up the juvenile case for prosecution to the relevant juvenile court. In a case of joint commission of offence by a child and an adult, shall send up the child for prosecution to the relevant juvenile court and the adult to the relevant court. In sending up a child for prosecution, supporting evidence in respect of his age shall be sent together⁷⁹⁸

- A Police Officer or a person who is authorized to take cognizance, in respect of a child who has escaped from a training school, home, temporary care station or a custodian may arrest him without a warrant.⁷⁹⁹

19) Trial for the Child

- The Supreme Court may establish juvenile courts in appropriate local areas and appoint juvenile judges. In local areas where juvenile courts as aforesaid

⁷⁹⁸ Article 38 of the Child Law 1993

⁷⁹⁹ Article 39 of the Child Law 1993

have not been established, the Supreme Court may confer powers of a juvenile judge on a Township Judge.⁸⁰⁰

- The Juvenile Court shall, on receiving a juvenile case, first and foremost scrutinize the supporting evidence in respect of the age of the child, contained in the proceedings. During trial, the Juvenile Court shall release the child sent up for prosecution, on the execution of a bond, entrust to the care of parents or guardian subject to conditions, commit to the custody of a temporary care station or other appropriate place subject to conditions. If a child has attained the age of 16 years during trial, the Juvenile Court shall continue to try the case, as if the accused were a child and pass a sentence in accordance with this law⁸⁰¹

- The juvenile court shall try the case in a separate court or a separate building or if there is no separate court or building, in a building or room other than that in which the ordinary sittings of the court are held. No person other than the parents, guardians staff of the court, Law Officers, members of the People's Police Force on duty and not in uniform, persons directly concerned with the case and persons who have been granted permission by the juvenile court shall be present at the place of trial. If the child or his parents or guardian cannot or do not wish to engage a lawyer and makes an application to be defended with the assistance of any appropriate person, shall grant permission to do so. The Juvenile Court shall arrange to make available an interpreter, if necessary.⁸⁰²

- The Juvenile Court applies different trial procedures from a trial in a typical court. For example, the Court may allow inserting, and announcing of information revealing the identity of a child who is accused of having committed an offence or a child who is participating as a witness in any case, in the radio, television, newspapers, magazines journals and publications and displaying and making use of the photograph of the child, if it is believed to be of benefit to the child. The Court may direct the relevant Probation Officer to make inquiries and to submit a report of the personal history, character, conduct, behaviour and environmental circumstances of the child and his parents or guardian.⁸⁰³

⁸⁰⁰ Article 40 of the Child Law 1993

⁸⁰¹ Article 41 of the Child Law 1993

⁸⁰² Article 42 of the Child Law 1993

⁸⁰³ Article 43 of the Child Law 1993

- The Juvenile Court shall, before passing an order on a child who is found guilty, take into consideration the following and pass an order which is reformatory and which will be beneficial to the child: (a) the age and character of the child; (b) the environmental circumstance of the child; (c) the cause of committing the offence; (d) the report submitted by the Probation Officer; (e) other circumstances which are required to be taken into consideration in the interests of the child.⁸⁰⁴

- Notwithstanding anything contained in any existing law, a death sentence, transportation for life or a sentence of whipping shall not be passed on any child,⁸⁰⁵

- A child shall not ordinarily be sentenced to imprisonment. Only if the Juvenile Court is satisfied that the child has committed an offence which is punishable with death or transportation for life under any existing law or that the child is of so unruly or depraved a character or absolutely uncontrollable, he shall not be sentenced to imprisonment. Such sentence of imprisonment shall not exceed a term of 7 years.⁸⁰⁶

- The Juvenile Court may pass any of the following orders in respect of a child who should not be sentenced to imprisonment if the offence committed is not serious and the character of the child is not yet perverted; (i) may release him after due admonition; (ii) may impose a fine, if he has attained the age of 14 years and has an income. If he is a child who has no income, a fine may be imposed on the parents or guardian⁸⁰⁷

- Whether the offence is serious or not, if the character of the child is not yet perverted and in order to deter further commission of offence, such child shall be entrusted to the custody of his parents or guardian on execution of a bond for good behaviour according to the conditions of the bond for a period not exceeding 3 years⁸⁰⁸

- The Court may cause the child to submit to the supervision and management of the Probation Officer during a period not exceeding 3 years⁸⁰⁹

⁸⁰⁴ Article 44 of the Child Law 1993

⁸⁰⁵ Article 45 of the Child Law 1993

⁸⁰⁶ Article 46 of the Child Law 1993

⁸⁰⁷ Article 47 (a) of the Child Law 1993

⁸⁰⁸ Article 47 (b) of the Child Law 1993

⁸⁰⁹ Article 47 (c) of the Child Law 1993

- Whether the offence is serious or not if the child is of a perverted but has no parents or guardian or if the child has parents or guardian but cannot be admonished and is in no circumstances for custody and care, may commit such child to the custody of any training school for a minimum term of 2 years or till he attains the age of 18 years as a maximum term⁸¹⁰

- The Juvenile Court may in addition to the sentence of imprisonment passed under section 46 or any order passed under section 47 also pass an order directing the parents or guardian to pay compensation for injury; loss or damage caused to any person by the act of the child.⁸¹¹

- There shall be right of appeal or right of revision in accordance with the provisions of the Code of Criminal Procedure against the order or decision passed under this Law by the juvenile Court⁸¹²

20) As regards safeguarding Children Against Dangers, this principle does not restrict its scope of protection to only a child who is deemed a suspect or a witness. Therefore, it shall be applied to any child who is involved in the criminal justice procedure or a child in a vulnerable situation.

- The Police Officer shall, in order to safeguard a child who is likely to be exposed to danger send up such child as soon as possible to the relevant Juvenile Court⁸¹³

- The Juvenile Court may, if believes on information or on personal knowledge that a child is in danger or that if immediate action is not taken, there is likelihood of danger befalling the child direct the Police Officer to search for the child and send him up before it and to commit the child to the custody of a temporary care station before being able to send him up.⁸¹⁴

⁸¹⁰ Article 47 (d) of the Child Law 1993

⁸¹¹ Article 48 of the Child Law 1993

⁸¹² Article 49 of the Child Law 1993

⁸¹³ Article 50 of the Child Law 1993

⁸¹⁴ Article 51 of the Child Law 1993

21) As regards, custody and care of children and youths in prisons, the Officer in charge of a prison shall, in respect of a child or youth who has been sentenced to imprisonment shall:⁸¹⁵

- not keep him together with adult prisoners until he attains the age of 18 year
- custody him according to his age range, either with children or youth, and custody him in the cell or area adult cannot access
- grant him the right to meet parents, guardians, relatives and friends concerned
- provide medical check-up regularly for him
- train and provide a child with education which will reform his character and vocational education
- grant him the right to enjoy remission period in accordance with the existing regulations and bye-laws.⁸¹⁶

The Officer in charge of a prison shall allow the child of a female prisoner to stay together with his mother so in prison till he attains the age of 4 years if there no one outside to take custody and care of him or if his mother desires or may allow the aforesaid child to continue to stay together with his mother in prison till he attains the age of 6 years if his mother so desires. The child who stays together with his mother in prison shall be provided with food, clothing and shelter and health care.

The Officer in charge of a prison shall inform the Director General of the Social Welfare Department as soon as possible, in order to make arrangements for the care and custody of any child left after a female prisoner dies in prison or if the child staying together with the female prisoner attains the age of 6 years.

⁸¹⁵ Article 52 of the Child Law 1993

⁸¹⁶ Article 53 of the Child Law 1993

2 2) Training School, Temporary Care Station, Home, Residential Nursery

The Director General shall establish the following with the approval of the Minister. Training schools required for the custody and care of a child in need of protection and care or a child who has committed an offence, who is entrusted under this Law.⁸¹⁷

Temporary care stations required for the temporary custody and care during the period of trial of a child who is accused of having committed an offence.⁸¹⁸

If the Director General believes that a home established by a voluntary social worker or a non-governmental organization with the intention of taking custody and care of a child in need of protection and care : (a) is appropriate for the custody and care of children sent under this Law, such home may be recognized as being a training school for the purpose of this Law; (b) is appropriate for the temporary custody and care during the trial of a child who is accused of having committed an offence, such home may be recognized as being a temporary care station for the purpose of this Law.⁸¹⁹

A voluntary social worker or a non-governmental organization may establish homes for custody and care of children in need of protection and care, on their own arrangements. A Home established under sub-section (a) shall be registered with the Social Welfare Departments, as may be prescribed.⁸²⁰

The Director General may establish local residential nurseries required and care of children who have not attained the age of 5 year.⁸²¹

⁸¹⁷ Article 55 (a) of the Child Law 1993

⁸¹⁸ Article 55 (b) of the Child Law 1993

⁸¹⁹ Article 56 of the Child Law 1993

⁸²⁰ Article 63 of the Child Law 1993

⁸²¹ Article 57 of the Child Law 1993

23) Powers of the Minister

The Minister is vested with powers to promulgate any regulations on control over the Child under this law or may assign certain responsibilities to competent official to perform his or her duties to accomplish objectives of this law.⁸²²

The duties and powers of a Probation Officer are as follows:

(a) making necessary investigations and submitting a report, when assigned responsibility in respect of the child by the Juvenile Court

(b) managing and supervising a child who is ordered to submit to his management and supervision in the manner prescribed

(c) reporting to the relevant Social Welfare Officer, if it is found that a child is in need of protection and care under this Law

(d) informing the relevant police officer or the Juvenile Court, if it is found that there is likelihood of danger befalling any child or that a child is in danger

(e) arresting the child without a warrant and handing him over to a police officer, if a child who has escaped from a training school, home, temporary care station or a custodian is found

(f) co-ordinating and co-operating with the parents or guardians concerned, local

24) Offences and Penalties

Whoever commits any of the following acts shall, on conviction be punished with imprisonment for a term which may extend to 6 months or with fine which may extend to kyats 1000 or with both

(a) employing a permitting a child to perform work which is hazardous to the life of the child or which may cause disease to the child or which is harmful to the child's moral character

(b) taking a child to or allowing him to enter a place where only alcohol is sold, sending the child to buy alcohol, selling alcohol to the child, permitting the

⁸²² Article 59 of the Child Law 1993

child to take alcohol, employing or permitting the child to work in the business which trades in alcohol

(c) urging, inducing or abetting the child to gamble

Whoever commits any of the following acts shall, on conviction be punished with imprisonment for a term which may extend to 2 years or with fine which may extend to kyats 10,000 or with both⁸²³

(a) neglecting knowingly that a girl under his guardianship, who has not attained the age of 16 is earning a livelihood by prostitution

(b) permitting a child under his guardianship to live together or to consort with a person who earns a livelihood by prostitution

(c) employing a child to beg for his personal benefit; failing to prevent a child under his guardianship from begging; making use of the child in any manner in his livelihood of begging;

(f) using the child in pornographic cinema, video, television photography.

25) Youth who has committed an offence

A youth, who at the time of committing the offence has attained the age of 16 years, but has not attained the age of 18 years shall be sent up for prosecution to the Court which has jurisdiction, in respect of the offence. In sending up for prosecution such case of the youth, it shall be accompanied by supporting evidence in respect of the age of the youth.⁸²⁴

Notwithstanding that the youth has attained the age of 18 years on the day of passing of the sentence, the Court shall deem as if such person were a youth and pass order accordingly.⁸²⁵

The Court shall take into consideration the following before passing an order on the youth who is found guilty of the offence: (a) the age and character of the

⁸²³ Article 66 of the Child Law 1993

⁸²⁴ Article 67 of the Child Law 1993

⁸²⁵ Article 69 of the Child Law 1993

youth; (b) the environmental circumstance of the youth's residence; (c) the physical and mental condition of the youth; (d) the cause of committing the offence.⁸²⁶

Notwithstanding anything contained in any existing Law: (a) a sentence of death or transportation for life shall not be passed on the youth; (b) if a sentence of imprisonment is passed on youth, the maximum term of imprisonment shall not exceed ten years.⁸²⁷

3.4.2 Situation of child protection in The Union of Myanmar

The United Nations Children's Fund (UNICEF) conducted an analysis report on situation of child protection in The Union of Myanmar with the data as of in July 2012. The data aforementioned is an accumulation of child's protection reports from various region of Myanmar. The analysis report congregates information regarding nutrition, public utility service for child, clean water, sanitation, knowledge and number of children with HIV. Principle of protection of rights in various aspects can be summarized as followed.

3.4.2.1 Relevant Law

Although Myanmar is a Member State of the Convention on the Rights of the Child (CRC) or even ratified it by enacting the Child Law 1993, it still can be seen that there are some provisions of the law which are not in accordance with international law. For example, the definition of 'child' is referring to those whose age is under 16 years old while the international convention defines the 'child' as those whose age is under 18 years old.

As aforementioned, even though Myanmar ratified the Convention on the Rights of Child (CRC), several parts of Myanmar's domestic law are not in accordance with the Convention. It can be seen that although Myanmar's constitution 2008 recognizes and protects the child's right to fundamental education and health care which shall be provided by the State and the right of mother with disabilities, Myanmar started to abide by the convention in 2015 with the goal of success within the same year.

⁸²⁶ Article 70 of the Child Law 1993

⁸²⁷ Article 71 of the Child Law 1993

3.4.2.2 Society

Children in Myanmar are expected to study or to work very hard. The people of Myanmar usually do not allow their children to play or improve his or her creativity. The number of child workers is rising and there is little evidence to support children's participation in activities in which they can provide their opinion such as in school. The society of Myanmar is likely to prioritize men's opinions over those of women based on their religious beliefs.

3.4.2.3 Poverty

The situation of poverty in Myanmar was rising between 2009 and 2010. This poverty affects child protection in the rural area and the minorities. To elaborate, children in rural areas do not have birth registration or access to fundamental education in school. Moreover, many children have to work and unable to access public health services or habitation.

3.4.2.4 Living quality

Due to Myanmar's domestic political conflicts regarding the minorities and natural disasters, many children in Myanmar died or do not have public safety, proper mental health care, and better quality of living.

3.4.2.5 Health and nutrition

According to the report, five out of 56,000 children died from health and nutrition issues. Moreover, the death rate of the newborn children to 5-6 years old children also rises making Myanmar the country with the highest aforementioned dead rate within ASEAN. In some cases, such health issues result in children's physical or mental disabilities. That is because many children do not have proper nutrition which leads to health risks. Nutrition and vitamin deficiency in children also lead to disabilities such as lack of iodine.

Even though Myanmar developed its health care system in order to resolve health issues including improving people's access to management information and creating

relevant organizations, the standard of public health service in Myanmar is still in the very low range and not sufficient for its citizen.

In addition, Myanmar also improved its clean water system in rural areas, however, the provided clean water is still not sufficient. In some rural villages, only one-third of the households received clean water from the state. Nonetheless, Myanmar developed other health plans to educate children regarding sanitation.

3.4.2.6 Right to education

Myanmar provided more primary schools which are for 5-9 years old children. However, the current children's access to education rate is only 54.2 percent meaning that there are only around half of all children in Myanmar can access education. Moreover, the quality of the fundamental education is low and it shall be improved.

3.4.2.7 Right to protection

According to the report's statistic, 5 percent of the newborn children to 17 years old children cannot live with their biological parents. Most of these children are at border with many migrants. Currently, these children cannot access Myanmar's legal protection and mostly it is the non-profit organizations (NGOs) who help them have better-living quality.

To conclude, the Union of Myanmar ratified the Convention on the Rights of the Child (CRC) and implemented the principle of the convention into its domestic law which guarantees the fundamental children's rights that shall be provided by the state. However, Myanmar still has some domestic law which is not in accordance with international law principles. Some principles are lower than the standards of international law. Importantly, Myanmar is currently facing issues enforcing these laws.

3.5 Laws relating to Promotion of Science, Technology, and Telecommunication

3.5.1 The Science and Technology Development⁸²⁸

About the Science and Technology Development the Union of Myanmar has the law which is the Science and Technology Development Law 1994 that was established for the purposes of development and improvement science and technology in the Republic of the Union of Myanmar. The Union of Myanmar has release the law related to science and technology including applied science. To promote such scientific, include the development of skill, knowledge, proficiency in order to contribute to the work of science especially research and development of science applied in practice. For technology which focuses on technology-related expertise and services that can be used in the production process, with the skills and knowledge. Such a promoting the transfer of technology along with the story, but does not include the purchase or rental of goods. Therefore, Myanmar has established research units in science and technology research in the Union of Myanmar served to promote science and technology. Including the Advisory Council on Science and Technology under the Ministry of Science and Technology directly.⁸²⁹ The promoting science and technology in Myanmar is illustrated by diagram below

Diagram



⁸²⁸ The Science and Technology Development Law

⁸²⁹ Section 2 of the Science and Technology Development Law

3.5.1.1 The objectives

The objectives of The Science and Technology Development Law focus on development of Science and Technology for promotion of industrial production contributory towards the National Economic Development Plans.⁸³⁰ The law also carries out Research and Development for the increased extraction and utilization of domestic raw materials and the promotion of industrial production enterprises based on modern Science and Technology.⁸³¹ Besides, this law aims to transfer Technology for the promotion of production processes and the improvement of the quality of goods.⁸³² In addition, the law requires for the development of Science and Technology and for Research and Development and to improve their qualifications⁸³³ including communication and co-operation with domestic and foreign research institutes and organizations for the development of Science and Technology and Research and Development.⁸³⁴ Moreover, under the Science and Technology Development Law promotes luminaries and inventors by honour and grant appropriate benefits to outstanding luminaries and inventors in the field of Science and Technology.⁸³⁵

3.5.1.2 Establishment of the National Council for Science and Technology Development

The Government of the Republic of the Union of Myanmar has released this law to form the National Council for Science and Technology Development. According to the law, the National Council for Science and Technology Development consisting of (i) person assigned by the Government as a chairman (ii) Ministers or Deputy Ministers of Ministries conducting Science and Technology Development activities (iii) heads or government departments and government organizations conducting Science and Technology Development activities (iiii) appropriate luminaries (v) director General of

⁸³⁰ Section 3 (a) of the Science and Technology Development Law

⁸³¹ Section 3 (b) of the Science and Technology Development Law

⁸³² Section 3 (c) of the Science and Technology Development Law

⁸³³ Section 3 (d) of the Science and Technology Development Law

⁸³⁴ Section 3 (e) of the Science and Technology Development Law

⁸³⁵ Section 3 (d) of the Science and Technology Development Law

Myanmar Scientific Technological Research Department.⁸³⁶ The government if it is necessary may determine the Vice-Chairman and Joint Secretary for forming the Council.⁸³⁷ For Non-governmental members of the Council are entitled to receive such remuneration prescribed by the Ministry.⁸³⁸

In accordance with section 6 has set out duties and Powers of the Council are as follows⁸³⁹

1. laying down policies for the successful implementation of the objectives of this Law
2. providing guidance and supervising the Science and Technology Development works and Research and Development activities conducted by government departments and government organizations
3. promoting and assisting the Science and Technology Development works and Research and Development activities conducted by nongovernmental organizations, Co-operative Societies, private luminaries
4. coordinating the Science and Technology Development works and Research and Development activities conducted by government departments and government organizations, nun-governmental organizations Co-operative Societies and private luminaries
5. nurturing luminaries for the successful implementation of the development of Science and technology and Research and Development and making provisions for the improvement of their qualification
6. making arrangements to enable communication and co-operation with foreign research departments relating to Science and Technology
7. providing guidance for the formation of Science and Technology related associations

⁸³⁶ Section 4 (a) of the Science and Technology Development Law

⁸³⁷ Section 4 (b) of the Science and Technology Development Law

⁸³⁸ Section 5 of the Science and Technology Development Law

⁸³⁹ Section 6 of the Science and Technology Development Law

8. forming scientific organizations and work committees as may be necessary and determining the functions and duties thereof

9. providing guidance for the convening of, and participation in conferences, seminars and meetings on domestic and foreign Science and Technology

10. submitting advice to the Government from time to time on matters relating to domestic and foreign Technology Transfer

11. recommending the presentation of Awards and Titles by the State to outstanding luminaries and Inventors in the field of Science and Technology;

12. awarding gratuity, in accordance with the stipulation, to outstanding luminaries and inventors in the field of Science and Technology

13. submitting reports to the Government from time to time on the activities of the Council.

3.5.1.3 Formation of the Myanmar Scientific and Technological Research Department

The Central Research Organization established under the Union of Myanmar Applied Research Institute Act, 1954⁸⁴⁰ is reorganized as the Myanmar Scientific and Technological Research Department. Any movable and immovable properties, assets and liabilities of the Central Research Organization shall devolve respectively on the Department.⁸⁴¹

The functions and duties of the Department are as follows⁸⁴²:

1. conducting works of research and applied research based on Science and Technology

2. carrying out research aimed at solving technological problems and difficulties faced by the domestic industries

⁸⁴⁰ Section 7 of the Science and Technology Development Law

⁸⁴¹ Section 8 of the Science and Technology Development Law

⁸⁴² Section 9 of the Science and Technology Development Law

3. conducting developmental research for the extension of successful laboratory scale processes to production scale
4. identifying potential usefulness of natural resources for commercial exploitation
5. designing and fabricating machinery and equipment; establishing pilot plants
6. convening of and participating in domestic and foreign conferences and seminars on Science and Technology; exchange of luminaries and co-operation
7. conducting standardizations and specifications of weights and measures, equipment and machinery, raw materials and finished goods
8. submitting advice to the Council from time to time on matters relating to domestic and foreign Technology Transfer
9. conducting Research and Development on environmental conservation
10. conducting Research and Development on the usage of atomic energy and protection from atomic radiation;
11. establishing and maintaining the Central Science Library, collecting and exchanging scientific and technological literature
12. providing advice and service relating to Science and Technology; disseminating technical information; compiling, publishing and distributing scientific and technological publications
13. conducting Research and Development projects and scientific and technological activities assigned by the Council or the Ministry.

3.5.1.4 Technology Transfer

Regarding to this law states that any person or organization able to transfer technology which they have developed successfully is entitle to use the technology to any person free of charge, sell or allow the right to use the technology for a contracted

period of time within the country under a contract.⁸⁴³ However, the manner and conditions relating to domestic and foreign technology transfer shall be determined by the Government.⁸⁴⁴

Regarding to transferring technology, any government department or government organization has developed successfully under section 10 sub-section (b), monetary benefits may be granted in the prescribed manner to the relevant inventor or to persons who are mainly instrumental in the development of the Technology.⁸⁴⁵ If the person who has obtained the right to use the Technology desires, he may assign the duties to the inventor or to persons who are mainly instrumental in the development of the Technology in accordance with the existing regulations and byelaws for government servants.⁸⁴⁶

In addition to the contract for Technology Transfer under section 10 sub-section (b) shall contain the following facts

1. statement of the nature and applicability of the Technology transferred
2. statement of the type of Technology, the nature and amount of the financial payment
3. statement of the period for which the transferred Technology may be used
4. statement of the rights and responsibilities of the transferor and transferee of the transferred technology
5. other agreements.⁸⁴⁷

The Department shall establish a registration office for the registration of Technology Transfer contracts.⁸⁴⁸ A contract for Technology Transfer shall be

⁸⁴³ Section 10 of the Science and Technology Development Law

⁸⁴⁴ Section 11 of the Science and Technology Development Law

⁸⁴⁵ Section 12 (a) of the Science and Technology Development Law

⁸⁴⁶ Section 12 (b) of the Science and Technology Development Law

⁸⁴⁷ Section 13 of the Science and Technology Development Law

⁸⁴⁸ Section 14 of the Science and Technology Development Law

registered in the prescribed manner unless registered; there shall be no right of instituting a suit based thereon.⁸⁴⁹ The provisions of this Chapter shall not apply to the transfer of patented inventions or registered designs.⁸⁵⁰

The orders and directives issued under the Union of Myanmar Applied Research Institute Act, 1954 may,⁸⁵¹ in so far as they are not inconsistent with this Law, continue to be applicable.⁸⁵² The expenses of the Council shall be borne by the Department. The office work of the Council shall be carried out by the Department.⁸⁵³

However, for the purpose of carrying out the provisions of this law the Ministry of science and technology may, with the approval of the Government, issue such rules and procedures if necessary. The Council, Ministry or the Department may issue such orders and directives as may be necessary.⁸⁵⁴ The Union of Myanmar Applied Research Institute Act, 1954 is hereby repealed.⁸⁵⁵

3.5.2 Telecommunication of Myanmar

Myanmar has the law about telecommunication for taking care about all telecommunication of country. The objectives of telecommunication law are to contribute information technology to the development of the country.⁸⁵⁶ It establishes high-quality telecommunication services through transparent and fair competition from local and foreign companies in an ever-growing telecommunication sector.⁸⁵⁷ The law provide legal protection to both the telecommunication service providers and users.⁸⁵⁸ In addition, people within the country enable to access to telecommunication services⁸⁵⁹ and create telecommunications

⁸⁴⁹ Section 15 of the Science and Technology Development Law

⁸⁵⁰ Section 16 of the Science and Technology Development Law

⁸⁵¹ Section 17 of the Science and Technology Development Law

⁸⁵² Section 18 (a) of the Science and Technology Development Law

⁸⁵³ Section 18 (b) of the Science and Technology Development Law

⁸⁵⁴ Section 19 of the Science and Technology Development Law

⁸⁵⁵ Section 20 of the Science and Technology Development Law

⁸⁵⁶ Section 4 (a) of the telecommunication Law 2013

⁸⁵⁷ Section 4 (b) of the telecommunication Law 2013

⁸⁵⁸ Section 4 (d) of the telecommunication Law 2013

⁸⁵⁹ Section 4 (c) of the telecommunication Law 2013

services, network facilities and telecommunications equipment.⁸⁶⁰ The telecommunication law 2013 applies to any person, department and organization within the territory of Myanmar.⁸⁶¹ This law expand to the Myanmar citizens who are anywhere beyond the limits of the Republic of the Union of Myanmar are also under this law.⁸⁶² In accordance to this law, it can be seen that the telecommunication law applies to both local and foreign licensees.

According to the law, any person, department and organization from domestic and abroad who wish to establish and provide (i) network facilities Service; (ii) network service; (iii) application service; requires to apply to the Posts and Telecommunication Department to obtain permission and license. ⁸⁶³ The telecommunication law provide a license for the purpose of facilities and service and a license for telecommunication equipment is illustrated as follows

⁸⁶⁰ Section 4 (e) of the telecommunication Law 2013

⁸⁶¹ Section 2 (a) of the telecommunication Law 2013

⁸⁶² Section 4 (b) of the telecommunication Law 2013

⁸⁶³ Section 5 of the telecommunication Law 2013

Facilities and services	Network facilities service	the service of leasing any Network Facilities to a licensee of Telecommunications Service while keeping in possession of any Network Facilities or providing service over that Network Facilities. ⁸⁶⁴
	Network service	a service for transmission and reception of information by any means of Telecommunications. This expression does not include services that are provided solely on the customer side of the network boundary. ⁸⁶⁵
	Application service	any service provided using one or more networks. This expression does not include services that are provided solely on the customer side of the network boundary. ⁸⁶⁶
Equipment	Telecommunications equipment	equipment used for Telecommunications specifically determined by the Ministry for the purpose of supporting this Law. ⁸⁶⁷

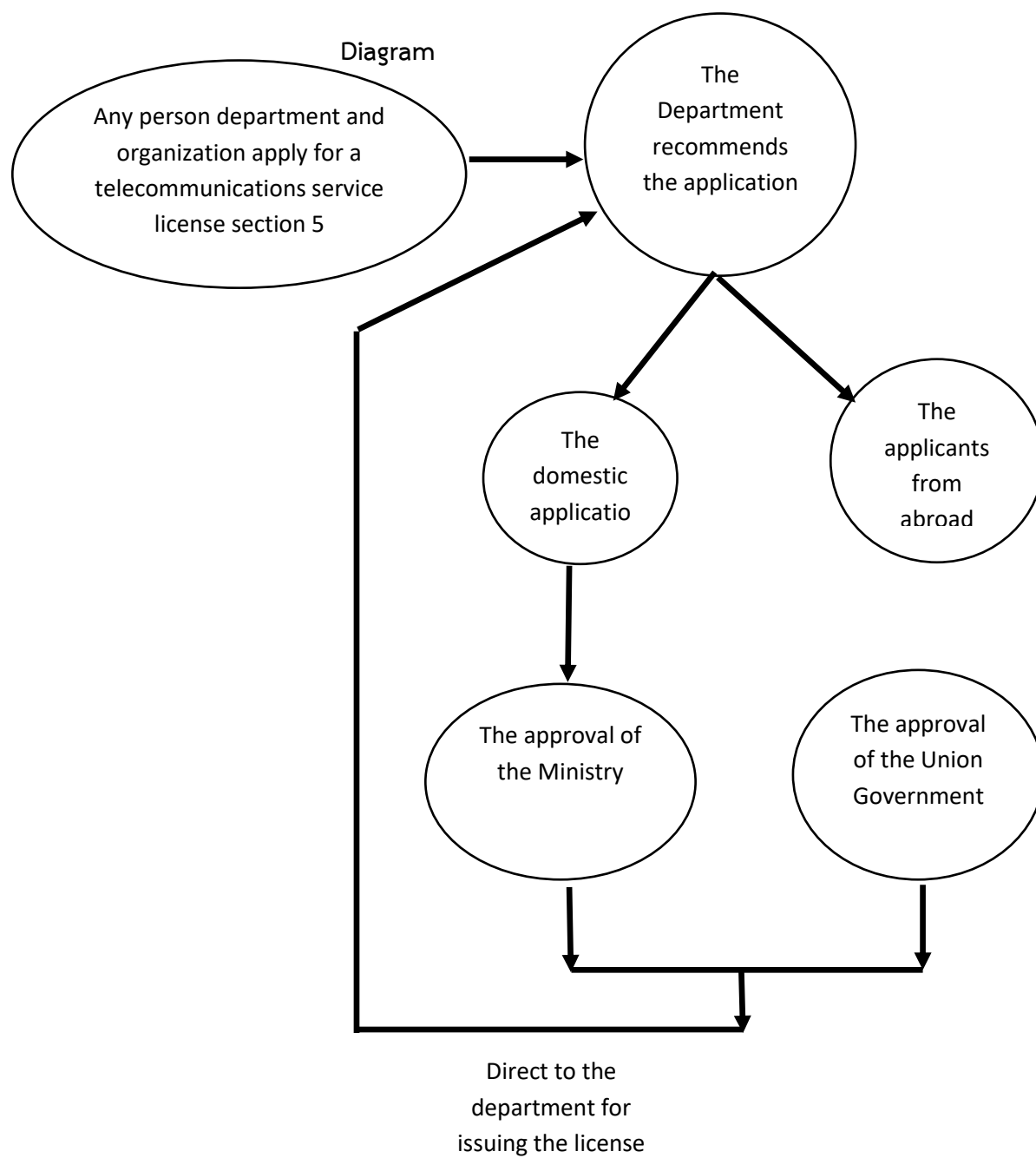
Any person, department and organization is required to apply for a telecommunications service license with the Telecommunications Department. When the Department has reviewed the application, the Department will submit its recommendation to the Ministry. In the matter of foreign applicants who wish to obtain a telecommunications service license, will have submit the application to the Union Government of Myanmar for improvement instead of the Ministry. After the approval of the Union Government, the Department will issue service licenses to the applicants with a validity period of 5 to 20 years, subject to reapprove by the Ministry upon reapplication is shown by diagram below

⁸⁶⁴ Section 3 (g) of the telecommunication Law 2013

⁸⁶⁵ Section 3 (h) of the telecommunication Law 2013

⁸⁶⁶ Section 3 (i) of the telecommunication Law 2013

⁸⁶⁷ Section 3 (j) of the telecommunication Law 2013



Once the department gives a permission to establish and provide telecommunication service, a service license is entitle for example

(a) cooperate with the person, department and organization from domestic and abroad according to this law.⁸⁶⁸

(b) enter into an agreement with any other Service Licensee for the matters of (i) accessing and interconnection of any Telecommunications Service (ii) sharing the Network Facilities (iii) carrying out other matters specifically prescribed in Service License.⁸⁶⁹

However, the service license have a responsibilities by this law including rules, procedures, notifications, orders and directives issued under this Law. Besides, the service license has limited from time to time. Facilities and services licences have a minimum five year term and a maximum 20 year term.⁸⁷⁰ For equipment licences, the term will be as prescribed in the licence.⁸⁷¹ The licensee is respond to pay license fees, license renewal fees, usage fees, service fees as well as other fees to be collected according to the technology or time requirement in accord with the stipulations.⁸⁷²

3.5.2.1 Consumer Protection

According to the telecommunication law, the licensee has a duty to submit proposed tariff in order to providing for the service or for a new service to be provided to the Department with regard to any Telecommunications Service.⁸⁷³ In addition, The Department determines consumer protection standards relating to a Service License. The Service Licensee will have to respond and comply with the consumer protection standards.⁸⁷⁴

⁸⁶⁸ Section 10 of the telecommunication Law 2013

⁸⁶⁹ Section 11 of the telecommunication Law 2013

⁸⁷⁰ Section 8 (c) of the telecommunication Law 2013

⁸⁷¹ Section 14 of the telecommunication Law 2013

⁸⁷² Section 15 of the telecommunication Law 2013

⁸⁷³ Section 29 of the telecommunication Law 2013

⁸⁷⁴ Section 31 of the telecommunication Law 2013

3.5.2.2 Access and Interconnect

On the matter of access and inter connection, the department stipulates terms and conditions of the Network Services to Network Facilities. The Service Licensee able to carry out an agreement between a service licensee and another Service License for the purpose of enabling access and interconnection of Network Services to Network Facilities for any Telecommunications Service, with the approval of the Department.⁸⁷⁵

3.5.2.3 Prohibition on Anti-Competitive Practice

Under the telecommunication, there are some prohibition for the Service Licensee unable to carry out in order of lessening competition in the Telecommunications Market.⁸⁷⁶ The Service Licensee restricts for entering into any understanding, agreement, arrangement or contract with any person, department or organization in respect of the following matters⁸⁷⁷:

- (a) price fixing in his own volition
- (b) market sharing with an aim to lessen competition
- (c) boycotting of a supplier or vendor of Telecommunications Equipment
- (d) unfair opposition to any competitor.

Doing for such the activities may cause a lateral cessation from the Department.⁸⁷⁸

3.5.2.4 Dispute Resolution

According to this law, it can be seen that the law clearly states dispute resolution under section 50 to 52. When the dispute arises relating to as the matter of (i) carrying out and providing any Telecommunications Service or Network Facilities, (ii) carrying out access and interconnection of the Network Service to the Network Facilities. The

⁸⁷⁵ Section 33 of the telecommunication Law 2013

⁸⁷⁶ Section 35 of the telecommunication Law 2013

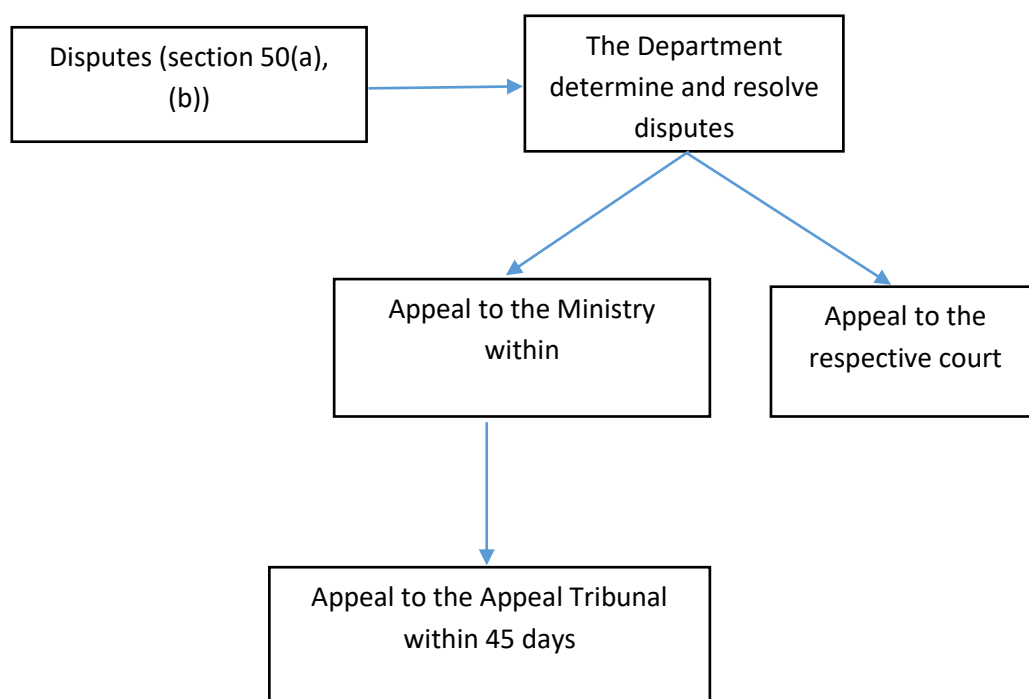
⁸⁷⁷ Section 36 of the telecommunication Law 2013

⁸⁷⁸ Section 37 of the telecommunication Law 2013

Service Licensee able to submit directly such a dispute to the department.⁸⁷⁹ After submitting the disputes, the department is responsible to mediate and resolve the dispute. Not only the submitted dispute, but also the dispute which is not submitted by the Service Licensee, the department entitled to resolve a dispute that may harm the public interest.⁸⁸⁰

The dispute regarding the telecommunications technology, the person who dissatisfies with the decision made by the Department may appeal to the Ministry within 30 days from the day of such decision.⁸⁸¹ However, the other dispute which does not related to the telecommunications technology is required to appeal to the respective court to relief for losses.⁸⁸² Apart from the above settling disputes, a person who dissatisfied with the decision of the Ministry may appeal to the Appeal Tribunal within 45 days from the day of such decision.⁸⁸³ Those disputes shall be settled as the following processes:

Diagram : Dispute settlement process



⁸⁷⁹ Section 50 of the telecommunication Law 2013

⁸⁸⁰ Section 51 of the telecommunication Law 2013

⁸⁸¹ Section 52 a (i) of the telecommunication Law 2013

⁸⁸² Section 52 a (ii) of the telecommunication Law 2013

⁸⁸³ Section 52 (c) of the telecommunication Law 2013

3.5.2.5 Offences and Penalties

In accordance with this law, the telecommunication stipulates offenses and penalties for whoever commit against the provision according to the table below

Table : Offences and Penalties

Acts	Penalties
Any person provides Telecommunications Service without a license.	liable to imprisonment for a term not exceeding five years and may also be liable to a fine. ⁸⁸⁴
Any person commits as follow (a) Accessing and disturbing a Telecommunications Network, altering or destroying the determination of technical standards or the original form without the permission of the owner or a person who has the administrative right. (b) Releasing a virus or using any other means with an intention to cause damage to the Telecommunications Network. (c) Stealing, cheating, misappropriating or mischief of any money and property by using any Telecommunications Network. (d) Extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by	liable to imprisonment for a term not exceeding three years or to a fine or to both. ⁸⁸⁵

⁸⁸⁴ Section 65 of the telecommunication Law 2013

⁸⁸⁵ Section 66 of the telecommunication Law 2013

Acts	Penalties
using any Telecommunications Network.	
Any person keeps in possession or uses any Telecommunications Equipment restricted as requiring a license without having such a license	liable to imprisonment for a term not exceeding one year or to a fine or to both. ⁸⁸⁶
<p>Any person commits as follow</p> <p>(a) communications, reception, transmission, distribution or conveyance of incorrect information with dishonesty or participation</p> <p>(b) prohibiting, obstructing or interfering the transmission, reception, communication, conveyance or distribution of information without permission</p> <p>(c) entering without the permission into the place restricted with the approval of the Department where Telecommunications Service are provided</p> <p>(d) prohibiting, obstructing or disturbing any person who has been assigned duty on any Telecommunications Service by a licensee from serving his duty</p>	liable to imprisonment for a term not exceeding one year or to a fine or to both. ⁸⁸⁷
Any person discloses any information which is kept under a secured or encrypted system to any irrelevant person by any means, unless	liable to imprisonment for a term not exceeding one year to a fine or to both. ⁸⁸⁸

⁸⁸⁶ Section 67 of the telecommunication Law 2013

⁸⁸⁷ Section 68 of the telecommunication Law 2013

⁸⁸⁸ Section 69 of the telecommunication Law 2013

Acts	Penalties
for prosecution regarding Telecommunications, and authorized under court order to disclose	
Any licensee who uses, keeps in possession, supplies or imports any Network Facility or Telecommunications Equipment that does not meet the prescribed technical standards	liable to imprisonment for a term not exceeding one year to a fine or to both.
Any person deters, obstructs, or disturbs the discharge of official duty by the Department or inspection team formed by the Department.	liable to imprisonment for a term not exceeding six months or to a fine or to both. ⁸⁸⁹
Any person contravenes any prohibition contained in rules, regulations, by-laws, notifications, orders, directions and procedures issued under telecommunication Law	liable to imprisonment for a term not exceeding six months or to a fine or to both.

3.5.3 The Computer Science Development of Myanmar

The Computer Science Development Law 1996 of Myanmar aims to define and implement measures necessary for the development and dissemination of computer science and technology, and the supervision of import and export of computer software or information.⁸⁹⁰

3.5.3.1 Definition

The Computer Science Development Law 1996 involves the development of computer science and information technology. The definition of computer includes individually-used small-size machines, commonly used medium size and large-size

⁸⁸⁹ Section 70 of the telecommunication Law 2013

⁸⁹⁰ Section 3 of the Computer Science Development Law

electronic machinery, which can produce the required answers and diagrams by comparative scrutiny of collected data. The definition also includes electronic machinery which is prescribed by notification from time to time by the Ministry of Communications.⁸⁹¹

In accordance to this law, there are non-governmental institutions without profit-making motive involved in the governance and regulation such as The Computer Science Development Council according to section 4 and the Computer Federation under section 18.

3.5.3.2 The Myanmar Computer Science Development Council.

The Myanmar Computer Science Development Council established by The Computer Science Development Law, are responsible for setting out developmental policies and guidance related to computer science within the state. According to the Computer Science Development Law the stated duties of the Council include:

(1) Laying down the policy and giving guidance for the development of computer science⁸⁹², and the policy in accordance to the systematic dissemination of utilization of computer science,⁸⁹³ computer network⁸⁹⁴ and information technology⁸⁹⁵ in the State.

(2) Making arrangements for students to study basic computer science.⁸⁹⁶

(3) Supervising, and giving guidance with respect to activities of the federation and computer-related associations formed according to this Law.⁸⁹⁷

(4) Prescribing the types of computer software and information which are not permitted to be imported or exported.⁸⁹⁸

⁸⁹¹ Section 2 (a) of the Computer Science Development Law

⁸⁹² Section 7 (a) of the Computer Science Development Law

⁸⁹³ Section 7 (b) of the Computer Science Development Law

⁸⁹⁴ Section 7 (c) of the Computer Science Development Law

⁸⁹⁵ Section 7 (e) of the Computer Science Development Law

⁸⁹⁶ Section 7 (d) of the Computer Science Development Law

⁸⁹⁷ Section 7 (f) of the Computer Science Development Law

⁸⁹⁸ Section 7 (g) of the Computer Science Development Law

(5) Laying down measures for any extensive development in the utilization of computer science.⁸⁹⁹

2.6 Forming working committees and bodies related to computer science and assigning duties.⁹⁰⁰

2.7 Abolishing any computer association which is not in compliance with the provisions of this law, or any computer association not functioning in conformity with the provisions of this Law, or not in conformity with the constitution of the relevant association.⁹⁰¹

3.5.3.3 The Myanmar Computer Federation

Under the Computer Science Development Law, there is other institution set out to contribute towards the emergence of a modern developed State, carrying out the development of computer science⁹⁰², and supporting the assignments for The Computer Science Development Council. The Federation was established in 1998 by the promulgation of Computer Science Development Law 1996. The duties and powers of the federation are as follows

(1) Conducting research related to computer science and giving assistance to the persons conducting research.⁹⁰³

(2) Promoting extensive utilization of computer science.⁹⁰⁴

(3) Prescribing the syllabi and curricula for computer training schools.⁹⁰⁵ Moreover, the Federal will run computer science courses, holding lectures,

⁸⁹⁹ Section 7 (h) of the Computer Science Development Law

⁹⁰⁰ Section 7 (i) of the Computer Science Development Law

⁹⁰¹ Section 7 (j) of the Computer Science Development Law

⁹⁰² Section 24 (a) of the Computer Science Development Law

⁹⁰³ Section 24 (b) of the Computer Science Development Law

⁹⁰⁴ Section 24 (c) of the Computer Science Development Law

⁹⁰⁵ Section 24 (d) of the Computer Science Development Law

competitions and organizing study tours⁹⁰⁶ including holding examinations in computer science, conferring certificates and medals.⁹⁰⁷

(4) Giving assistance to manufacturers so as to enhance the quality of computer hardware and computer software⁹⁰⁸ including production of computer hardware and computer software and for sale inside and outside the country.⁹⁰⁹

(5) Communicate with international computer organization⁹¹⁰ and also make arrangements for holding and dispatching delegates to local and foreign conferences, meetings, workshops, seminars, and paper-reading sessions.⁹¹¹

(6) Submitting advice to the Council in order to protect the benefits of computer scientists and inventors⁹¹² and carrying out tasks assigned by the Council.⁹¹³

3.5.3.4 Prior Sanction and License

According to the chapter VII section 26, it was stated that the Ministry of Communications has the responsibilities to determine⁹¹⁴ the types of computer to be imported, kept in possession, or utilized. The Ministry of Communications is entitled to grant or refuse a prior sanction⁹¹⁵ for person who (i) desires to import and keep in possession or utilize the types of computer⁹¹⁶; (ii) a person who desires to set up a computer network, or connecting a link inside the computer network.⁹¹⁷ A person desirous of keeping in possession or utilizing the type of computer will comply with the orders and directives issued from time

⁹⁰⁶ Section 24 (f) of the Computer Science Development Law)

⁹⁰⁷ Section 24 (g) of the Computer Science Development Law

⁹⁰⁸ Section 24 (i) of the Computer Science Development Law

⁹⁰⁹ Section 24 (j) of the Computer Science Development Law

⁹¹⁰ Section 24 (l) of the Computer Science Development Law

⁹¹¹ Section 24 (m) of the Computer Science Development Law

⁹¹² Section 24 (u) of the Computer Science Development Law

⁹¹³ Section 24 (w) of the Computer Science Development Law

⁹¹⁴ Section 26 (a) of the Computer Science Development Law

⁹¹⁵ Section 29 of the Computer Science Development Law

⁹¹⁶ Section 27 of the Computer Science Development Law

⁹¹⁷ Section 28 of the Computer Science Development Law

to with respect to issuance of license, prescribing the term of license, license fee and license conditions.⁹¹⁸

3.5.3.5 Offences and Penalties

Under section 31 of the law, it stipulated punishment for whoever imports or keeps in possession or utilizes any type of computer without the prior sanction of the Ministry of Communications prescribed under sub-section (a) of section 26 would be punished with imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine.⁹¹⁹ Similarity to the case of setting up a computer network or connecting a link inside the computer network would be punished with the same penalty. The acts and punishments are summarized by Table below

Table : Offences and Penalties	
Acts	Penalties
Section 31, imports or keeps in possession or utilizes any type of computer without the prior sanction of the Ministry of Communications prescribed under sub-section (a) of section 26	Imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine. ⁹²⁰
Sets up a computer network or connects a link inside the computer network, without the prior sanction of the Ministry of Communications	Imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine. ⁹²¹
Fails to comply with a prohibitory order issued by the Council, or the Ministry of Science and Technology ⁴ or the Ministry of	Imprisonment for a term which may extend to 6 months or with fine or with both. ⁹²²

⁹¹⁸ Section 30 of the Computer Science Development Law

⁹¹⁹ Section 31 of the Computer Science Development Law

⁹²⁰ Section 31 of the Computer Science Development Law

⁹²¹ Section 32 of the Computer Science Development Law

⁹²² Section 33 of the Computer Science Development Law

Table : Offences and Penalties	
Acts	Penalties
Communications	
Commits any acts using computer network or any information technology as follow (a) carrying out any act which undermines State Security, prevalence of law and order and community peace and tranquility, national unity State economy or national culture (b) Obtaining or sending and distributing any information of State secret relevant to State security, prevalence of law and order and community peace.	Imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and may also be liable to a fine. ⁹²³
violates any order relating to control issued by the Council under sub-section (c) and Subsection (d) of section 7	Imprisonment for a term which may extend to 3 years or with fine or with both. ⁹²⁴
imports or exports any type of computer software or any information prescribed by the Council under sub-section (g) of section 7	Imprisonment for a term which may extend from a minimum of 5 years to a maximum of 10 years and may also be liable to a fine. ⁹²⁵

⁹²³ Section 34 of the Computer Science Development Law

⁹²⁴ Section 35 of the Computer Science Development Law

⁹²⁵ Section 36 of the Computer Science Development Law

Table : Offences and Penalties	
Acts	Penalties
fails to comply with an order abolishing any computer association, issued by the Council under sub-section (j) of section 7	Imprisonment for a term which may extend to 3 years, or with fine or with both. ⁹²⁶

3.6 Laws relating to Environmental Protection

Myanmar environmental law fundamentally serves as a legal basis and framework for exercising of the state's power pertaining to environmental protection. When the State Law and Order Restoration Council was in power, it promulgate the Forest Law in 1992. This law essentially categorises different types of forests and restrictions on each type of forests. In addition, it serves a source of power for state agencies to exercise powers with an aim to protect forest. Afterwards, during the Thein Sien presidency, Myanmar enacted the Prevention from Danger of Chemical and Associated Materials Law in 2013 as a means to prevent and control dangerous chemical substances or relating substances by establishing three state organisations to serve as a policy-maker, regulator, and reviewer of chemical and relating substances through the licensing system.

3.6.1 Law on environmental conservation⁹²⁷

The Environmental Conservation Law 2012 acts as a legal basis for formulation and implementation of environmental conservation policies.⁹²⁸ In a nutshell, the law concerns powers and authorities of the Environmental Conservation Committee (hereinafter "*the Committee*") and the Ministry. As illustrated by below Diagram, these two state organisations are responsible for the following matters: environmental quality standards; environmental conservation systems; and conservation of natural resources and cultural heritages. Given this legal framework, those seeking to conduct business in Myanmar

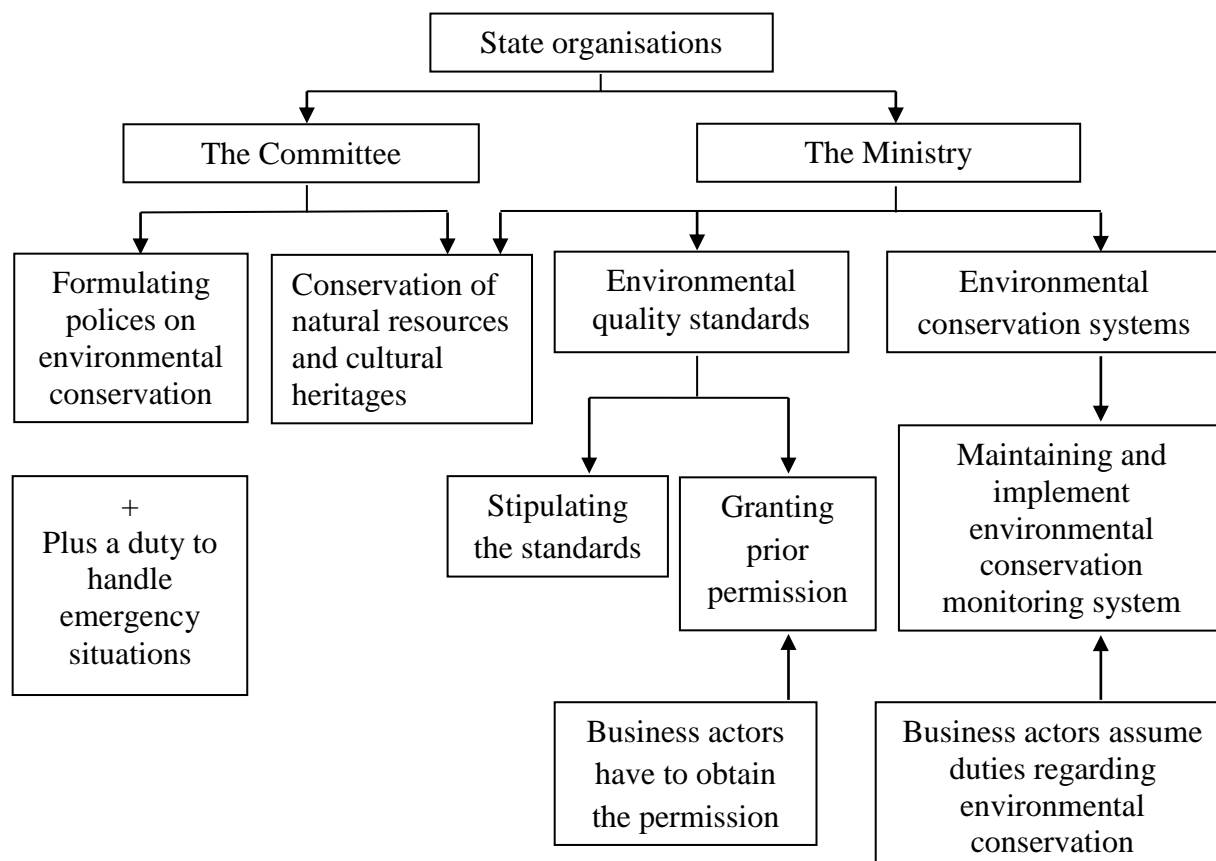
⁹²⁶ Section 37 of the Computer Science Development Law

⁹²⁷ The Environmental Conservation Law (The Pyidaungsu Htuttaw No.9/2012)

⁹²⁸ Section 3 of the Environmental Conservation Law 2012

should pay attention to duties and requirements regarding the aforesaid matters. Failure to comply with requirements under the law can lead to criminal liabilities.

Diagram



3.6.1.1 State organisations for environmental conversation

Two key state organisations under the Environmental Conservation Law 2012 are the Environmental Conservation Committee and the Ministry⁹²⁹. The Committee is formed by the Union Government⁹³⁰ and acts as a key policymaker for environmental conservation matters such as, sending suitable suggestions and encouragements relating to environmental conservation to the relevant Government departments and organizations,⁹³¹ and laying down and carrying out the Myanmar national

⁹²⁹ Section 3 of Ibid states that “The Ministry means the Union Ministry assigned by the Union Government to perform the matters of environment.”

⁹³⁰ Section 4 of the Environmental Conservation Law 2012

⁹³¹ Section 6 of the Environmental Conservation Law 2012

environmental policies and other environmental policies for conservation and enhancement of environment with the approval of the Union Government⁹³². Other responsibilities of the Committee can be found in Article 7 of the Environmental Conservation Law.

Apart from responsibilities under Article 7, the Committee is bound by the law to handle environmental emergency situations as required by Article 9 of the law. Environmental Emergency means the situation which may affect the safety and health of the public or the environment and ecosystem if natural or man-made disaster or pollution is not taken action immediately.⁹³³ If the Committee is aware that an event of environmental emergency has occurred or may occur in the entire Myanmar or any Region or State or any area, it shall immediately report to the Union Government so as to declare the occurrence of such event.⁹³⁴ The Committee, Ministry and Department shall carry out necessary measures relating to the environmental emergency.⁹³⁵

Working in conjunction with the Committee, the Ministry assumes several duties relating to environmental conservation. *Inter alia*, it is responsible to implement the environmental conservation policies formed by the Committee.⁹³⁶ Beyond implementing domestic conservation policies, the Minister is bound by the law to implement the international, regional and bilateral agreements accepted by Myanmar for environmental conservation and enhancement of environmental quality in accord with the guidance adopted by the Union Government or the Committee.⁹³⁷ Another crucial role of the Ministry is stipulating and implementing environmental quality standards, which will be discussed in turn.

3.6.1.2 Environmental quality standards

The Ministry is responsible to stipulate a series of environmental quality standards. These standards cover: (a) suitable surface water quality standards in the usage in rivers, streams, canals, springs, marshes, swamps, lakes, reservoirs and other inland

⁹³² Section 6 (g) of the Environmental Conservation Law 2012

⁹³³ Section 2 (p) of the Environmental Conservation Law 2012

⁹³⁴ Section 9 (a) of the Environmental Conservation Law 2012

⁹³⁵ Section 9 (b) of the Environmental Conservation Law 2012

⁹³⁶ Section 7 (a) of the Environmental Conservation Law 2012

⁹³⁷ Section 7 (l) of the Environmental Conservation Law 2012

water sources of the public; (b) water quality standards for coastal and estuarine areas; (c) underground water quality standards; (d) atmospheric quality standards; (e) noise and vibration standards; (f) emissions standards; (g) effluent standards; (h) solid wastes standards; and (i) other environmental quality standards stipulated by the Union Government.⁹³⁸ Once stipulated, these standards shall take precedence over any existing law that stipulates lower environmental quality standards.⁹³⁹ The stipulated environmental standards must be adhered to by a person. A person causing a point source of pollution shall treat, emit, discharge and deposit the substances which cause pollution in the environment in accord with stipulated environmental quality standards.⁹⁴⁰

To implement the environmental quality standards, the Ministry may stipulate the categories of business, work-site or factory, and work-shop which may cause impact on the environmental quality that requires to obtain the prior permission.⁹⁴¹ The owner or occupier of the category of business, work-site or factory, workshop stipulated by the Ministry shall apply for the prior permission to the Ministry.⁹⁴² The Ministry can grant or refuse to issue the prior permission at its discretion.⁹⁴³ Moreover, the Ministry is vested with regulatory power to inspect compliance with the granted permission. If it is found that a holder of the prior permission fails to comply with any of the terms and conditions, the Ministry may choose to: cause the compliance after warning; cause the compliance after paying a fine.⁹⁴⁴ Beyond compliance with the permission, the holder of the prior permission shall effect insurance according to the category of his business, work-site or factory, workshop for any accident that may cause impact on the environment, in accord with the existing law.⁹⁴⁵

Obtaining the prior permission as stipulated by the Ministry is a crucial duty under the Environmental Conservation Law 2012. No one shall, without the

⁹³⁸ Section 10 (a) - (i) of the Environmental Conservation Law 2012

⁹³⁹ Section 12 of the Environmental Conservation Law 2012

⁹⁴⁰ Section 14 of the Environmental Conservation Law 2012

⁹⁴¹ Section 21 of the Environmental Conservation Law 2012

⁹⁴² Section 22 of the Environmental Conservation Law 2012

⁹⁴³ Section 23 of the Environmental Conservation Law 2012

⁹⁴⁴ Section 25 (a) and (b) of the Environmental Conservation Law 2012

⁹⁴⁵ Section 26 of the Environmental Conservation Law 2012

prior permission, operate business, work-site or factory, workshop which is required to obtain the prior permission under this Law.⁹⁴⁶ Whoever, without the prior permission, operates business, work-site or factory, workshop which is required to obtain the prior permission under this Law shall, on conviction, be punished with imprisonment for a term not exceeding three years, or with fine from a minimum of one hundred thousand kyats to a maximum of one million kyats, or with both.⁹⁴⁷

Apart from complying with requirements regarding the prior permission as discussed above, business actors in Myanmar should pay attention to other rules and notification on environmental conservation. Article 29 of the law states that no one shall violate any prohibition contained in the rules, notifications, orders, directives and procedures issued under this Law.⁹⁴⁸ Whoever violates any prohibition contained in the rules, notifications, orders, directives and procedures issued under this Law shall, on conviction, be punished with imprisonment for a term not exceeding one year, or with fine, or with both.⁹⁴⁹

3.6.1.3 Forest extraction

The Ministry is responsible to maintain and implement environmental conservation monitoring system.⁹⁵⁰ The following matters must be included in the system (a) the use of agro-chemicals which cause to impact on the environment significantly (b) transport, storage, use, treatment and disposal of pollutants and hazardous substances in industries (c) disposal of wastes come out from exploration, production and treatment of minerals, industrial mineral raw materials and gems (d) carrying out waste disposal and sanitation works (e) carrying out development and constructions (f) carrying out other necessary matters relating to environmental pollution.⁹⁵¹

Those who are interested in conducting business in Myanmar should be aware of their duties relating environment conservation. The owner or occupier of any

⁹⁴⁶ Section 28 of the Environmental Conservation Law 2012

⁹⁴⁷ Section 31 of the Environmental Conservation Law 2012

⁹⁴⁸ Section 29 of the Environmental Conservation Law 2012

⁹⁴⁹ Section 32 of the Environmental Conservation Law 2012

⁹⁵⁰ Section 13 of the Environmental Conservation Law 2012

⁹⁵¹ Section 13 (a) - (f) of the Environmental Conservation Law 2012

business, material or place which causes a point source of pollution shall install or use an on-site facility or controlling equipment in order to monitor, control, manage, reduce or eliminate environmental pollution. If it is impracticable, it shall be arranged to dispose the wastes in accord with environmentally sound methods.⁹⁵² A person or organisation operating business in the industrial estate or business in the special economic zone or category of business stipulated by the Ministry is subject to additional duties under the law including, a duty to contribute the stipulated cash or kind in the relevant combined scheme for the environmental conservation;⁹⁵³ and a duty to contribute the stipulated users charges or management fees for the environmental conservation.⁹⁵⁴

Moreover, those who are interested in conducting business in urban areas of Myanmar should pay attention to urban environmental management. For urban areas, environmental management on the following matters is to be done in accordance with the guidance of the Ministry: (a) land use planning and management including zoning; (b) management of the construction industry in pivotal urban centres; (c) management of housing settlements; (d) management of wastes; (e) pollution control including land, water, air and noise pollution; and (f) other necessary environmental management.⁹⁵⁵

(4) Conservation of natural resources and cultural heritages

Meaning of “conservation” in the Environmental Conservation Law 2012 includes conservation of natural resource and cultural heritages. The Union Government and the Environmental Committee in accord with the guidance of the Union Government and the Committee, carry out the conservation, management, beneficial use, sustainable use and enhancement of regional cooperation of the following environmental natural resources: (a) forest resources; (b) land resources; (c) fresh water resources including underground water; (d) mineral resources; (e) agricultural resources; (f) fisheries resources; (g) marine resources; (h) natural ecosystems; (i) natural areas, wildlife, natural plants and biological diversity; and (j) other natural resources stipulated by the Union Government.⁹⁵⁶

⁹⁵² Section 15 of the Environmental Conservation Law 2012

⁹⁵³ Section 16 (a) of the Environmental Conservation Law 2012

⁹⁵⁴ Section 16 (b) of the Environmental Conservation Law 2012

⁹⁵⁵ Section 17 of the Environmental Conservation Law 2012

⁹⁵⁶ Section 18 of the Environmental Conservation Law 2012

The Ministry shall cooperate with the relevant Government departments and Government organizations in the matters of environmental conservation for perpetual existence of cultural heritage sites and natural heritage sites, cultural monuments and natural areas stipulated under any existing law.⁹⁵⁷ The Ministry shall provide necessary technologies to the relevant Government departments and Government organizations in implementing the matters relating to conservation of natural resources and cultural heritages.⁹⁵⁸

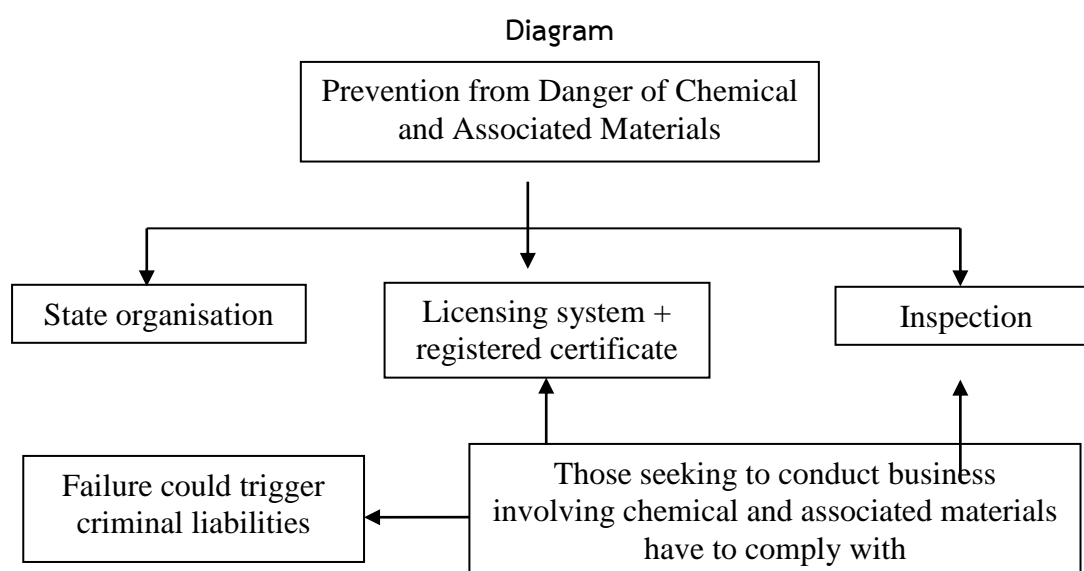
⁹⁵⁷ Section 19 of the Environmental Conservation Law 2012

⁹⁵⁸ Section 20 of the Environmental Conservation Law 2012

3.6.2 Prevention from Danger of Chemical and Associated Materials Law

(2013)

The law aims at preventing and regulating danger of chemical⁹⁵⁹ and associated materials.⁹⁶⁰ In achieving the aforesaid goals, it establishes three state organisations. These state actors are responsible for formulating policies and regulating and inspecting the use of chemical and associated materials through the licensing system. It is compulsory for those seeking to conduct business which involves chemical and associated materials to obtain a license and comply with regulations contained in the license. Apart from obtaining the license, the license holder is required to obtain a registered certificate for usage of chemical and associated materials. Moreover, the license holder is bound by the law to undergo inspection.



3.6.2.1 State organisations

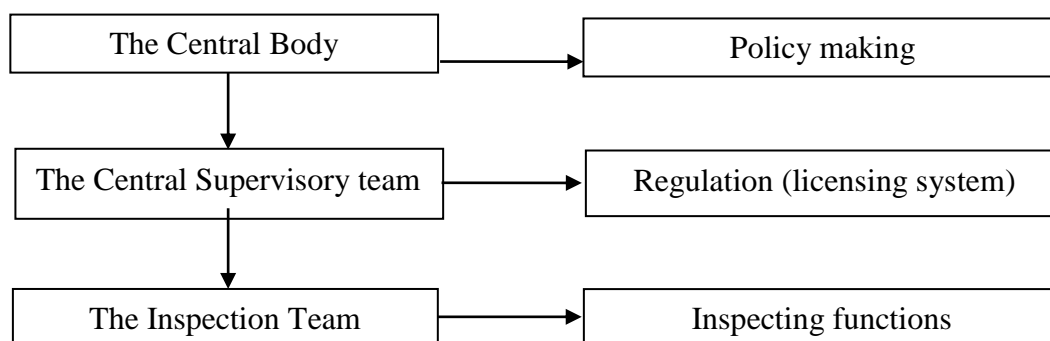
Under the Prevention from Danger of Chemical and Associated Materials Law, there are three key organisations that are responsible for preventing danger of

⁹⁵⁹ The Chemical means imposing danger to the health or life of man or animal or chemical element, chemical compound and chemical mixture which cause bad consequences to the environment naturally or appearing after created by man. Please Section 2(a) of the Prevention from Danger of Chemical and Associated Materials Law (2013).

⁹⁶⁰ Section 3 (a) of the Prevention from Danger of Chemical and Associated Materials Law 2013

chemicals and associated material namely, the Central Body; the Central Supervisory team; and the Inspection Team. Each of them performs different but interrelating functions as displayed by below diagram.

Diagram



(1) The Central Body

According to the Prevention from Danger of Chemical and Associated Materials Law, the Union Government is responsible to form the central body for prevention from the danger of chemical and associated materials.⁹⁶¹ This central body plays vital roles in preventing danger of chemical and associated materials. Firstly, it assumes a responsibility to lay down policy relating to prevention from danger of chemical and associated materials.⁹⁶² Moreover, it is responsible to specify the name and volume of the prohibited chemical and associated materials for not producing, modifying, using, keeping, storing, distributing, transporting, importing and exporting^{963, 964}.

Another key responsibility of the Central Body concerns prevention of environmental pollution's impacts on life and health. It is responsible to arrange

⁹⁶¹ Section 4 (a) and 2 (e) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁶² Section 5 (a) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁶³ Section 33 of Ibid states that no one is allowed to produce, change and compound, use, keep, store, distribute, sell, transport, import or export the chemical and associated materials, prohibited by the central body. If anyone is convicted of committing any prohibition under section 33, he shall be punished with imprisonment not more than seven years or with a fine not more than seven lakhs or with both and the relevant materials related with the offense shall be confiscated as state property.

⁹⁶⁴ Section 5 (b) of the Prevention from Danger of Chemical and Associated Materials Law 2013

pre-investigation and effective management for the workers' health, direct affecting of life and indirect affecting to health and safety of life for man and animal through the environmental pollution, in the chemical and associated materials business.⁹⁶⁵ In addition to impacts on workers' health, the Central Body is required to review and arrange effective management for causing harm to the environment due to the chemical and associated materials.⁹⁶⁶ Other duties and responsibilities on the Central Body can be found in Section 5 of Prevention from Danger of Chemical and Associated Materials Law.

(2) The Central Supervisory team

The Central Body is required to form the Central Supervisory team for prevention from danger of chemical and associated materials.⁹⁶⁷ This supervisory team is responsible for supervising and directing whether the chemical and associated materials produced by the chemical and associated materials business are in compliance with the standard norm or not.⁹⁶⁸ Moreover, it must forming and specify the duty and responsibility of the supervising teams of the region, the state, the union territory, self-administered division, self-administered region, district or township, with the consent of central body.⁹⁶⁹

Those seeking to conduct businesses which involve chemical and associated materials should pay attention to regulations promulgated by the supervisory team. The supervisory team is responsible to specify rules and regulations relating to the transporting, storing, using and disposing methods for the chemical and associated materials.⁹⁷⁰ Moreover, it is responsible to prohibit the importing and exporting of deterred chemical and associated materials or the equipment utilized for these materials, in accord with the international agreement.⁹⁷¹

⁹⁶⁵ Section 5 (i) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁶⁶ Section 5 (j) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁶⁷ Section 7 (a) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁶⁸ Section 8 (a) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁶⁹ Section 8 (b) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁷⁰ Section 8 (g) of the Prevention from Danger of Chemical and Associated Materials Law 2013

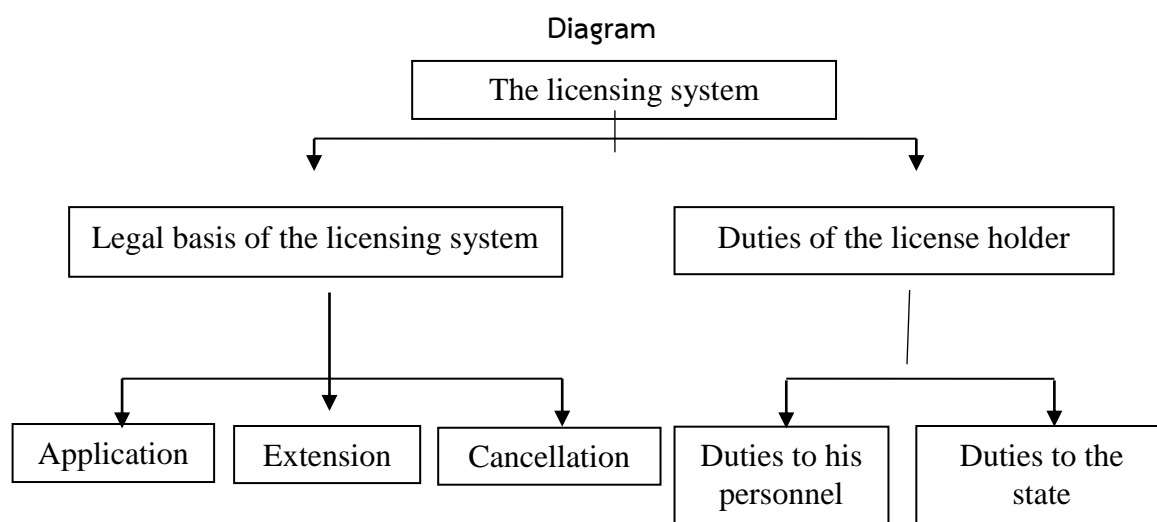
⁹⁷¹ Section 8 (h) of the Prevention from Danger of Chemical and Associated Materials Law 2013

(3) The Inspection Team

The supervisory team shall form the inspection team for inspecting the matters relating to the chemical and associated materials.⁹⁷² In performing the inspecting function, the Inspection Team is required to submit the report to the relevant supervising team after inspecting regularly once in 6 months.⁹⁷³ Moreover, the relevant supervising team may form the inspecting team in the border trade camps, ports, and other necessary places.⁹⁷⁴

3.6.2.2 Licensing system

At heart of the Prevention from Danger of Chemical and Associated Materials (2013) is the licensing system. As displayed below, the law provides details about application, extension, and cancellation of the license. Equally important, it stipulates duties that the license holder has to perform.



⁹⁷² Section 11 of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁷³ Section 11 (a) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁷⁴ Section 12 (a) of the Prevention from Danger of Chemical and Associated Materials Law 2013

(1) Legal basis of the licensing system

Business involving chemical and associated materials is a regulated business. Those seeking to conduct business involving chemical and associated materials⁹⁷⁵ shall apply to the Central Supervising body for the acquisition of the license, attached with the management plan for the environmental conservation in accord with the stipulations.⁹⁷⁶ The central body can allow or refuse to issue the license at its discretion.⁹⁷⁷ The license can be extended. The license holder shall apply to the central supervising body in accord with the stipulation 30 days in advance before the expiry of the validity for the license extension.⁹⁷⁸ Identical to the above approving process, the central supervising body shall allow or refuse the license validity extension.⁹⁷⁹

The license shall be regarded as cancelled if: the license holder surrendered the license; no application to extend the term of the license up to the term of the expiry the term of the license; or license is cancelled according to this law.⁹⁸⁰ If the license is cancelled because of the first two grounds, the license holder can reapply the license.⁹⁸¹ However, if the license is cancelled because of the last ground, no reapplication is allowed to be made.⁹⁸² Section 34 states that no one is allowed to do the chemical and associated materials business without having the license.⁹⁸³ A person breaching the aforesaid prohibitions shall be punished with imprisonment not more than five years or with a fine not more than five lakhs or with both and the relevant materials related with the offense shall be confiscated as state property.⁹⁸⁴

⁹⁷⁵ The Central Body is responsible to specify the ability and regulation of license applicant and the registered certificate applicant. Please see Section 5(d) of Ibid.

⁹⁷⁶ Section 13 of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁷⁷ Section 14 (a) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁷⁸ Section 18 of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁷⁹ Ibid, Section 19 of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁸⁰ Section 28 of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁸¹ Section 29 (a) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁸² Section 29 (b) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁸³ Section 34 of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁸⁴ Section 38 of the Prevention from Danger of Chemical and Associated Materials Law 2013

(2) Duties of the license holder

As displayed by the above Diagram, the license holder assumes several duties under the law. The first dimension is duties of the holder to his personnel. The holder is bound by the law to protect and take care of his workers. The license holder has to ensure that his workers strictly follow the directives for safety in handling the chemical and associated materials.⁹⁸⁵ The workers shall be provided with safety equipment sufficiently in the chemical and associated materials business and to personal protective equipment and clothing to the workers free of charge.⁹⁸⁶ Alongside providing equipment, the holder is responsible to educate their workers. The license holder is bound by the law to give the course to use personal protective equipment and clothing systematically, to give the training and shall instruct as necessary the chemical and associated materials business.⁹⁸⁷ Lastly, in order to protect health of the workers, the license holder shall give the medical check-up to the workers who shall do the chemical and associated material business.⁹⁸⁸

The second dimension of the license holder's duties is its relationship with the state. The license holder is required by the law to give the copy of the permit to the relevant township general administration department, if the dangerous chemical and associated materials are allowed to store.⁹⁸⁹ If the business is prone to the fire hazard using inflammable materials or explosives, the prior consent, directive of the relevant fire service department must be taken.⁹⁹⁰ Moreover, the law concerns transportation of dangerous chemical and associated materials. The license holder is required to obtain the approval of the central supervising body if the chemical and the associated materials are transported from the permitted region to any other region.⁹⁹¹

⁹⁸⁵ Section 16 (b) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁸⁶ Section 16 (c) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁸⁷ Section 16 (d) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁸⁸ Section 16 (f) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁸⁹ Section 16 (g) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁹⁰ Section 16 (h) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁹¹ Section 16 (j) of the Prevention from Danger of Chemical and Associated Materials Law 2013

(3) Additional duties

In addition to the duties discussed above, the license holder should be aware of two more duties regarding inspection and insurance. As regards inspection, before doing the business for the relevant chemical and associated materials, the license holder shall be inspected by the relevant supervising team and inspecting team for the safety and endurance of the equipment.⁹⁹² As regards insurance, the license holder shall keep the insurance in accord with the stipulations to pay for the compensation if any loss occurred to man and animals or environment in respect of the chemical and associated materials business.⁹⁹³

(4) Controlling, preventing the danger and alleviating the danger

The law does not only seek to compensate loss arising from chemical and associated materials, but also aims at preventing such loss. The license holder is required by the law to classify the danger level according to the properties of the chemical and associated materials so as to prevent the danger in advance.⁹⁹⁴ He has to attend the training for keeping the personal protective equipment and using them systematically to prevent and elevate accident.⁹⁹⁵ Furthermore, he is required to carry out in accord with the stipulations in connection with transporting, keeping, storing, using and disposing the chemical and associated materials.⁹⁹⁶

3.6.2.3 Registered certificate

Beyond requiring a person to apply for a license for business generally involving chemical and associated materials, the law aims at regulating usage of chemicals and associated materials. The key regulatory measure is a registered certificate. The license holder must apply for this registration to the central supervising body in accord with the stipulation for the relevant chemicals and associated materials using for his chemicals and associated materials business.⁹⁹⁷ The license holder should be noted he will be asked to pay for the registration fees for the related chemical and associated materials

⁹⁹² Section 15 (a) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁹³ Section 17 of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁹⁴ Section 27 (a) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁹⁵ Section 27 (c) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁹⁶ Section 27 (d) of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁹⁷ Section 20 of the Prevention from Danger of Chemical and Associated Materials Law 2013

and shall issue the registered certificate with the regulations.⁹⁹⁸ The registered certificate holders shall apply to the central supervising body in accord with the stipulations 30 days in advance before the expiry of the validity if he wants to extend the term of the registered certificate.⁹⁹⁹

The registered certificate holder must strictly follow regulations contained in the certificate.¹⁰⁰⁰ He shall apply again to the central supervising body to register if he wants to use the chemical in the associated materials which are not contained in the registered list and shall inform to the central supervising body if he does not want to use the chemical in the associated materials which are contained in the registered list.¹⁰⁰¹ Despite already obtaining the certificate, the registered certificate holder may be forced by the central supervising body to stop using chemicals and associated materials if the permitted chemical and the associated materials are prone to danger for man, animals and the environment, in accord with the particulars received locally and abroad.¹⁰⁰²

Section 35 states that no one is allowed to use in the chemical and associated materials business for the unregistered or cancelled from the list of register or the chemical and associated materials which are unqualified to meet the standard.¹⁰⁰³ A person breaching the aforesaid prohibitions shall be punished with imprisonment not more than five years or with a fine not more than five lakhs or with both and the relevant materials related with the offense shall be confiscated as state property.¹⁰⁰⁴

3.6.2.4 Compliance inspection

The license holder is required to strictly follow stipulations contained in the license or the registered certificate holder. Failure to comply with these stipulations can trigger license suspension or cancellation. If the central supervising team found that the license holder breach any stipulations contained in the license or the registered certificate

⁹⁹⁸ Section 21 of the Prevention from Danger of Chemical and Associated Materials Law 2013

⁹⁹⁹ Section 24 of the Prevention from Danger of Chemical and Associated Materials Law 2013

¹⁰⁰⁰ Section 22 of the Prevention from Danger of Chemical and Associated Materials Law 2013

¹⁰⁰¹ Section 23 of the Prevention from Danger of Chemical and Associated Materials Law 2013

¹⁰⁰² Section 26 of the Prevention from Danger of Chemical and Associated Materials Law 2013

¹⁰⁰³ Section 35 of the Prevention from Danger of Chemical and Associated Materials Law 2013

¹⁰⁰⁴ Section 38 of the Prevention from Danger of Chemical and Associated Materials Law 2013

holder breach any stipulation contained in the register or license holder and the registered certificate holder breach or fail to follow any stipulations contained in the rules, order, notification, directive and the procedures under this law, it can choose to: suspend the chemical and associated materials business temporarily; (b) allow to continue to do the chemical and associated materials business after amending the requirements to pay the penalty fees; and cancel the license and registered certificate.¹⁰⁰⁵

Section 36 of the law states that no one is allowed to deter or obstruct in the inspection of central inspection team, supervising team and inspection teams in respect of the chemical and associated materials business.¹⁰⁰⁶ If anyone is convicted of committing any prohibition under section 36, he shall be punished with imprisonment not more than two years or with a fine not more than two lakhs or with both.¹⁰⁰⁷

3.7 Laws relating to culture and historical and archaeology

Culture and historical and archaeology in the Union of Myanmar is mainly under the responsibility of the Ministry of Culture. The main policy of the Ministry of Culture is "to love and cherish the country and the people by taking pride on own good traditions as well as by preserving, exposing and propagating Myanmar Cultural Heritage".¹⁰⁰⁸ There are many acts and laws relating to culture and historical and archaeology which shall discuss belowed.

3.7.1 Preservation of Antiquities Law 2015

The Union Ministry of Culture has already promulgated the Preservation of Antiquities Law 2015 to preserve the antiquities. The Antiquities Act was enacted in 1957 amending in 2015. The law aims at laying down preservation policy for perpetuation of antiquities, preserving antiquities from damage and loss due to natural disaster or human's effort and improving national prestige and integrity.¹⁰⁰⁹

¹⁰⁰⁵ Section 30 of the Prevention from Danger of Chemical and Associated Materials Law 2013

¹⁰⁰⁶ Section 36 of the Prevention from Danger of Chemical and Associated Materials Law 2013

¹⁰⁰⁷ Section 39 of the Prevention from Danger of Chemical and Associated Materials Law 2013

¹⁰⁰⁸ <http://www.modins.net/myanmarinfo/ministry/culture.htm>

¹⁰⁰⁹ Article 3 of the Preservation of Antiquities Law 2015

3.7.1.1 Definition

According to Article 2(a), Antiquities means man-made objects and fossils which are over 100 years old existed above or underground and above or underwater.¹⁰¹⁰ Furthermore, antiquities are including to (a) Zoological and botanical fossils, (b) Buddha images, votive tablets, wall paintings, textile paintings, pictures, ruins and religious objects; (c) Artistic handiwork, (d) Arms made of stone, bronze, iron or any kind of metal, bone, fang or horn of an animal or wood or bamboo; (e) Coins made of gold, silver, bronze, iron or any kind of metal, coins made of earth or clay, pieces of gold and silver used as currency, objects molded as currency including gold bowls and silver bowls; (f) Statues, images and features curved by using gold, silver, stone, bronze, iron or any kind of metal, earth, clay, cement, brick, wood or bone, fang and horn of an animal; (g) Objects from Myanmar palace and royal appurtenances; (h) Transportation objects such as palanquins, stretchers, carriages and carts; (i) Literal objects such as stone inscriptions, brick inscriptions, inscriptions on bells, ink inscriptions on stucco, inscriptions and manuscripts on gold plates, silver plates, bronze plates, terracotta plaques, clay tablets, leathers, printed manuscripts, letters, stamps and seals; (j) Arts and crafts included in ten Myanmar traditional arts; (k) Artistic handiwork depicted as figures or statues in the round, reliefs and wood-carven handiworks, metal molded objects; (l) Textile such as Myanmar turbans, headgears and clothes; (m) Men and women accessories; (n) Measurement equipment such as weights, measure baskets for grains and pair of scales; (o) Household utilities such as harrows, ploughs, frames of the reed in a loom and loom objects; (p) Household utilities such as earthen pots, earthen bowls, glazed earthen jars, glazed earthen bowls, collets, porcelain pots and bowls, culinary objects made of gold, silver, bronze or any other kind of metal and lacquerwares; (q) Musical instruments including drums, gongs, flutes, oboes, cymbals, small brass gongs of the traditional Myanmar brass gong circle and drum circles; (r) Accessories to beautify animals such as elephants, horses, buffaloes and cows; (s) Myanmar traditional toys including marble plaything; (t) Other objects recorded by the Ministry as antiquities after field inspection.¹⁰¹¹ Preservation includes the fencing, covering in, repairing and restoring,

¹⁰¹⁰ Article 2 (a) of the Preservation of Antiquities Law 2015

¹⁰¹¹ Article 4 of the Preservation of Antiquities Law 2015

cleansing and maintaining in other manner including chemical preservation of antiquities for perpetuation.¹⁰¹²

3.7.1.2 The Duties and responsibilities of the Ministry of Culture

The Ministry of Culture is principally concerned with:- (a) preserve, excavate, collect and save antiquities and carry out research; (b) carry out measures to prevent antiquities from smuggling to foreign countries and re-gain antiquities that have been smuggled to foreign countries; and (c) educate the public to cultivate their spirit of preserving and valuing antiquities.¹⁰¹³ In addition, the Ministry may has a responsibilities to (a) accept any antiquity returned by any person who inherited or possessed such antiquity in other way as state-owned property and maintain it as necessary;¹⁰¹⁴ (b) acknowledge the person who has returned the antiquity as a beneficiary and award him/her the market value of such antiquity and additional historical and cultural emoluments.¹⁰¹⁵

3.7.1.3 Inspection of antiquity

When the object requires inspecting, the Directorate shall cause Antiquities Inspection Body formed under the rules and pass a decision.¹⁰¹⁶ Moreover, the Directorate shall submit the case to Expert Team formed by the Ministry and follow its decision if the dispute occurs for the decision made under the Antiquities Inspection Body.¹⁰¹⁷ The decision of the Ministry passed under the Expert Team for the submission the Directorate shall be final and conclusive.¹⁰¹⁸

3.7.1.4 Reporting the discovery of antiquity

When a person who discovers an object that does not belong to any owner or maintenance person and knows or deems to know that such object is an antiquity,

¹⁰¹² Article 2(d) of the Preservation of Antiquities Law 2015

¹⁰¹³ Article 5 of the Preservation of Antiquities Law 2015

¹⁰¹⁴ Article 7 (a) of the Preservation of Antiquities Law 2015

¹⁰¹⁵ Article 7 (b) of the Preservation of Antiquities Law 2015

¹⁰¹⁶ Article 10 (a) of the Preservation of Antiquities Law 2015

¹⁰¹⁷ Article 10 (b) of the Preservation of Antiquities Law 2015

¹⁰¹⁸ Article 11 of the Preservation of Antiquities Law 2015

she or he shall report to the relevant ward or village tract administration office promptly.¹⁰¹⁹ Then the ward or village tract administrator shall maintain such object as necessary and continue reporting to the relevant Township administration office within 14 days.¹⁰²⁰ Next the Township administrator shall take necessary measures promptly and notify the Directorate within 7 days starting from the date of receiving the report.¹⁰²¹ The Directorate has a responsibility to inspect the object whether or not it is an antiquity and maintain or cause to maintain the object as required according to stipulations.¹⁰²²

3.7.1.5 Application for Permit with regard to antiquity

Any department, organization or person shall apply to the Directorate or Authorized Department according to stipulations to obtain the permit when she is desirous to: (a) excavate or discover antiquities above or underground and above or underwater; (b) bring out of the country or transport antiquities in order to preserve or research them or display them at the exhibition according to international culture exchange programmes; (c) bring or transport antiquities from one local place to another; and (d) take photo, video or film of antiquities maintained by the Directorate or copy them for commercial purpose.¹⁰²³ The Directorate or Authorized Department shall scrutinize the application and approve or refuse to issue the permit.¹⁰²⁴

3.7.1.6 Offences and Penalties

In addition to stipulating acts of offences and penalties, the Preservation of Antiquities Law 2015 gives details on cognizance of offences and penalties that

- (1) Any person who has been convicted of having brought the antiquities out of the country or transported them shall be punished with imprisonment of

¹⁰¹⁹ Article 12 of the Preservation of Antiquities Law 2015

¹⁰²⁰ Article 13 (a) of the Preservation of Antiquities Law 2015

¹⁰²¹ Article 13 (a) of the Preservation of Antiquities Law 2015

¹⁰²² Article 13 (b) of the Preservation of Antiquities Law 2015

¹⁰²³ Article 14 (a) of the Preservation of Antiquities Law 2015

¹⁰²⁴ Article 14 (b) of the Preservation of Antiquities Law 2015

minimum five years to maximum ten years or fine of minimum five million kyats to maximum ten million kyats or both.¹⁰²⁵

(2) Any person who has been convicted of having damaged the original structure of antiquities, destroyed antiquities, excavated or discovered antiquities above or underground and above or underwater without permit shall be punished with imprisonment of minimum three years to maximum seven years or fine of minimum three million kyats to maximum five million kyats or both.¹⁰²⁶

(3) Any person who has been convicted of having collected, possessed, sold or bought antiquities for commercial purpose shall be punished with imprisonment of minimum two years to maximum five years or fine of minimum 1.5 million kyats to maximum three million kyats or both.¹⁰²⁷

(4) Any person who has been convicted of having:

(a) brought or transported antiquities from one local place to another

(b) taken photo, video or film of antiquities maintained by the Directorate or copied them for commercial purpose; without being permitted shall be punished with imprisonment of minimum one year to maximum three years or fine of minimum three hundred thousand kyats to maximum five hundred thousand kyats or both.¹⁰²⁸

(5) Any person who has been convicted of having failed to report by breaching the provision in section 12 with regard to antiquities shall be punished with imprisonment of minimum six months to maximum one year or fine of minimum one hundred thousand kyats to maximum three hundred thousand kyats or both.¹⁰²⁹

¹⁰²⁵ Article 15 of the Preservation of Antiquities Law 2015

¹⁰²⁶ Article 16 of the Preservation of Antiquities Law 2015

¹⁰²⁷ Article 17 of the Preservation of Antiquities Law 2015

¹⁰²⁸ Article 18 of the Preservation of Antiquities Law 2015

¹⁰²⁹ Article 19 of the Preservation of Antiquities Law 2015

(6) Any person who has been convicted of having made efforts or assisted other person to commit any offence under this Law shall be punished with the penalty prescribed under this Law for the relevant offence.¹⁰³⁰

3.7.2 University of Culture Law 1993

One of the important policies to promote and preserve Myanmar cultural heritage is establishing the University of Culture on 24 September 1993. The University was formed under the University of Culture Law 1993. The law aims at providing for the determination of policies for the University of Culture.

According to the University of Culture Law, the university shall operate under its own name and common seal and shall have perpetual succession and right to sue.¹⁰³¹ The main aims of establishing the University of Culture are keeping dynamic patriotism, strengthening of national unity and preservation of national culture. The objectives of the University are also: (a) to preserve and develop Myanmar cultural heritage; (b) to conduct research and training for the development of Myanmar Fine Arts and the emergence of outstanding artistes; (c) to provide for instruction in the culture, customs and traditions of the national races of the Union at the University, Institute of Culture and Schools; (d) to contribute towards keeping alive and keen the Union spirit and sense of patriotism.¹⁰³²

To implement the objective of the University, the Government shall form the Council. Ministry of Culture is given responsibility for a chairman of the Council and Councillors had comprised of persons from the relevant Government departments and of the relevant subjects, suitable organizations, luminaries of the relevant subjects and suitable citizens.¹⁰³³ Director General, Department of Fine Arts is a secretary of the Council.¹⁰³⁴ The Council has important duties to laying down the policies, determining to conduct works of research including the number of students, the qualifications for admission and the qualifications of the teachers, and supervising the administrative function of university and

¹⁰³⁰ Article 20 of the Preservation of Antiquities Law 2015

¹⁰³¹ Article 4 of the university of Culture Law 1993

¹⁰³² Article 7 of the university of Culture Law 1993

¹⁰³³ Article 8 (a) - (d) of the University of Culture Law 1993

¹⁰³⁴ Article 8 (e) of the University of Culture Law 1993

giving decisions.¹⁰³⁵ As regarding carry out effectively the academic functions and administrative functions of the universities, two bodies, one for University Academic Body and the others for University Administrative Body, shall be formed by the Council.¹⁰³⁶

3.8 Laws relating to Enhancement of Public Administration Efficiency

3.8.1 The Region or State Government Law 2010

According to section 443 of the Constitution of the Republic of the Union of Myanmar, the Region or State Government Law is put in place for the enactment and the implementation of the administrative functions of the Region or State Government. It is also necessary to enact the relevant laws to enable proper execution of the legislative, administrative and judicial functions of the Union to be carried out and to cope with any arising tasks in The Assembly of the Union (Hluttaw) smoothly owing to this law.

The president has the authority to put in place the number of executive members within the Ministries of Region or State, and specific the department and organization, of a minimum of five to a maximum of ten members within. It could be changed by the Ministries within such stipulated number.¹⁰³⁷ The Ministries are not segregated from the Region or State Ministers of the National Races and the Chairpersons of the Leading Body of the Self-Administered Division or the Self-Administered Area who are the ex-officio Ministers of the Region or State.¹⁰³⁸

3.8.1.1 People in the Region or State Government

The Region or State Government is formed with the following persons

1. Chief Minister is elected by the President among the Hluttaw representatives of the relevant Region or State Hluttaw, who fulfils the qualifications

¹⁰³⁵ Article 11 of the University of Culture Law 1993

¹⁰³⁶ Article 12 of the University of Culture Law 1993

¹⁰³⁷ Section 4 (a) of the Region or State Government Law

¹⁰³⁸ Section 4 (c) of the Region or State Government Law

contained in sub-section (a) of section 261.¹⁰³⁹ The elected Hluttaw representatives will appoint and assign duty as the Chief Ministry¹⁰⁴⁰ who responsible to the President.¹⁰⁴¹

2. Ministers are selected by the Chief Minister with the qualifications contained in sub-section (a) of section 261 of the Constitution.¹⁰⁴² The Chief Minister select the ministry from a list of suitable members of the Defence Services from the Commander-in-Chief of the Defence Services to enable assignment of duties for the security and border affairs,¹⁰⁴³ a list of Chairperson from the Leading Body of the Self-Administered Division or Leading Body of the Self- Administered Zone situated in the relevant Region or State¹⁰⁴⁴ and the list of Hluttaw representatives elected to carry out the affairs of National races in the relevant Region or State.¹⁰⁴⁵ The President shall appoint and assign duty to the persons submitted by the Chief Minister as Ministers.¹⁰⁴⁶

3. Advocate-General is elected by the Chief Minister with the approval of the Hluttaw before submitting to the President. The Advocate-General has a duty to obtain legal advice and to assign duty on legal issues¹⁰⁴⁷. He is responsible to the President through the Chief Minister and the Union Attorney General.¹⁰⁴⁸

4. The Head of the General Administration Department of the Region or State is the ex-officio Secretary of the relevant Region or State Government.¹⁰⁴⁹

¹⁰³⁹ Section 6 (a) of the Region or State Government Law

¹⁰⁴⁰ Section 6 (c) of the Region or State Government Law

¹⁰⁴¹ Section (c) of the Region or State Government Law

¹⁰⁴² Section 8 (a) (i) of the Region or State Government Law

¹⁰⁴³ Section 8 (a) (ii) of the Region or State Government Law

¹⁰⁴⁴ Section 8 (a) (iii) of the Region or State Government Law

¹⁰⁴⁵ Section 8 (a) (iv) of the Region or State Government Law

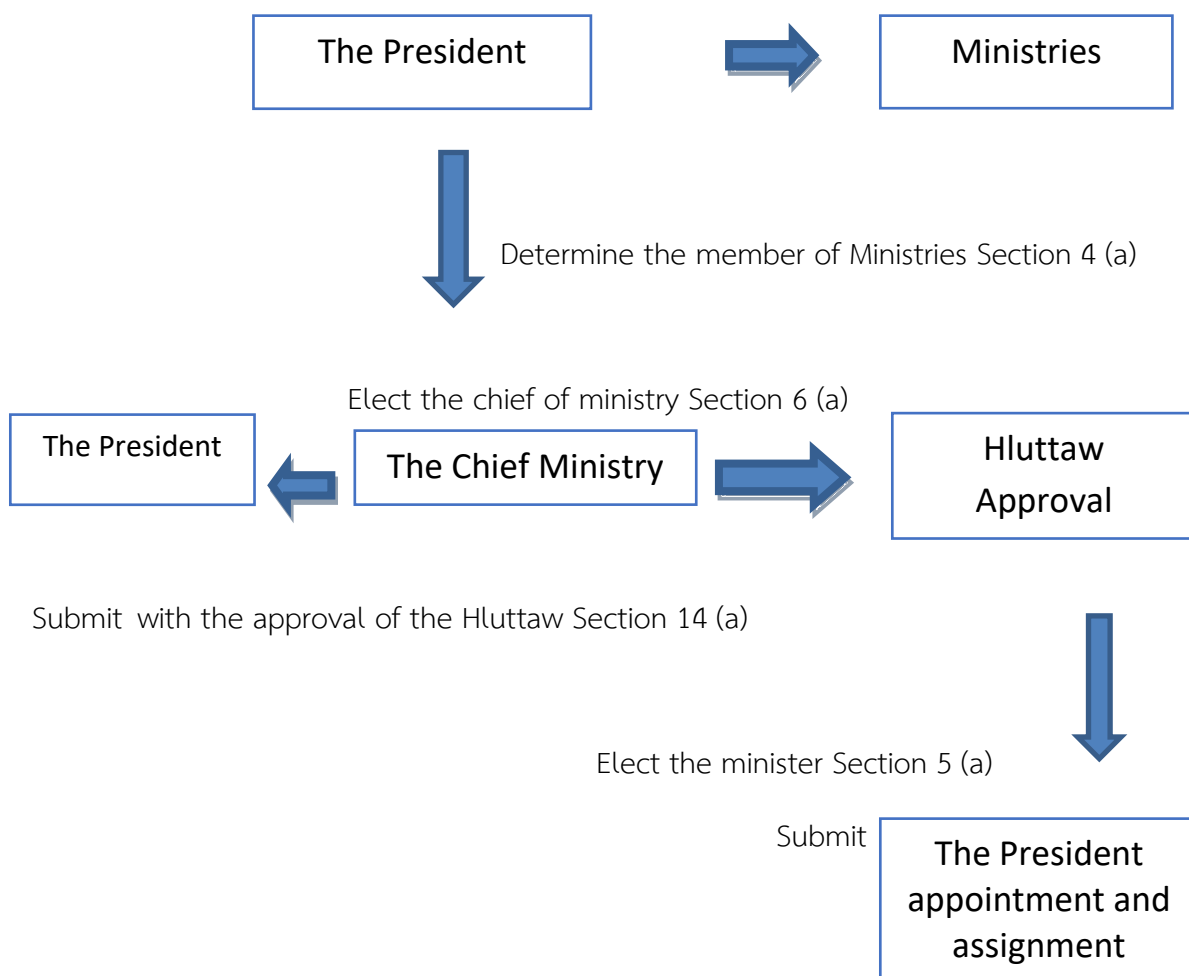
¹⁰⁴⁶ Section 8 (f) of the Region or State Government Law

¹⁰⁴⁷ Section 14 (a) of the Region or State Government Law

¹⁰⁴⁸ Section 15 (a) (b) of the Region or State Government Law

¹⁰⁴⁹ Section 3 (b) of the Region or State Government Law

Diagram



3.8.1.2 Appointment and Assigning Duty to the Chief Justice of the High Court of the Region or State

The Region or State Government Law specifies the execution of the judicial functions of the Union. This law regulates an appointment and assigning of duty to the Chief Justice of the High Court of the Region or State and the judge of the high court of the region.

In order to nominate the chief justice, the president collaborates with the chief ministry and the relevant ministers organise the nomination list.¹⁰⁵⁰ It is sent to the relevant Hluttaw. The qualifications prescribed in section 310 of the Constitution for the

¹⁰⁵⁰ Section 17 (a) of the Region or State Government Law

Chief Justice of the High Court of the Region or State.¹⁰⁵¹ The Chief Justice of the High Court of the relevant Region or State is appointed and assigned duty by the president with the approval of the relevant Hluttaw.¹⁰⁵²

3.8.1.3 Appointment and Assigning Duty to the Judges of the High Court of the Region or State

To appoint the judges of the High Court of the Region or State and assign duty, the Chief Minister, together with the Chief Justice of the Union, prepare the nomination list for the appointment of the Judges of the High Court and send to the relevant Hluttaw.¹⁰⁵³ The said nominees is qualified under section 310 of the Constitution for the Judges of the High Court of the Region or State.¹⁰⁵⁴ Aftermunicipals the President appoint and assign duty to the persons approved by the relevant Hluttaw as the Judges of the High Court of the relevant Region or State.¹⁰⁵⁵ In addition, the Region or State Government Law provides the rights specify for the Chief Justice of the High Court of the Region or State and the Judges of the High Court of the Region or State to have a freedom from party politics.¹⁰⁵⁶

3.8.1.4 Appointment and Assigning Duty to the Auditor-General of the Region or State

The law also lays down the regulation in regarding to the appointment and assigning to the Auditor-General of the Region or State who is responsible to the President through the Chief Minister.¹⁰⁵⁷ The Chief Minister shall submit to the President for appointment and assigning duty to a person from among Hluttaw representatives or from among those who are not Hluttaw representatives who fulfils the qualifications contained in sub section (a) of Section 271 of the Constitution, with the approval of the Hluttaw of the relevant Region or State as the Auditor-General of the Region

¹⁰⁵¹ Section 17 (b) of the Region or State Government Law

¹⁰⁵² Section 17 (d) of the Region or State Government Law

¹⁰⁵³ Section 18 (a) of the Region or State Government Law

¹⁰⁵⁴ Section 18 (b) of the Region or State Government Law

¹⁰⁵⁵ Section 18 (d) of the Region or State Government Law

¹⁰⁵⁶ Section 19 of the Region or State Government Law

¹⁰⁵⁷ Section 21 (a) of the Region or State Government Law

or State so as to audit the accounts of receipt and expenditure of the Region or State and report to the Hluttaw.¹⁰⁵⁸ The President shall appoint and assign duty to the person submitted with the approval of the Hluttaw as Auditor General of the Region or State.¹⁰⁵⁹

3.8.1.5 Duties and Powers of the Chief Minister Matters Relating to the Promulgation as Law

Subject to the region or state government law, there is a specific period of time of signing the bill by the chief of minister. The law provides that the Bills approved by the Region or State Hluttaw shall be signed by the chief of ministry within seven days from the day next to the day of receipt in accord with the stipulated manners and promulgate it as law.¹⁰⁶⁰ Unlike the Bills approved by the Leading Body of the Self-Administered Division or Self-Administered Zone shall be signed within 14 days from the day next to the day of receipt and promulgate it as law.¹⁰⁶¹ The Chief Minister does not sign and promulgate the Bill as law within the prescribed period. The Bill is considered a law as if the Chief Minister had signed it on the day of the completion of the stipulated period.¹⁰⁶² The laws which are signed or deemed to be signed by the Chief Minister is said to be published in the Gazette. Unless a specific provision is contained the law shall come into force on the day of such promulgation.¹⁰⁶³

¹⁰⁵⁸ Section 20 (b) of the Region or State Government Law

¹⁰⁵⁹ Section 20 (a) of the Region or State Government Law

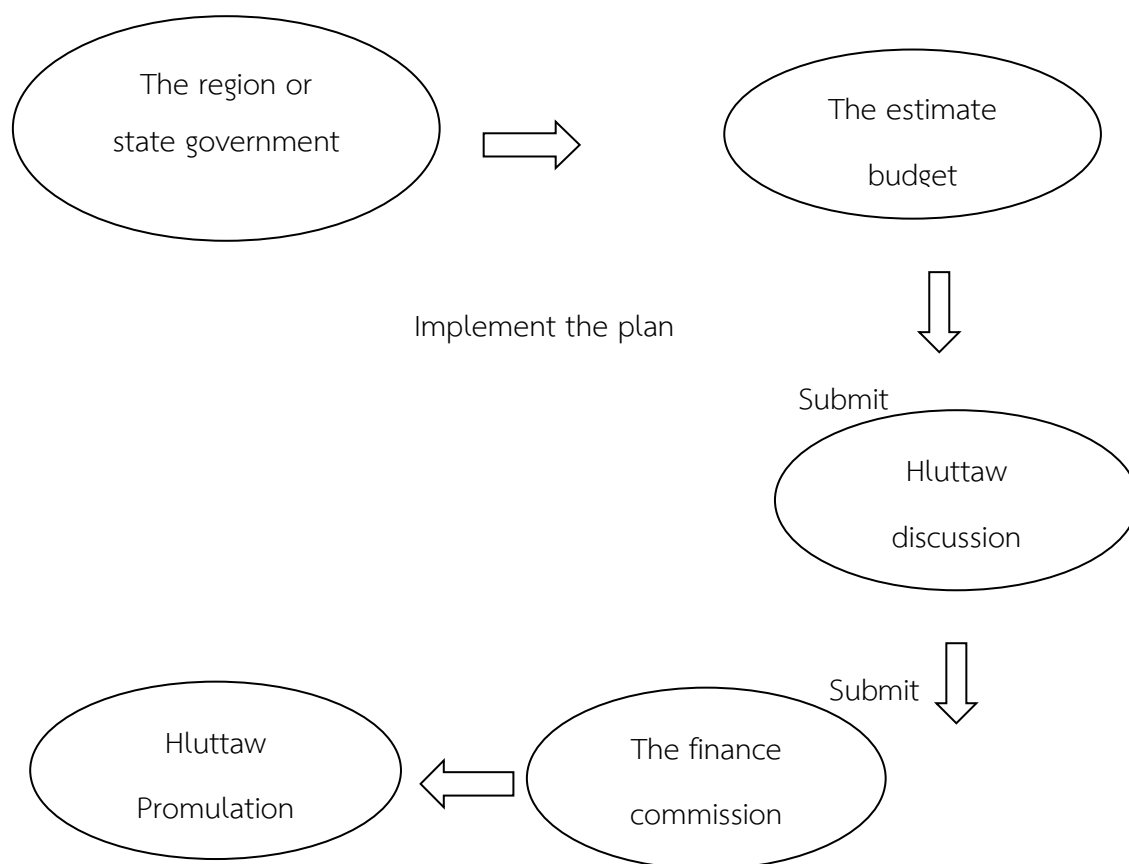
¹⁰⁶⁰ Section 23 (a) of the Region or State Government Law

¹⁰⁶¹ Section 23 (b) of the Region or State Government Law

¹⁰⁶² Section 23 (c) of the Region or State Government Law

¹⁰⁶³ Section 23 (d) of the Region or State Government Law

Diagram



For the next financial year base on annual union budget

3.8.1.6 Duties and Powers of the Members of the Government of the Region or State Executive Power of the Region or State Government

In accordance with the provisions of the Constitution, the executive power of the Region or State Government extends to the matters on which the Region or state Hluttaw has power to make laws. Moreover, it also extends to the matters on which the Region or State Government is permitted to carry out in accord with any Union Law. The Region or State Government has the responsibility to assist the Union Government in the preservation of the stability of the Union, community peace and tranquility and prevalence of law and order. In addition the Region or State Governments and the Leading Bodies of Self-Administered Division or Self-Administered Zone also abide by the

cooperation and co-ordination of the Union Government to work effectively and successfully.

3.8.2 The Union Government Law

The State Peace and Development Council hereby enacts this Law in accord with section 443 of the Constitution of the Republic of the Union of Myanmar, in order that the Union Government may carry out the administrative functions smoothly in accord with the Constitution of the Republic of the Union of Myanmar. This Law shall come into force commencing from the day on which the Constitution comes into force.¹⁰⁶⁴

3.8.2.1 Formation, Appointment and Assignment of Duty of the Head of State

The Head of State and the Head of Union Administration shall be the President of the Union.¹⁰⁶⁵ The President of the Union and the Vice-Presidents shall be elected in accord with the Law¹⁰⁶⁶ and the President of the Union shall be responsible to the Pyidaungsu Hluttaw.¹⁰⁶⁷

(1) Formation of the Union Government

The Union Government shall be formed with the following persons:

- (i) President of the Union
- (ii) Vice Presidents of the Union
- (iii) Union Ministers
- (iv) Attorney General of the Union.¹⁰⁶⁸

And The Director General of the Office of the Union Government shall be the ex-officio secretary of the Union Government.¹⁰⁶⁹

¹⁰⁶⁴ Section 1 (a) of the Union Government Law 2010

¹⁰⁶⁵ Section 3 of the Union Government Law 2010

¹⁰⁶⁶ Section 5 of the Union Government Law 2010

¹⁰⁶⁷ Section 4 of the Union Government Law 2010

¹⁰⁶⁸ Section 6 (a) (i) (ii) (iii) of the Union Government Law 2010

¹⁰⁶⁹ Section 6 (b) of the Union Government Law 2010

(2) Determining the Number of Ministries of the Union Government and the Union Ministers

The President of the Union may determine, amend and add the Ministries of the Union Government¹⁰⁷⁰ and also can determine, increase and decrease the stipulated number of the Union Ministers.¹⁰⁷¹

(3) Formation of the Union Level Organizations

The President of the Union shall, in accord with the Constitution or the specific laws promulgated in accord with the Constitution.¹⁰⁷²

(4) Formation of the National Defence and Security Council

The President of the Union shall form the National Defence and Security Council headed by himself in order to perform the duties conferred by the Constitution or any law with the following persons President of the Union , Two Vice-Presidents of the Union , Speaker of the Pyithu Hluttaw, Speaker of the Amyotha Hluttaw, Commander-in-Chief of the Defence Services, Deputy Commander-in-Chief of the Defence Services, Minister for the Ministry of Defence Services, Minister for the Ministry of Foreign Affairs, Minister for the Ministry of Home Affairs and Minister for the Ministry of Border Affair.¹⁰⁷³ For The secretary of the Union Government shall be the ex-officio secretary of the National Defence and Security Council.¹⁰⁷⁴

(5) Formation of the Financial Commission

The President of the Union shall issue and declare the formation of the Financial Commission.¹⁰⁷⁵

(6) Appointment and Assigning Duties to the Union Ministers

In order to appoint the Union Ministers, the President of the Union shall: select the suitable persons who are fulfill the qualifications contained in sub-section

¹⁰⁷⁰ Section 8 (a) of the Union Government Law 2010

¹⁰⁷¹ Section 8 (b) of the Union Government Law 2010

¹⁰⁷² Section 9 of the Union Government Law 2010

¹⁰⁷³ Section 10 (a) of the Union Government Law 2010

¹⁰⁷⁴ Section 10 (b) of the Union Government Law 2010

¹⁰⁷⁵ Section 11 (a) of the Union Government Law 2010

(a) of section 232 of the Constitution then obtain the list of suitable members of the Defence Services nominated to appoint for the Ministries of Defence, Home Affairs and Border Affairs. The list of the Union Ministers selected shall be compiled and obtained approval by submitting it to the Pyidaungsu Hluttaw.

The persons who have obtained the approval of the Pyidaungsu Hluttaw shall be appointed and assigned duties as the Union Ministers. In so appointing and assigning duty, the Ministry or Ministries in respect of which responsibility shall be taken by each Union Minister shall be prescribed.

(7) Appointment of and Assigning Duties to the Attorney General of the Union

The President of the Union shall appoint and assign duty to any person from among the representatives of any Hluttaw as the Attorney General of the Union under section 237 of the Constitution after obtaining the approval of the Pyidaungsu Hluttaw for enabling to obtain legal advice and to assign legal duties.

(8) Appointment of and Assigning Duties to the Union Level Persons

The President of the Union shall appoint and assign duty to the Commander-in-Chief of the Defence Services with the proposal and recommendation of the National Defence and Security Council¹⁰⁷⁶ Those persons who fulfill the relevant qualifications under the Constitution or the specific laws promulgated in accord with the Constitution¹⁰⁷⁷ And also co-ordinate with the Commander-in-Chief of the Defence Services if he desires to appoint the members of the Defence Services in appointing and assigning duties as the Deputy Attorney General, the Deputy Auditor General and the members of the Union Civil Services Board.¹⁰⁷⁸ The Deputy Ministers shall be responsible to the relevant Union Minister and the President of the Union.¹⁰⁷⁹

¹⁰⁷⁶ Section 12 (a) of the Union Government Law 2010

¹⁰⁷⁷ Section 16 (b) of the Union Government Law 2010

¹⁰⁷⁸ Section 17 (a) (ii) of the Union Government Law 2010

¹⁰⁷⁹ Section 17 (b) of the Union Government Law 2010

(9) Determining the Number of the Region or State Ministries and the Ministers

The President of the Union, with the approval of the relevant Region or State Hluttaw may determine, amend and add the Region or State Ministries¹⁰⁸⁰ and also determine the number of Region or State Ministers, increase and decrease the stipulated number.¹⁰⁸¹

(10) Appointment of and Assigning Duties to the Region or State Level Persons

The President of the Union shall appoint and assign duty to the persons in accord with the provisions of the Constitution¹⁰⁸² and shall intimate the relevant Region or State Hluttaw and the Pyidaungsu Hluttaw appointed the Chief Ministers and Ministers of the Region or State¹⁰⁸³ within so intimating, mention the Ministries to which they are signed duties according to each Minister of the Region or State.¹⁰⁸⁴

(11) Formation of the Nay Pyi Taw Council, Appointment of and Assigning Duties to the Chairperson and the Members Thereof

The President of the Union shall form a Nay Pyi Taw Council in accord with clause (1) of sub-section (b) of section 285 of the Constitution¹⁰⁸⁵ and the Nay Pyi Taw Council Law shall appoint and assign duties to the persons who fulfil the qualifications contained in sub-section (a) of section 285 of the Constitution as the Chairperson and members of the Nay Pyi Taw Council under clause (2) of sub-section (b) of section 285 of the Constitution and the Nay Pyi Taw Council Law.¹⁰⁸⁶

¹⁰⁸⁰ Section 18 (a) of the Union Government Law 2010

¹⁰⁸¹ Section 18 (b) of the Union Government Law 2010

¹⁰⁸² Section 19 (a) of the Union Government Law 2010

¹⁰⁸³ Section 20 (a) of the Union Government Law 2010

¹⁰⁸⁴ Section 20 (b) of the Union Government Law 2010

¹⁰⁸⁵ Section 21 of the Union Government Law 2010

¹⁰⁸⁶ Section 22 of the Union Government Law 2010

3.8.2.2 Duties and Powers of the President of the Union and the Vice-Presidents and International, Regional or Bilateral Treaties Matters

The President of the Union, in accord with law shall conclude, ratify, annul and withdraw from the international, regional or bilateral treaties which is entitled to carry out with¹⁰⁸⁷ or without the approval of the Pyidaungsu Hluttaw.¹⁰⁸⁸

(1) Diplomatic Matters

The President of the Union may establish and sever diplomatic relations with foreign countries with the approval of the Pyidaungsu Hluttaw¹⁰⁸⁹, may appoint and recall the diplomats of the Union¹⁰⁹⁰, may give consent on the appointment of foreign diplomats or send intimation to recall the foreign diplomat¹⁰⁹¹ and may accept the letters of accreditation of foreign diplomats.¹⁰⁹²

(2) Territorial Boundary Matters

The President of the Union shall carry out in accord with the provisions contained in section 52 of the Constitution if it is necessary to redelineate the territorial boundary of the Union¹⁰⁹³ and shall carry out in accord with the provisions contained in section 53 of the Constitution if a cause arises to redelineate the territorial boundary of a Region or State.¹⁰⁹⁴

(3) Military Matters

The President of the Union shall have the right to take appropriate military action, as may be necessary in co-ordination with the National Defence and Security Council formed in accord with the Constitution, in case of aggression against the Union.¹⁰⁹⁵

¹⁰⁸⁷ Section 25 (a) of the Union Government Law 2010

¹⁰⁸⁸ Section 25 (b) of the Union Government Law 2010

¹⁰⁸⁹ Section 26 (a) of the Union Government Law 2010

¹⁰⁹⁰ Section 26 (c) of the Union Government Law 2010

¹⁰⁹¹ Section 26 (d) of the Union Government Law 2010

¹⁰⁹² Section 26 (e) of the Union Government Law 2010

¹⁰⁹³ Section 27 of the Union Government Law 2010

¹⁰⁹⁴ Section 28 of the Union Government Law 2010

¹⁰⁹⁵ Section 31 (a) of the Union Government Law 2010

He shall submit his action to the Pyidaungsu Hluttaw session for approval if it is in session and may declare war or make peace only with the approval of the Pyidaungsu Hluttaw.¹⁰⁹⁶

(4) Matters relating to Ordinance

The President of the Union shall have the right to promulgate the ordinance for administrative matters, which require immediate action to be taken other than matters relating to the Union budget.¹⁰⁹⁷ If do not revoked that ordinance promulgated, he shall submit it to the nearest session of the Pyidaungsu Hluttaw held within 60 days from the day of the promulgation of the ordinance for its approval.¹⁰⁹⁸ But if the approval of the Pyidaungsu Hluttaw is not obtained, the ordinance shall cease to have effect from the day on which it is not approved.¹⁰⁹⁹ The President of the Union may, with the approval of the Pyidaungsu Hluttaw, cause the ordinance to continue to be effective for the required period. An ordinance has been already been revoked within 60 days after its promulgation, submit it to the nearest session of the Pyidaungsu Hluttaw.¹¹⁰⁰

(5) Matters relating to Promulgation as Law

The President of the Union shall sign the Bills approved and sent by the Pyidaungsu Hluttaw, within 14 days after the day of receipt¹¹⁰¹, and shall promulgate it as law then send the Bill back to the Pyidaungsu Hluttaw together with his remarks.¹¹⁰² If the President of the Union does not send the Bill back to the Pyidaungsu Hluttaw together with his remarks within the stipulated period to sign and promulgate as law, it shall become law on the day of the completion of the stipulated period, as if it has obtained the signature of the President of the Union.¹¹⁰³

If the Bill is sent back to the Pyidaungsu Hluttaw under sub-section (b) of section 33, the Pyidaungsu Hluttaw may, accept the remarks of the President of the

¹⁰⁹⁶ Section 31 (b) of the Union Government Law 2010

¹⁰⁹⁷ Section 32 (a) of the Union Government Law 2010

¹⁰⁹⁸ Section 32 (b) of the Union Government Law 2010

¹⁰⁹⁹ Section 32 (c) of the Union Government Law 2010

¹¹⁰⁰ Section 32 (e) of the Union Government Law 2010

¹¹⁰¹ Section 33 (a) of the Union Government Law 2010

¹¹⁰² Section 33 (b) of the Union Government Law 2010

¹¹⁰³ Section 33 (c) of the Union Government Law 2010

Union and decide to amend the Bill or decide to approve the Bill as it is without accepting the remarks of the President of the Union.¹¹⁰⁴ When the Bill is sent back to him by the decision of the Pyidaungsu Hluttaw, the President of the Union shall sign the Bill and promulgate it as law within seven days from the day of receiving the Bill back.¹¹⁰⁵

(6) Matters relating to Honorary Title and Amunicipal

The President of the Union may can confer honorary titles and amunicipals or revoke the honorary titles and amunicipals conferred.

(7) Matters relating to the Head of Civil Services Organization

The President of the Union may, under the specific laws enacted in accord with the Constitution: appoint heads of the Civil Services organization and remove the heads of the Civil Services organization.

(8) Matters relating to Pardon

The President of the Union has the power to grant a pardon and the power to grant amnesty.

(9) Matters relating to Delivering Address and Sending Message

The President of the Union has the right to deliver address and send message to the entire country relating to the policies and general situation of the Union from time to time.

(10) Other Matters

The President of the Union may intimate the Speaker of the Pyidaungsu Hluttaw to call and convene an emergency or special session of the Pyidaungsu Hluttaw. Moreover he has the right to submit matters on the Constitution directly to the Constitutional Tribunal of the Union. The President of the Union may allocate the functions and duties to be carried out by the Vice-Presidents if a Vice-President is unable to serve duty so can let this duty to the other Vice-President. The President of the Union or the Vice-Presidents shall exercise the powers and carry out the duties and powers vested by the Constitution and other laws.

¹¹⁰⁴ Section 34 (a) of the Union Government Law 2010

¹¹⁰⁵ Section 34 (b) of the Union Government Law 2010

(11) Duties and Powers of the Vice-Presidents

The Vice-President who won the second highest votes when holding the election of the President of the Union shall serve the duties and functions of the President of the Union temporarily and jointly while the President is travelling abroad. Besides a Vice-President assigned duty by the President of the Union shall lead and scrutinize the budgets of the Union Ministries and the Union Level Organizations and the other Vice-President shall lead and scrutinize the budgets of the Region or State and submit their budget appropriation to the Financial Commission.

3.8.2.3 Duties and Powers of the Union Government Executive Power of the Union Government

Subject to the provisions of the Constitution, the executive power of the Union extends also to administrative matters on which the Pyidaungsu Hluttaw has power to make law.¹¹⁰⁶

Subject to the provisions of the Constitution, the executive power of the Union shall be vested in the President of the Union.¹¹⁰⁷

All executive actions of the Union Government shall be taken in the name of the President of the Union¹¹⁰⁸ except the matters prescribed by the Constitution to perform on his own discretion, the President of the Union has the right to make necessary rules on matters which the Union Government has the right to perform the said matters to the Union Ministers¹¹⁰⁹ and shall be in accord with the manners contained in the rules prescribed by the President of the Union.¹¹¹⁰

The Union Ministries shall, in carrying out the functions by their subordinate governmental departments and organizations, manage, guide, supervise and inspect to be in conformity with the provisions of the Constitution and the existing laws.¹¹¹¹

¹¹⁰⁶ Section 48 of the Union Government Law 2010

¹¹⁰⁷ Section 50 of the Union Government Law 2010

¹¹⁰⁸ Section 51 (a) of the Union Government Law 2010

¹¹⁰⁹ Section 51 (b) of the Union Government Law 2010

¹¹¹⁰ Section 51 (c) of the Union Government Law 2010

¹¹¹¹ Section 54 of the Union Government Law 2010

(1) Planning and Financial Matters

The Union Government

(a) shall lay down the policies of the Union Government in accord with the provisions of the Constitution and with the approval of the Pyidaungsu Hluttaw¹¹¹² and shall carry out, as may be necessary as contained in the Budget Law promulgated by the Pyidaungsu Hluttaw¹¹¹³

(b) may allow in accord with law when the Nay Pyi Taw Development Committee, Yangon City Development Committee or the Mandalay City Development Committee submits and requests for enabling the State to assist due to further need of fund as its own fund is not sufficient in undertaking the development of relevant towns.¹¹¹⁴

(2) Matters relating to Business

The Union Government may, allow the Region Government or State Government to carry out with the Union in joint-venture¹¹¹⁵ or allow any cooperative organizations, economic organizations to carry out with the Union Government under terms and conditions.¹¹¹⁶

(3) Submitting Bills

The Union Government shall submit the Bills relating to the National planning, annual budget and tax¹¹¹⁷ or may submit the necessary Bills to the Pyidaungsu Hluttaw relating to matters on which the Pyidaungsu Hluttaw is entitled to make law in accord with the provisions of the Constitution.¹¹¹⁸

¹¹¹² Section 55 (a) of the Union Government Law 2010

¹¹¹³ Section 55 (c) of the Union Government Law 2010

¹¹¹⁴ Section 55 (h) (i) (ii) of the Union Government Law 2010

¹¹¹⁵ Section 56 (a) of the Union Government Law 2010

¹¹¹⁶ Section 56 (b) of the Union Government Law 2010

¹¹¹⁷ Section 57 (a) of the Union Government Law 2010

¹¹¹⁸ Section 57 (b) of the Union Government Law 2010

(4) Relation with the Hluttaws

The Union Government may assign the Union Minister or Deputy Minister to give clarifications or may answer if the Pyidaungsu Hluttaw, the Amyotha Hluttaw, the Pyithu Hluttaw, and the committees, commissions and bodies formed by them invite and send the required facts to such committees.¹¹¹⁹

(5) Other Matters

The Union Government shall carry out the functions and duties assigned by any existing law.¹¹²⁰

(6) Sessions of the Union Government

The regular session of the Union Government shall normally be convened at least twice a month. If it is necessary, special session may be called and convened¹¹²¹ with The President of the Union shall act as the Chairperson in the sessions.¹¹²²

3 . 8 . 2 . 4 Duties and Powers of the Union Ministers and the Deputy Ministers

The Union Minister has the following duties and powers relating to the Ministry for which he is responsible:

(a) taking responsibility to implement the works to be carried out systematically under the Union plans¹¹²³

(b) scrutinizing and supervising as to whether or not it is performed in conformity with the existing laws, rules, regulations, bylaws, orders, directives, and procedures.¹¹²⁴

The Deputy Ministers carrying out the works under the duties and powers conferred by the Minister¹¹²⁵ and supervising to implement the works to be carried

¹¹¹⁹ Section 58 of the Union Government Law 2010

¹¹²⁰ Section 59 (e) of the Union Government Law 2010

¹¹²¹ Section 60 of the Union Government Law 2010

¹¹²² Section 61 of the Union Government Law 2010

¹¹²³ Section 64 (c) of the Union Government Law 2010

¹¹²⁴ Section 64 (d) of the Union Government Law 2010

¹¹²⁵ Section 65 (b) of the Union Government Law 2010

out systematically under National plans in accord with the duty assigned by the Minister¹¹²⁶ and also carrying out other duties assigned by the Minister.¹¹²⁷

3.8.2.5 Term of Office, Resignation from Office, Termination from Duties, Impeachment and Filling and Appointment in the Vacancy

(1) Term of the office of the members of the Union Government

The term of office of the President of the Union or the Vice-Presidents is five years¹¹²⁸ and shall not serve for more than two terms.¹¹²⁹ When such term of office expires, the President of the Union and the Vice-Presidents shall continue to carry out their functions and duties until the time the new President of the Union has been elected.¹¹³⁰

The term of office of the Union Minister or the Deputy Minister and the Attorney General of the Union or the Deputy Attorney General is normally the same as that of the President of the Union.¹¹³¹

(2) Resignation from Office and Termination of Office of the Members of the Union Government

The President of the Union or any Vice-President shall be allowed to resign from office if he desires to do so on his own volition before the expiry of his term of office. Such resignation shall be intimated to the Speaker of the Pyidaungsu Hluttaw.¹¹³²

The Deputy Minister or The Deputy Attorney General may resign from office if they desire to do after submitting his desire to resign in writing to the President of the Union.¹¹³³

¹¹²⁶ Section 65 (e) of the Union Government Law 2010

¹¹²⁷ Section 65 (g) of the Union Government Law 2010

¹¹²⁸ Section 66 (a) of the Union Government Law 2010

¹¹²⁹ Section 66 (c) of the Union Government Law 2010

¹¹³⁰ Section 66 (b) of the Union Government Law 2010

¹¹³¹ Section 66 (g) of the Union Government Law 2010

¹¹³² Section 67 of the Union Government Law 2010

¹¹³³ Section 68 (a) of the Union Government Law 2010

The President of the Union may direct the Union Minister, the Attorney General of the Union, any Deputy Minister or Deputy Attorney General who cannot discharge his duty efficiently to resign. If he fails to comply as directed, he shall be terminated from the duty.¹¹³⁴

(3) Impeachment against the Members of the Union Government

The President shall terminate such person from office when the relevant Hluttaws have taken action in accord with section 233 of the Constitution had submitted to the President that he is unfit to continue in office due to impeachment by the representatives of the Amyotha Hluttaw or the Pyithu Hluttaw against the Union Minister or Attorney General of the Union in accord with the Constitution.¹¹³⁵

(4) Filling the Vacant Office and Appointment of the Members of the Union Government

If the office of the President of the Union becomes vacant due to resignation before the expiry of the term in any causes, one of the Vice-Presidents who has won the second highest votes in the Presidential election, shall serve as temporary President.¹¹³⁶

If the office of a Vice-President becomes vacant due to resignation before the expiry of the term in any causes, it shall be carried out according to the manner contained in sub-sections (f) and (g) of section 73 of the Constitution in order to elect in substitution.¹¹³⁷

The President of the Union shall submit his impeachment to the Speaker of the Pyidaungsu Hluttaw and If the Speaker of the Pyidaungsu Hluttaw, decides that the person who is impeached is unfit to continue to serve at the present office, such decision shall be submitted to the President of the Union then The President of the Union shall terminate the said person from office on receiving the report.¹¹³⁸

¹¹³⁴ Section 69 (a) of the Union Government Law 2010

¹¹³⁵ Section 71 of the Union Government Law 2010

¹¹³⁶ Section 72 (a) of the Union Government Law 2010

¹¹³⁷ Section 73 of the Union Government Law 2010

¹¹³⁸ Section 71 of the Union Government Law 2010

(5) Filling the Vacant Office and Appointment of the Union Level Persons

If the office of the Commander-in-Chief becomes vacant due to any causes, the President of the Union may appoint and assign duty to the new in such vacant office under the Constitution or the specific laws promulgated in accord with the Constitution.¹¹³⁹

(6) Termination from Duty of the Region or State Level Persons

The President of the Union may direct who cannot carry out the duties assigned efficiently to resign from office. If it is not complied as directed, they shall be terminated from duty.¹¹⁴⁰

(7) Filling and Appointment at the Vacant Office of the Region or State Level Persons

The President of the Union may fill the vacant office, appoint and assign duty in accord with the provisions of the Constitution if the office of any of Chief Ministers, Chief Justices, Ministers, Judges of the Region or State High Court, Advocates General, Auditors General, Chairpersons of the Leading Bodies of the Self-Administered Division or Self-Administered Zone, become vacant due to any causes.¹¹⁴¹

(8) Termination from Duty and Filling and Appointment at the Vacant Office of the Chairperson or Members of the Nay Pyi Taw Council

The President of the Union may direct the Chairperson and the members of the Nay Pyi Taw Council who cannot discharge their duties efficiently to resign from office¹¹⁴² and carry out if it is concerned with a member of the Defence Services who is the member of the Nay Pyi Taw Council who has to resign from office or be terminated from duty¹¹⁴³. Also if the office of the Chairperson or member of the Nay Pyi Taw Council

¹¹³⁹ Section 78 (a) of the Union Government Law 2010

¹¹⁴⁰ Section 79 (a) of the Union Government Law 2010

¹¹⁴¹ Section 82 of the Union Government Law 2010

¹¹⁴² Section 83 (a) of the Union Government Law 2010

¹¹⁴³ Section 83 (b) of the Union Government Law 2010

becomes vacant due to any causes, the President of the Union may appoint and assign duties, to a new Chairperson or new member of the Nay Pyi Taw Council in accord with the provisions of the Constitution.¹¹⁴⁴

3.8.2.6 Declaration of a State of Emergency

If administrative functions cannot be carried out in accord with the Constitution in a Region, State, Union territory or Self-Administered Area or there arising or finding sufficient cause to so arise a state of emergency that may disintegrate the Union or disintegrate national solidarity or that may cause the loss of sovereignty then the President may promulgate an ordinance and declare a state of emergency after co-ordination with the National Defence and Security Council.¹¹⁴⁵

In the matter of declaration of a state of emergency due to a situation, the President of the Union may declare a state of emergency in time after coordinating with the Commander-in-Chief of the Defence Services, some senior positions who are the member of Defence Service and all the members of the National Defence and Security Council.¹¹⁴⁶ The President has right to obtain and exercise the executive power of the relevant Region, State or Self-Administered Area¹¹⁴⁷ and may confer and cause to carry out the executive power by forming any appropriate body or on any suitable person.¹¹⁴⁸

Notwithstanding that the term of the Pyidaungsu Hluttaw had expired, the President of the Union and the Vice-Presidents or the Speaker of the Pyithu Hluttaw and the Speaker of the Amyotha Hluttaw shall remain in their offices until the new President of the Union and the new Vice-Presidents, or the new Speaker of the Pyithu Hluttaw and the new Speaker of the Amyotha Hluttaw have been elected in accord with the Constitution.¹¹⁴⁹

The National Defence and Security Council, on the expiry of the term of the Pyidaungsu Hluttaw has the right to exercise the State power until the new President

¹¹⁴⁴ Section 84 of the Union Government Law 2010

¹¹⁴⁵ Section 85 of the Union Government Law 2010

¹¹⁴⁶ Section 87 (a) of the Union Government Law 2010

¹¹⁴⁷ Section 86 (a) of the Union Government Law 2010

¹¹⁴⁸ Section 86 (b) of the Union Government Law 2010

¹¹⁴⁹ Section 96 of the Union Government Law 2010

of the Union has been elected and the Union level authorities have been formed in accord with the provisions of the Constitution. In so exercising as such, the legislative power shall be exercised by itself.¹¹⁵⁰

3.8.2.7 Miscellaneous

The preparatory works carried out by the State Peace and Development Council before this Law comes into force, for the implementation of this Law shall be deemed to have been carried out in accord with the Constitution.¹¹⁵¹

This Law may be amended, inserted or repealed by the Pyidaungsu Hluttaw formed in accord with the Constitution of the Republic of the Union of Myanmar.¹¹⁵²

3.8.3 The Municipal or Village Tract Administration Law

3.8.3.1 Formation of Municipals or Village Tracts

With the approval of the Union Resident under the recommendation of the relevant Chief Minister of the Region or Sate Nay Pyi Taw Council, the Ministry of Home Affairs of the Union Government, by issuing the notification may make forming, amending or altering the name of municipals within the town boundary¹¹⁵³ or make forming amending or altering the name of villages outside the town boundary.¹¹⁵⁴

Towns, municipals, village tracts and villages stipulated under the Towns Act (The Myanmar Act No.3/1907) and the Village Act (the Myanmar Act No.6/1907) shall be deemed as the stipulated towns, municipals, village tracts and villages as far as not amending and reforming under this law.¹¹⁵⁵

¹¹⁵⁰ Section 97 (d) of the Union Government Law 2010

¹¹⁵¹ Section 99 of the Union Government Law 2010

¹¹⁵² Section 103 of the Union Government Law 2010

¹¹⁵³ Section 3 (a) of the Municipal or Village Tract Administration Law 2012

¹¹⁵⁴ Section 3 (b) of the Municipal or Village Tract Administration Law 2012

¹¹⁵⁵ Section 4 of the Municipal or Village Tract Administration Law 2012

3.8.3.2 Qualifications to be fulfilled in the Municipal or Village Tract

Administrator

The following qualifications are required [for municipal or village tract administrator].

Be a citizen born to citizen parents¹¹⁵⁶ with has attained the age of 25 years¹¹⁵⁷, has the qualification of fair education¹¹⁵⁸, consecutively residing in the relevant municipal or village tract for at least ten years and will reside actually at the relevant municipal or village tract at the time performing the current duty¹¹⁵⁹ and absolutely not a member of the armed organization and a person who is not participant or who does not communicate with the unlawful associations.¹¹⁶⁰

3.8.3.3 Appointing and Assigning the Municipal or Village Tract

Administrator

The Township Administrator shall select five elders within the municipal or village tract and assign duty as a supervisory board.¹¹⁶¹

The Supervisory Board shall form the ten housed group according to the municipal or village in accord with the stipulated manners by taking the list of houses within the municipal or village tract¹¹⁶² and scrutinize whether or not each of the elected persons from each ten housed group are fulfilled with the stipulated qualifications.¹¹⁶³ Compile the name list to appoint and assign as the municipal or village tract administrator¹¹⁶⁴ then submit the name list and personal data of the person who has

¹¹⁵⁶ Section 5 (a) of the Municipal or Village Tract Administration Law 2012

¹¹⁵⁷ Section 5 (b) of the Municipal or Village Tract Administration Law 2012

¹¹⁵⁸ Section 5 (c) of the Municipal or Village Tract Administration Law 2012

¹¹⁵⁹ Section 5 (e) of the Municipal or Village Tract Administration Law 2012

¹¹⁶⁰ Section 5 (k) of the Municipal or Village Tract Administration Law 2012

¹¹⁶¹ Section 6 of the Municipal or Village Tract Administration Law 2012

¹¹⁶² Section 7 (a) of the Municipal or Village Tract Administration Law 2012

¹¹⁶³ Section 7 (d) of the Municipal or Village Tract Administration Law 2012

¹¹⁶⁴ Section 7 (e) of the Municipal or Village Tract Administration Law 2012

the highest number of secret votes to the township administrator after compiling the priority arrangement elected.¹¹⁶⁵

The township administrator shall appoint and assign as the municipal or village tract administrator with the approval of the district administrator.¹¹⁶⁶ The term of the municipal or village tract administrator is the same as that the Pyithu Hluttaw. Such term shall not be more than three times.¹¹⁶⁷

3.8.3.4 Ethics to be obeyed and upheld

The municipal or village tract administrator shall exercise and carry out in accord with the ethics in carrying out the functions and duties such as refraining from abuse of power, using influence, doing malpractice and using undue influence¹¹⁶⁸ or performing the functions and duties efficiently assigned in accord with laws.¹¹⁶⁹

3.8.3.5 Basic Principles of Function

The municipal or village tract administrator shall carry out the functions and duties in accord with the following basic principles

(a) Obeying and upholding the non-disintegration of the Union, non-disintegration of National Solidarity and Perpetuation of sovereignty¹¹⁷⁰

(b) Safeguarding the fundamental rights of the citizens contained in the Constitution of the Republic of the Union of Myanmar.¹¹⁷¹

3.8.3.6 Chapter VII: Functions and Duties of the Municipal or Village tract Administrator

The municipal or village tract administrator shall carry out the following functions and duties in accord with the relevant laws, rules and procedures by

¹¹⁶⁵ Section 7 (g) of the Municipal or Village Tract Administration Law 2012

¹¹⁶⁶ Section 8 of the Municipal or Village Tract Administration Law 2012

¹¹⁶⁷ Section 9 of the Municipal or Village Tract Administration Law 2012

¹¹⁶⁸ Section 11 (b) of the Municipal or Village Tract Administration Law 2012

¹¹⁶⁹ Section 11 (c) of the Municipal or Village Tract Administration Law 2012

¹¹⁷⁰ Section 12 (a) of the Municipal or Village Tract Administration Law 2012

¹¹⁷¹ Section 12 (b) of the Municipal or Village Tract Administration Law 2012

security, prevalence of law and order, community peace and tranquility and carrying out the benefit of the public ¹¹⁷²and also safeguarding the right of persons who live in the municipal or village tract¹¹⁷³

Prohibiting the activity cause to danger and injure the public on the roads and public places and arresting and informing to arrest if not following such prohibitions¹¹⁷⁴ and arresting and informing to take action the notorious lawless persons¹¹⁷⁵

Carrying out functions and duties assigned by any existing law.¹¹⁷⁶

3.8.3.7 Chapter VIII: Permit to resign, temporary suspension from office or termination of office and appointment in substitution

The municipal or village tract administrator is entitled to submit his resignation from duty to the Township Administrator on his own volition or due to his health.¹¹⁷⁷

If cases relating to any Municipal or Village Tract Administrator arises, the township Administrator inquire if necessary and may permit the resignation, temporary suspension from office of termination of office with the approval of the District Administrator.¹¹⁷⁸

The vacant place of the Municipal or Village Tract Administrator due to permission to resign or termination from duty shall be substituted and appointed in accord within thirty days¹¹⁷⁹, then the township administrator shall assign temporary duty to the person who is the second priority and resides in the municipal or village tract in order to serve the duty of the relevant municipal or village tract administrator at the time of his

¹¹⁷² Section 13 (a) of the Municipal or Village Tract Administration Law 2012

¹¹⁷³ Section 13 (c) of the Municipal or Village Tract Administration Law 2012

¹¹⁷⁴ Section 13 (o) of the Municipal or Village Tract Administration Law 2012

¹¹⁷⁵ Section 13 (m) of the Municipal or Village Tract Administration Law 2012

¹¹⁷⁶ Section 13 (f) of the Municipal or Village Tract Administration Law 2012

¹¹⁷⁷ Section 14 of the Municipal or Village Tract Administration Law 2012

¹¹⁷⁸ Section 15 of the Municipal or Village Tract Administration Law 2012

¹¹⁷⁹ Section 16 (a) of the Municipal or Village Tract Administration Law 2012

temporary suspension from office or at the vacant time of his resignation or termination from office.¹¹⁸⁰

3.8.3.8 Duties of the Person residing in the Municipal or Village Tract

The person residing in the municipal or village tract shall inform the relevant municipal or village tract administrator in accord with the stipulations if any of the following cases arises

(a) Coming and putting up as the overnight guest who resides in other municipal or village tract and is not listed in his family unit

(b) Departure of the guest who comes and puts up.¹¹⁸¹

Moreover, shall inform the relevant relating to crimes and vices, obey the directives prescribed to rear animals systematically and inform birth, death and move for leaving and move for coming of the family.¹¹⁸²

The person residing in the municipal or village tract shall refrain from making to injure and suffer the interests of the local people directly or indirectly.¹¹⁸³

3.8.3.9 Rights of persons residing in the Municipal or Village Tract

The municipal or village tract administrator shall safeguard the rights of persons residing in the relevant municipal or village tract¹¹⁸⁴ such as the right of safety of premises and property¹¹⁸⁵, the right to carry out matters relating to religion¹¹⁸⁶ or the right to compile and nurture literature, culture, fine arts and customs.¹¹⁸⁷

¹¹⁸⁰ Section 16 (c) of the Municipal or Village Tract Administration Law 2012

¹¹⁸¹ Section 17 of the Municipal or Village Tract Administration Law 2012

¹¹⁸² Section 19 of the Municipal or Village Tract Administration Law 2012

¹¹⁸³ Section 22 of the Municipal or Village Tract Administration Law 2012

¹¹⁸⁴ Section 24 of the Municipal or Village Tract Administration Law 2012

¹¹⁸⁵ Section 24 (a) of the Municipal or Village Tract Administration Law 2012

¹¹⁸⁶ Section 24 (b) of the Municipal or Village Tract Administration Law 2012

¹¹⁸⁷ Section 24 (c) of the Municipal or Village Tract Administration Law 2012

3.8.3.10 Offences and Penalties

Whoever fails to carry out the duty shall be punished with imprisonment for a term or with fine or with both by the relevant court.¹¹⁸⁸

3.8.3.11 Subsidy

The ministry of Home Affairs, the Union Government, with the approval of the union Government, shall prescribe monthly subsidy¹¹⁸⁹ or Lump sum subsidy if he serves the entire term of duty efficiently for the municipal or village tract administrator.¹¹⁹⁰

3.8.3.12 Expenditures of Office

The expenditures of office for the Office of the Municipal or Village Tract Administrator shall be incurred by proportional receipts on cess obtained for revenue collected on cultivated land¹¹⁹¹, If receipts is insufficient to incur expenditures of office¹¹⁹² shall, in respect of receipts submit to the Township with submit and request to the Township Administrator.¹¹⁹³

3.8.3.13 Municipal or Village Tract Clerk

The function and duties of the said office staff are as follows

(a) Calling a meeting by the directive of the Municipal or Village Tract Administrator and performing as the master of ceremony at meetings¹¹⁹⁴

(b) Compiling minutes of the meeting distributing the minutes with the approval of the Municipal or Village Tract Administrator and implementing in the decision of the meeting with the directive of the Municipal or Village Tract Administrator¹¹⁹⁵

¹¹⁸⁸ Section 25, 26, 27 of the Municipal or Village Tract Administration Law 2012

¹¹⁸⁹ Section 28 (a) of the Municipal or Village Tract Administration Law 2012

¹¹⁹⁰ Section 28 (b) of the Municipal or Village Tract Administration Law 2012

¹¹⁹¹ Section 29 of the Municipal or Village Tract Administration Law 2012

¹¹⁹² Section 30 (a) of the Municipal or Village Tract Administration Law 2012

¹¹⁹³ Section 30 (c) of the Municipal or Village Tract Administration Law 2012

¹¹⁹⁴ Section 32 (a) of the Municipal or Village Tract Administration Law 2012

¹¹⁹⁵ Section 32 (c) of the Municipal or Village Tract Administration Law 2012

(c) Collecting and compiling accounts and forms to be kept by the directive of the Municipal or Village Tract Administrator¹¹⁹⁶

3.8.3.14 Miscellaneous

The relevant Police Force Station shall assist the Municipal and Village Tract Administrator so as to carry out their function and duties effectively as follows

(a) Security, prevalence of law and order, and carrying out the benefit of the public¹¹⁹⁷

(b) Revealing, arresting, taking action and informing the crimes and vices.¹¹⁹⁸

The municipal or village tract administrator may, to obtain the necessary aid for enabling to carry out his functions and duties effectively, submit to the Township Administrator and administer and carry out.¹¹⁹⁹

In implementing and carrying out the provisions of this law

(a) The Ministry of Home Affairs of the Union Government may issue necessary rules and regulation with the approval of the Union Government¹²⁰⁰

(b) The Ministry of Home Affairs of the Union Government may issue necessary notifications, orders, directives and procedures.¹²⁰¹

The Towns Act (Myanmar Act No.3/1907) and the Village Act (Myanmar Act No. 6/1907) are hereby repealed by this law.¹²⁰²

¹¹⁹⁶ Section 32 (e) of the Municipal or Village Tract Administration Law 2012

¹¹⁹⁷ Section 34 (a) of the Municipal or Village Tract Administration Law 2012

¹¹⁹⁸ Section 34 (c) of the Municipal or Village Tract Administration Law 2012

¹¹⁹⁹ Section 35 of the Municipal or Village Tract Administration Law 2012

¹²⁰⁰ Section 36 (a) of the Municipal or Village Tract Administration Law 2012

¹²⁰¹ Section 36 (b) of the Municipal or Village Tract Administration Law 2012

¹²⁰² Section 37 of the Municipal or Village Tract Administration Law 2012

3.8.4 The Self-Administered Division or Self-Administered Zone Leading Body

Law

The State Peace and Development Council hereby enacts this Law in accord with section 443 of the Constitution of the Republic of the Union of Myanmar, in order to implement the works relating to administration by the Self-Administered Division or Self-Administered Zone Leading Body smoothly under the Constitution of the Republic of the Union of Myanmar. The Leading Body shall comprise a minimum of 10 members, region or State Hluttaw representatives elected from townships in the Self-Administered Division or Self-Administered Zone and the Defence Services Personnel representatives nominated by the Commander-in-Chief of the Defence Services to assign duties relating to security or border affairs. Another additional representatives selected by persons contained in sub-section (a) and (b) in accord with section 10. The Head of General Administration Department of the relevant SelfAdministered Division or Self-Administered have no right to vote. The Self-Administered Division and Self-Administered Zone are of equal status being the Self-Administered Areas.

3.8.4.1 Formation, Appointment and Assignment of Duties

The Chairperson of the Leading Body elected from The State Peace and Development Council shall form and assign duties to the Scrutiny Body headed by the Secretary of the relevant Leading Body to enable scrutinizing of the representatives contained in sub-sections (a) and (b) and to elect.¹²⁰³ Then the Scrutiny Body formed under section 7 shall, in scrutinizing the representatives contained in sub-sections¹²⁰⁴

(a) scrutinize by the accreditation certificate issued by the Union Election Commission, if they are Region or State Hluttaw representatives elected from townships in the Self-Administered Division or Self-Administered Zone¹²⁰⁵

(b) scrutinize by the accreditation certificate issued by the Commander-in Chief of the Defence Services, if they are Defence Services Personnel 3

¹²⁰³ Section 7 of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²⁰⁴ Section 8 of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²⁰⁵ Section 8 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law

representatives nominated by the Commander-in-Chief of the Defence Services as the member of Leading Body.¹²⁰⁶

(1) Selection, Appointment and Assignment of Duties to Chairperson and Members of Leading Body

After coordinating among themselves, select a suitable person as the Chairperson of the Leading Body from among the Region or State Hluttaw representatives elected from the townships in the Self-Administered Division. The list of the person so elected shall be submitted to the President of the Union¹²⁰⁷ and The President of the Union shall appoint and assign duties to the person as The Chairperson of the Leading Body¹²⁰⁸ elected under section 9 and members of the Leading Body contained from the remaining National races¹²⁰⁹. The member of the Leading Body so elected shall have the prescribed qualifications of the Hluttaw representatives of the Region or State under Constitution and if that members less than 10 members, must elect and appoint the required number of members from those residing in the relevant Self-Administered Division to fill up 10 members.¹²¹⁰

The Commander-in-Chief of the Defence Services may add and assign duties to the one-fourth of the total number of members of the Leading Body with the Defence Services personnel in the Leading Body and The Defence Services personnel.¹²¹¹

(2) Formation of Executive Committee of the Leading Body

¹²⁰⁶ Section 8 (b) of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²⁰⁷ Section 9 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²⁰⁸ Section 9 (c) of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²⁰⁹ Section 10 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²¹⁰ Section 10 (b) of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²¹¹ Section 11 of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

The Chairperson of the Leading Body shall select and form the Executive Committee of the Leading Body with a minimum of three persons to a maximum of five persons with the agreement of the Chief Minister of the Region or State and with the approval of the Region or State Hluttaw¹²¹² and The Chairperson of the Leading Body may allocate duties to the Executive Committee members of the Leading Body in each economic, social and management sector.¹²¹³

3.8.4.2 Election of the Chairperson of the Leading Body and Arranging to Elect the Chairperson of the Leading Body

The leader of the Scrutiny Body formed under section 7 shall carry out as the master of ceremony¹²¹⁴ and then make necessary arrangements to enable to election of the Chairperson of the Leading Body¹²¹⁵. The representatives contained in sub-sections (a) and (b) of section 4 shall coordinate among them select and elect a suitable person as the Chairperson of the Leading Body.¹²¹⁶

Voting shall be made before the members of the Leading Body in the meeting room of the Leading Body¹²¹⁷. In voting as such, make the right mark (v) for the person in favour or the cross-mark (X) for the person against on the ballot paper clearly. Then, the voting paper shall be cast into the ballot box by himself.¹²¹⁸

¹²¹² Section 17 of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²¹³ Section 18 of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²¹⁴ Section 19 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²¹⁵ Section 19 (b) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²¹⁶ Section 20 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²¹⁷ Section 21 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²¹⁸ Section 21 (g) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

If two or more persons are equal in the position of the person who obtained lesser votes shall be cancelled and if two or more persons are equal again in the second voting , the voting shall be suspended temporarily for three days excluding gazetted holidays.¹²¹⁹

The person who obtained the highest number of votes-in-favour shall be submitted to the President of the Union to appoint and assign duties to such person as the Chairperson of the Leading Body.¹²²⁰

3.8.4.3 Election of the National Races Representative Leading Body

Members

To enable election and appointment of each National race representative as the member of the Leading Body¹²²¹ The Chairperson and members of the Leading Body shall elect and appoint each National races representative from among the persons contained in preliminary list who have elected and obtained their desires under section 25 by coordination among themselves as members of the leading Body.¹²²²

The Chairman shall declare the selection of the person who obtained the highest number of vote as the National races representative Leading Body member.¹²²³

3.8.4.4 Election and Appointment to attain the Stipulated Number of the

Members of the Leading Body

If the minimum number of the members of the Leading Body is less than 10 persons¹²²⁴ The Chairperson and members of the Leading Body shall elect and

¹²¹⁹ Section 23 (b) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²²⁰ Section 24 of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²²¹ Section 25 of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²²² Section 26 of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²²³ Section 28 of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

appoint the required number as they desire to meet the minimum number.¹²²⁵ If the election cannot be completed, the election and appointment shall be made in the manner of secret voting.¹²²⁶

3.8.4.5 Duties and Powers of the Chairperson of the Leading Body

Submission and Declaration of the Bill

The Chairperson of the Leading Body shall submit the bill approved by the Leading Body to the Chief Minister of the relevant Region or State to enable signing and publishing as a law in the official gazette within 14 days.¹²²⁷

The Chairperson of the Leading Body shall carry out the implementation of the Leading Body¹²²⁸ and also carry out the allocation and determining of the functions of the members of the Leading Body¹²²⁹ and may shall convene the first session of the future terms of the Leading Body and carry out the duties as the Chairperson until the new Chairperson has been elected and appointed.¹²³⁰

3.8.4.6 Duties and Powers of the Leading Body and Executive Committee of the Leading Body

To enable approval of the said laws by the Leading Body: The Chairperson or each member of the Leading Body is entitled to submit the bill and it shall

¹²²⁴ Section 29 of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²²⁵ Section 29 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²²⁶ Section 29 (b) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²²⁷ Section 30 of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²²⁸ Section 35 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²²⁹ Section 35 (b) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²³⁰ Section 36 of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

be submitted to the meeting of the Leading by the Chairperson himself or the person assigned duties by him. It shall be discussed and negotiated at the meeting of the Leading Body and obtain the approval by the majority votes of the members of the Leading Body.¹²³¹

The regular session of the Leading Body shall be convened at least twice a year normally.¹²³² If it is necessary, a special session may be convened and attended by 75 percent of the total number of members of the Leading Body who have the right to attend.¹²³³ Unless contrary to the provisions of the Constitution, as the self administrative power of the Leading Body extends to the following matters allowed under any law enacted by the Pyidaungsu Hluttaw.¹²³⁴

The Executive Committee of the Leading Body shall submit urgently to the Chief Minister of the relevant Region or State if any of emergency arise.¹²³⁵ The Executive Committee of the Leading Body shall carry out in accord with the coordination of the Union Government¹²³⁶ and submit the report the general situations of its territory to the Union Government and relevant Region or State Government.¹²³⁷ The Executive Committee of the Leading Body may supervise, cooperate and coordinate the functions of civil services organizations which are performing duties within its territory in accord with law. ¹²³⁸

¹²³¹ Section 37 of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²³² Section 47 of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²³³ Section 48 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²³⁴ Section 39 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²³⁵ Section 40 of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²³⁶ Section 42 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²³⁷ Section 42 (b) of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²³⁸ Section 45 of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

3.8.4.7 Term of the Office, Resigning from Office, Termination from Office and Taking Action, Impeachment and Filling the Vacant Office

The term of office of the Chairperson is the same as the term of office of the President of the Union.¹²³⁹ The term of office of the members of the Leading Body is the same as the term of the relevant Region or State Hluttaw.¹²⁴⁰

They may resign from office by submitting in writing to the President through the Chief Minister of the Region or State or to the Speaker of the relevant Region or State Hluttaw or they shall submit and obtain the approval of the Commander-in-Chief of the Defence Services with the Defence Services procedure.¹²⁴¹

The Chairperson of the Leading Body shall, after coordinating with the members of Leading Body contained in original election and filling up in accord with sub-sections (a) and (b) of section 4, direct the members of the Leading Body who are elected and filled up in accord with section 10.¹²⁴² If the matter to take action is decided as correct, the Chairperson of the Leading Body shall terminate such member of the Leading Body from duty. If it is decided that it is not correct, he shall be caused to proceed with serving the duty.¹²⁴³

If a Chairperson of the Leading Body cannot carry out his duties efficiently, the President of the Union may direct him to resign from office.¹²⁴⁴ It shall be deemed that he has been terminated from the office of the Minister of the relevant Region

¹²³⁹ Section 53 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²⁴⁰ Section 53 (b) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²⁴¹ Section 54 of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²⁴² Section 62 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²⁴³ Section 62 (iv) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

¹²⁴⁴ Section 57 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law 2010

or State and the office of Chairman of the Executive Committee of the Leading Body¹²⁴⁵ and there is the right to take action against a member of the Leading Body who has involved with any matter contained in section 59.¹²⁴⁶

If the office of the Chairperson of the leading Body becomes vacant due to any cause, the President of the Union shall appoint and assign duties to any suitable person from among the Leading Body members contained in sub-section (a) of section 4 as the temporary Chairperson of the Leading Body.¹²⁴⁷

3.8.4.8 The Provision relating to Emergency Period and the Leading Body

If have the provision relating to Emergency Period, the legislative functions of the Leading Bodies have been suspended from the day of declaration that the legislative, executive and judicial powers of the Union are transferred to the Commander-in-Chief of the Defence Services. It shall be deemed that the members of the Leading Body have been terminated from duty from the day of emergency situation under section 417 of the Constitution. When the situation getting better, the relevant Leading Bodies shall be deemed to have been dissolved automatically.¹²⁴⁸

In implementing the provisions of this Law, the Leading Body may issue necessary rules, regulations and bye-laws, with the approval of the relevant Region or State Government¹²⁴⁹ and issue necessary notifications, orders, directives and procedures in accord with the Constitution of the Republic of the Union of Myanmar.¹²⁵⁰

¹²⁴⁵ Section 55 (c) of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²⁴⁶ Section 61 of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²⁴⁷ Section 63 of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²⁴⁸ Section 66 of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²⁴⁹ Section 72 (a) of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

¹²⁵⁰ Section 72 (b) of the Self-Administered Division or Self-Administered Zone Leading Body Law
2010

3.9 Laws relating to Administrative Procedure, Official Information, and Civil Liability of State Officials.

One of the key roles of constitutions in democratic societies governed by the rule of law is to ensure that executive power is exercised only on the basis of and within the limits of the law, and to provide rights and effective accessible recourse to individuals if their rights have been unduly infringed by administrative decisions or executive acts. In Myanmar, where state power has long been exercised without any constitutional limitation or remedies, the 2008 Constitution has reintroduced some basic elements of governance under the rule of law.¹²⁵¹ Reflecting the rule of principle, Section 224 of the Constitution states that

“Ministries of the Union Government shall, in carrying out the functions of their subordinate governmental departments and organizations, manage, guide, supervise and inspect in accord with the provisions of the Constitution and the existing laws.”¹²⁵²

The above constitutional provision imposes a constitutional duty upon all state agencies and officials to exercise their powers and carry out their responsibilities in a way that is consistent with the existing laws. Beyond merely recognising this objective, the Myanmar legal system adopts some legal mechanisms that are capable of limiting how state agencies and officials exercise their powers. Unlike the Thai legal system – where the Administrative Procedure Act B.E. 2539, the State Information Act B.E. 2539, and the State official Civil Liability Act B.E. 2539 have been in place, the check-and-balance system of Myanmar relies heavily on the Law of Writ 2014. However, neither the official information law nor the law on civil liability of state officials has been promulgated.

¹²⁵¹ Bingham Centre for the Rule of Law, ‘Exercising Executive Power in Myanmar: Constitutional Options for Safeguarding the Rule of Law in Public Administration’ (Bingham Centre for the Rule of Law, November 2014) http://www.biicl.org/documents/467_symposium_paper_dr_marcus_brand_constitutional_options_for_safeguarding_the_rule_of_law_in_public_administration_nov_2014_english.pdf?showdocument=1 retrieved 20 July 2016, 3.

¹²⁵² Ibid.

3.9.1 The public servants inquiries¹²⁵³

Wherever the Governor shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehavior by any person in the service of the Crown not removable from his appointment without the sanction the Governor, he shall cause the substance of the imputations to distinct articles of charge, and shall order a formal and into the truth thereof¹²⁵⁴ and public inquiry may be committed either to the Court, Board or other authority to which person accused is subordinate, or to any other person or persons, to be specially appointed by the Governor commissioners for the purpose notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry.¹²⁵⁵

When the Governor shall think fit to conduct the prosecution, he shall nominate some person to conduct the same on his behalf¹²⁵⁶ and the charge shall be brought by an accuser, the Governor shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser and every person who shall willfully and maliciously make any false accusation under The Public Servants Inquiries Act, upon such oath or affirmation, shall be liable to the penalties of perjury, but this enactment shall not be construed to prevent Governor from instituting any inquiry which he shall think fit, without such ace accusation on oath or solemn affirmation as aforesaid.¹²⁵⁷

Where the imputations shall have been made by an accuser, and the Governor shall think fit to leave to him the conduct of the prosecution, the Governor before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any counter-charge or action which may be aftermunicipals brought against him for malicious prosecution or perjury or subornation of perjury as the case may be.¹²⁵⁸ At any subsequent stage of the proceedings, the Governor may, if he thinks fit, abandon the

¹²⁵³ The Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁵⁴ Section 2 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁵⁵ Section 3 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁵⁶ Section 4 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁵⁷ Section 5 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁵⁸ Section 6 of the Public Servants Inquiries Act. India Act XXXVI, 1850

prosecution, and in such case may, if he think fit, on the application of the accuser, allow him to continue the prosecution, if lie is desirous of so doing on his furnishing such security as is hereinbefore mentioned.¹²⁵⁹

The commissioners shall have the same power of punishing contempt and obstructions to their proceedings as is given to civil and criminal Courts by the Code of Criminal Procedure, and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection as the District Judge, except that all process to cause the attendance of witness or other compulsory process, shall be served through and executed in Rangoon by the Court of Small Causes and elsewhere by the District Court in whose jurisdiction the witness or other person resides, on whom the process is to be served. When the commission has been issued to a Court, or other person or persons having power issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission.¹²⁶⁰

All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issue originally from the Court or other authority through whom it is executed¹²⁶¹. A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused at least three days before the beginning of the inquiry, exclusive of the day of delivery and the first day of the inquiry.¹²⁶²

At the beginning of the inquiry the prosecutor shall exhibit the articles of charge to the commissioners, which shall be openly read, and the person accused shall thereupon be required to plead "guilty" or "not guilty" to each of them, which pleas shall be forthwith recorded with the articles of charge. If the person accused refuses, or without reasonable cause neglects, to appear to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge¹²⁶³ and the

¹²⁵⁹ Section 7 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁶⁰ Section 8 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁶¹ Section 9 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁶² Section 10 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁶³ Section 11 of the Public Servants Inquiries Act. India Act XXXVI, 1850

prosecutor shall then be entitled to address the commissioners in of the articles of charge, and of the evidence by which they are to be proved: his address shall not be recorded.¹²⁶⁴

The oral and documentary evidence for the prosecution shall then exhibited: the witnesses shall be examined by or on behalf of the prosecutor and may be cross-examined by or on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examine, but not on any new matter without leave of the commissioners, who also may put such questions as they think fit¹²⁶⁵. If it shall appear necessary before the close of the case for the prosecution, the commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence and in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days before the exhibition of evidence exclusive of the day of adjournment and of the day to which the proceedings are adjourned.¹²⁶⁶

When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer. If made orally, it shall not be recorded if made in writing, it shall be recorded, after being and in that case a copy shall be given at the same time to the prosecutor.¹²⁶⁷

The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the commissioners according to the like rules as the witnesses for the prosecution, and the commissioners or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and, if necessary, explained to him in the language in which was given, and shall be recorded with the proceedings.¹²⁶⁸ If the person accused makes only an oral defence, and exhibits no evidence, the enquiry shall end with his defence if he records a written defence, or exhibits

¹²⁶⁴ Section 12 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁶⁵ Section 13 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁶⁶ Section 14 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁶⁷ Section 15 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁶⁸ Section 18 of the Public Servants Inquiries Act. India Act XXXVI, 1850

evidence, the prosecutor shall be entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings although such new evidence were not included in the list furnished to him.¹²⁶⁹

When the commissioner shall be of opinion that the articles of charge of any of them are not drawn with sufficient clearness and precision, the commissioners may, in their discretion, require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for reasonable time. The commissioners may also, if they think fit, adjourn the inquiry from time to time on the application of either the prosecutor or the person accused, on the ground of sickness or unavoidable absence of any witness or other reasonable cause. When application is made and refused, the commissioners shall record the application, their reasons for refusing to comply with it.¹²⁷⁰

After the close of the inquiry the commissioners shall forthwith report to the Governor their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case.¹²⁷¹

The Governor, on consideration of the report of the commissioners order them to take further evidence, or give further explanation of their opinions. He may also order additional articles of charge to be framed, in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been appointed, the Governor may also, if he thinks fit, refer the report of the commissioners to the Court or other authority to which the person accused is sub-ordinate, for their opinion on the case and will finally pass such orders thereon as appear just and consistent with his powers in such cases.¹²⁷²

¹²⁶⁹ Section 19 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁷⁰ Section 20 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁷¹ Section 21 of the Public Servants Inquiries Act. India Act XXXVI, 1850

¹²⁷² Section 22 of the Public Servants Inquiries Act. India Act XXXVI, 1850

Nothing in The Public Servants Inquiries Act shall be construed to affect the authority of the Governor for suspending or removing any public servant for any cause without an inquiry under the Act.¹²⁷³

3.9.2 Law of Writ

Since 2011, the right to issue writs under the 2008 Constitution is conferred on the Union Supreme Court. The Constitution therefore allows for access to the writs to challenge the legality of decisions of the lower courts and of government agencies. There is currently no opportunity for individuals to bring writ cases to the State and Region High Courts this right is only available in the Supreme Court.

The jurisdiction of the Supreme Court to issue writs (sachundaw) is contained in section 296. The Supreme Court of the Union: (a) has the power to issue the following writs: (i) Writ of Habeas Corpus (Shedawthwin Sachundaw Amein) (ii) Writ of Mandamus (Anape Sachundaw Amein) (iii) Writ of Prohibition (Tamyinse Sachundaw Amein) (iv) Writ of Quo Warranto (Anapaingme Sachundaw Amein) and (v) Writ of Certiorari (Ahmukaw Sachundaw Amein).¹²⁷⁴

3.9.2.1 Types and definition of writs.

This law provides a definition¹²⁷⁵ such as **Constitution** means the Constitution of the Republic of the Union of Myanmar, **Writ** means Writ of Habeas Corpus, Writ of Mandamus, Writ of Prohibition, Writ of Quo Warranto and Writ of Certiorari, **Writ of Habeas Corpus** means a formal written order of deciding whether or not there is legal justification of any person's detention after any court of Republic of the Union of Myanmar or any organization that has jurisdiction has caused any person who has been detained to be physically brought before the court and then examined the reason of his detention, **Writ of Mandamus** means a command issued by the Court to a public official or public body or government department asking them to, in accordance with laws in force, perform their duties which they have failed to perform, **Writ of prohibition** means a command that prohibits any court and other judicial matter from performing any act which exceeds their

¹²⁷³ Section 25 of the Public Servants Inquiries Act. India Act XXXVI, 1850

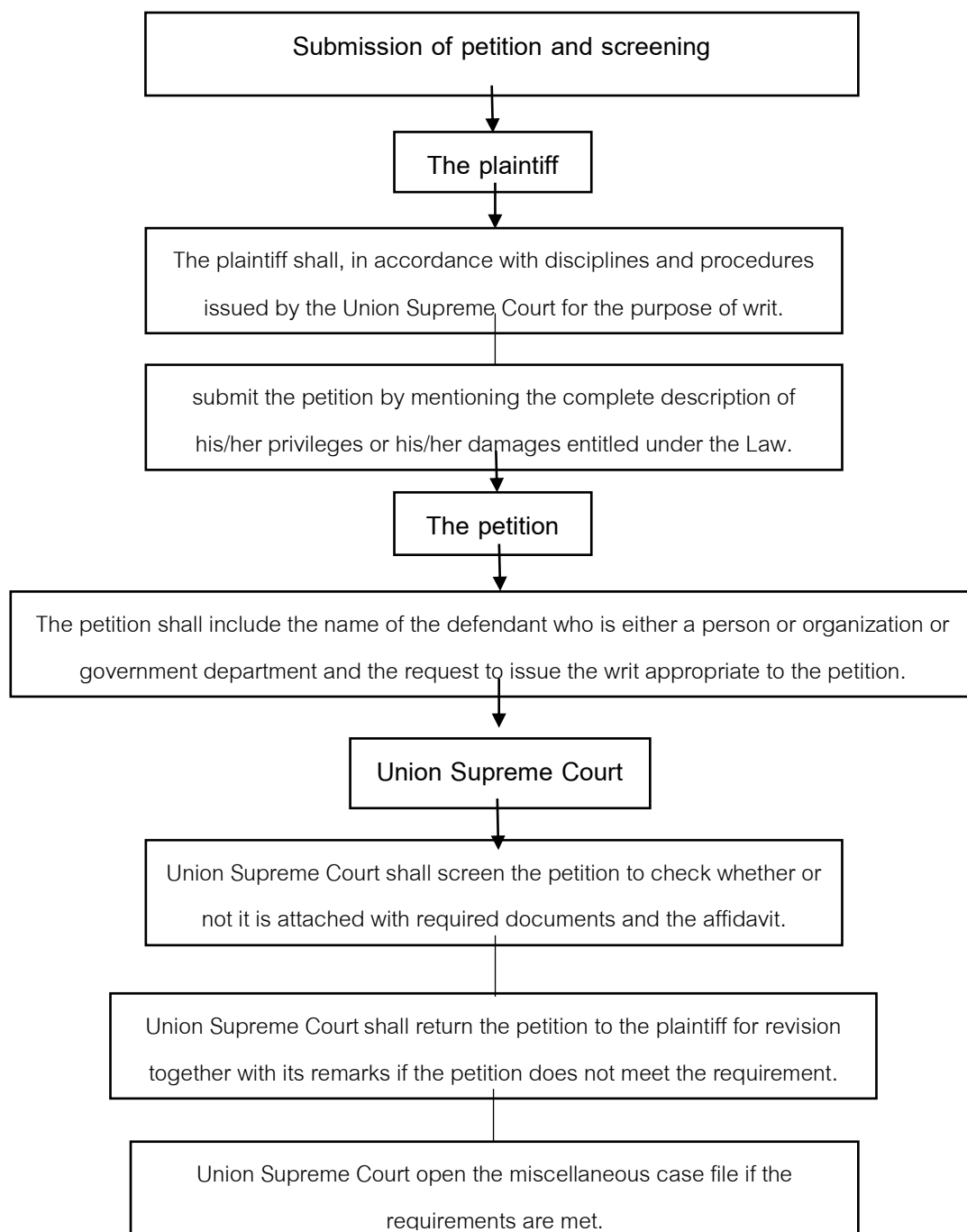
¹²⁷⁴ Section 3 of Law of Writ Pyidaungsu Hluttaw Law No. 24 of 2014

¹²⁷⁵ Section 2 of Law of Writ Pyidaungsu Hluttaw Law No. 24 of 2014

jurisdiction or acting contrary to the law, **Writ of Quo Warranto** means a formal written order of deciding whether or not there is compliance with laws in force after screening whether or not the acts of any government department or any organization that has jurisdiction conducted for individual or public are in line with laws, rules, regulations, disciplines, procedures, orders, notifications and instructions, and **Writ of Certiorari** means a formal written order that causes the decision and act of any court or any judicial matter to be consistent with the law if such decision and act are contrary to the law.

Union Supreme Court shall suspend the petition to order the writ in the region where the notice of emergency situation is effective and shall not suspend the right to claim benefits prescribed under section 377 of the Constitution unless it is required for public security in time of war or in time of foreign aggression or in time of insurrection.

3.9.2.2 Submission of petition and screening



3.9.3 Decision-Making body

Union Supreme Court shall form Initial Hearing and Decision Making Body comprising three judges of Union Supreme Court and Final Hearing and Decision Making Body comprising three judges of Union Supreme Court. Chief Judge of Union Supreme Court may include either in Initial Hearing and Decision Making Body or in Final Hearing and

Decision Making Body. The Chief Judge of Union Supreme Court may amend the constitution of Hearing and Decision Making Bodies.¹²⁷⁶

Initial Hearing and Decision Making Body shall, upon receipt of the petition, screen the subject matter and facts of the petition and attached documents and shall summon the plaintiff. Then, it shall pass the order whether or not the petition is approved after conducting the hearing.¹²⁷⁷ If Initial Hearing and Decision Making Body approves the petition, Union Supreme Court shall deliver such petition to Final Hearing and Decision Making Body and cause the screening and hearing.¹²⁷⁸

Final Hearing and Decision Making Body shall conduct the hearing of the plaintiff and defendant and shall pass the decision¹²⁷⁹ and the decision of the Union Supreme Court shall be final and conclusive for every submission of the writ.¹²⁸⁰

3.9.4 Duties and rights of the Defendant

The defendant shall, upon receipt of the summon for screening and hearing in connection with the petition, come to Hearing and Decision Making Body of Court of Writ¹²⁸¹ and submit the required documents and evidence in connection with the petition to Hearing and Decision Making Body of Court of Writ.¹²⁸²

If the defendant is desirous to report that any writ contained in the petition should not be ordered, he/she shall submit the written explanation to Hearing and Decision Making Body of Court of Writ together with evidence.¹²⁸³

The defendant is, upon request of the Hearing and Decision Making Body of Court of Writ, entitled to acquire the evidence from the relevant government departments and organizations for the purpose of submission.¹²⁸⁴

¹²⁷⁶ Section 7 of Law of Writ Pyidaungsu Hluttaw Law No. 24 of 2014

¹²⁷⁷ Section 8 of Law of Writ Pyidaungsu Hluttaw Law No. 24 of 2014

¹²⁷⁸ Section 9 of Law of Writ Pyidaungsu Hluttaw Law No. 24 of 2014

¹²⁷⁹ Section 10 of Law of Writ Pyidaungsu Hluttaw Law No. 24 of 2014

¹²⁸⁰ Section 11 of Law of Writ Pyidaungsu Hluttaw Law No. 24 of 2014

¹²⁸¹ Section 12 of Law of Writ Pyidaungsu Hluttaw Law No. 24 of 2014

¹²⁸² Section 13 of Law of Writ Pyidaungsu Hluttaw Law No. 24 of 2014

¹²⁸³ Section 14 of Law of Writ Pyidaungsu Hluttaw Law No. 24 of 2014

3.10 Law relating to peace and order and public safety

Main peace and order policies and public safety are set out in the Constitution of the Republic of the Union of Myanmar (2008) and the main law which is Law safeguarding the state from Danger of subversive elements 1975.

3.10.1 The Constitution of the Republic of the Union of Myanmar (2008)

Section 410-418 of Constitution set out important provisions on state of emergency by stipulating that

Section 410: If the President learns that or if the respective local administrative body submits that the administrative functions cannot be carried out in accord with the Constitution in a Region or a State or a Union territory or a Self-Administered Area, he may, after coordinating with the National Defence and Security Council, promulgate an ordinance and declare a state of emergency.

Section 411: In the matter concerning the declaration of a state of emergency in accord with Section 410, the President

(a) may exercise the executive power of a Region or a State or a Self- Administered Area concerned. Moreover, he may form an appropriate body or a suitable person and entrust the said executive power

(b) in doing so, if necessary, has the right to exercise the legislative power only for executive matters from among the matters that may be legislated by the respective Region, State or Self-Administered Areas. However, the legislative power shall not be empowered on anybody or any person.

Section 412

(a) If the President, learns that or if the respective local administrative body submits that

there arises or is sufficient reason to arise a state of emergency endangering the lives, shelter and property of the public in a Region or a state or a Union Territory or a Self-

¹²⁸⁴ Section 15 of Law of Writ Pyidaungsu Hluttaw Law No. 24 of 2014

Administered Area, after co-ordinating with the National Defence and Security Council, may promulgate an ordinance and declare a state of emergency.

(b) If all the members are unable to attend the meeting held by the President to co-ordinate with the National Defence and Security Council under Sub-Section (a), the President may declare in time a state of emergency after coordinating with the Commander-in-Chief of the Defence Services, the Deputy Commander-in-Chief of the Defence Services, the Minister for Defence, and the Minister for Home Affairs who are members. The said declaration shall be submitted to the National Defence and Security Council for approval as soon as possible.

Section 413: According to Section 412, concerning the declaration of a state of emergency

(a) the local administrative bodies and their members and the Civil Services organizations and their members may obtain the assistance of the Defence Services to effectively carry out their duties in accord with the existing laws in order to quickly restore to its original situation in an area where the declaration of a state of emergency has been in operation

(b) the President may, if necessary, declare a military administrative order. In the said order, the executive powers and duties and the judicial powers and duties concerning community peace and tranquility and prevalence of law and order shall be conferred on the Commander-in-Chief of the Defence Services. The Commander-in-Chief of the Defence Services may exercise the said powers and duties himself or empower on any suitable military authority to exercise thereof.

Section 414: The President, in promulgating an ordinance and declaring a state of emergency:

(a) shall specify in the said ordinance the areas and the duration that the state of emergency is in operation

(b) may, if necessary, restrict or suspend as required, one or more fundamental rights of the citizens residing in the areas where the state of emergency is in operation.

Section 415: The President shall, relating to the measures taken under Sections 410 and 411, and relating to the measures taken under Sections 412 and 413 in

declaring a state of emergency, carry out such measures in accord with Section 212 (b), (c) and (e).

Section 416: If the Pyidaungsu Hluttaw session besides approving the submission of the President under Section 415 also extends the duration of the ordinance, it shall remain in operation up to the expiry of the extended duration.

Section 417: If there arises or if there is sufficient reason for a state of emergency to arise that may disintegrate the Union or disintegrate national solidarity or that may cause the loss of sovereignty, due to acts or attempts to take over the sovereignty of the Union by insurgency, violence and wrongful forcible means, the President may, after co-ordinating with the National Defence and Security Council, promulgate an ordinance and declare a state of emergency. In the said ordinance, it shall be stated that the area where the state of emergency in operation is the entire Nation and the specified duration is one year from the day of promulgation.

Section 418:

(a) In the matter concerning the declaration of the state of emergency according to Section 417, the President shall declare the transferring of legislative, executive and judicial powers of the Union to the Commander-in-Chief of the Defence Services to enable him to carry out necessary measures to speedily restore its original situation in the Union. It shall be deemed that the legislative functions of all Hluttaws and leading bodies shall be suspended from the day of declaration. It shall also be deemed that on the expiry of the term of the said Hluttaws, the relevant Hluttaws have been dissolved automatically.

(b) Notwithstanding anything contained in the Constitution, commencing from the day of transfer of the sovereign power to the Commander-in-Chief of the Defence Services, it shall be deemed that the members appointed and assigned duties by approval of the relevant Hluttaws in accord with the Constitution, Self-Administered Division Leading Bodies or the members of Self-Administered Zone Leading Bodies, with the exception of the President and the Vice-Presidents, have been terminated from duty.

3.10.2 The Law to Safeguard the State against the Dangers of Those Desiring to Cause Subversive Acts

“The Law to Safeguard the State against the Dangers of Those Desiring to Cause Subversive Acts” known as “the State Protection Law 1975” was enacted in 1975 amending in 1991 in order to prevent the infringement of the sovereignty and security of the Union of Burma against not only any threat to the peace of the people but also the threat of those desiring to cause subversive acts causing the destruction of the country.

3.10.2.1 Definition

According to Article 2 of the State Protection Law 1975, “Commit” means to perform or about to perform, or to abet, or to assist in, any act that either directly or indirectly, in any manner, threatens any provision under Article 7 of this Law. Moreover, “Central Board” means the Board organized under Article 8 of this Law.¹²⁸⁵ Furthermore, “Person Against Whom Action Is Taken” means any person whose fundamental rights are being restricted by any provision under this Law, or any person who is under arrest and detained following such restriction.¹²⁸⁶

3.10.2.2 The duties and responsibilities of the State Council

To protect in advance against threats to the sovereignty and security of the State and the peace of the people, the State Council may have two responsibilities. Firstly, the State Council may declare a State of Emergency for any territory in the country.¹²⁸⁷ The declaration of the State of Emergency shall not exceed sixty days. The State Council shall submit and seek approval at the next session of the People's Assembly for any prolongation. If there is no such session within the next sixty days, an emergency People's Assembly session shall be held and approval secured. If the Assembly's approval cannot be secured, the State of Emergency ceases to be in force from the day it is not approved. Any measures officially implemented prior to the expiration of the State of Emergency shall be lawful.¹²⁸⁸

¹²⁸⁵ Article 2 of the State Protection Law 1975

¹²⁸⁶ Article 2 of the State Protection Law 1975

¹²⁸⁷ Article 3 (a) of the State Protection Law 1975

¹²⁸⁸ Article 4 of the State Protection Law 1975

Secondly, the State Council may, if necessary, restrict any citizen's fundamental rights in any territory in the Union of Burma.¹²⁸⁹ Immediately following the withdrawal of the declaration of the State of Emergency, restrictions any citizen's fundamental rights shall cease to be in force.¹²⁹⁰ Moreover, the State Council shall submit and secure approval of its activities at the next session of the People's Assembly, if the declaration of the State of Emergency mentioned under Article 3(b) is withdrawn within sixty days. If the Assembly's approval cannot be secured, the declaration of the State of Emergency shall cease to be in force from the day it is not approved. Any measures officially implemented prior to the annulment of the declaration shall be lawful.¹²⁹¹

3.10.2.3 Authority of the cabinet

The State Protection Law 1975 states that the Cabinet is authorized to pass an order, as may be necessary, restricting any fundamental right of any person suspected of having committed or believed to be about to commit, any act which endangers the sovereignty and security of the state or public peace and tranquility.¹²⁹² Any provision under Article 7 shall be implemented only according to this Law.¹²⁹³ The Cabinet may issue notifications, orders, directives and procedures as may be necessary for the purpose of effective and successful implementation of the provisions contained in this Law.¹²⁹⁴ Moreover, for the implementation of the authorization mentioned under article 7, the Cabinet may form a Central Board on its behalf, chaired by the Minister of Home and Religious Affairs,. The Minister of Defense and the Minister of Foreign Affairs shall be members of the Central Board.¹²⁹⁵

3.10.2.4 The restriction fundamental rights of citizens

In restricting fundamental rights of citizens, the following principles shall be strictly adhered to

¹²⁸⁹ Article 3 (b) of the State Protection Law 1975

¹²⁹⁰ Article 5 of the State Protection Law 1975

¹²⁹¹ Article 6 of the State Protection Law 1975

¹²⁹² Article 7 of the State Protection Law 1975

¹²⁹³ Article 23 of the State Protection Law 1975

¹²⁹⁴ Article 24 of the State Protection Law 1975

¹²⁹⁵ Article 8 of the State Protection Law 1975

- (a) The restriction order shall be laid down by the Central Board only
- (b) Only necessary restriction of fundamental rights shall be decided
- (c) The duration of such restriction shall be kept to a minimum
- (d) In addition to regular review of the restriction order, earlier review of the order may be done as necessary
- (e) If sufficient facts for filing a lawsuit have been gathered, the person against whom action is taken shall be handed over to the judicial authorities immediately
- (f) The person against whom action is taken shall enjoy the fundamental rights as provided in the Constitution, in so far as these rights have not been restricted
- (g) When any threat as described in Article 7 has ceased to exist, the restriction order shall be annulled immediately
- (h) Any person detained under this Law shall, after being released, not again be arrested and imprisoned on the same charges.¹²⁹⁶

3.10.2.5 The duties and responsibilities of the Central Board

In order to the protection of the State against dangers, the Central Board has the right to implement the following measures through restrictive order. Firstly, A person against whom action is taken can be detained for a period of up to ninety days. This can be extended to a period not exceeding one hundred and eighty days.¹²⁹⁷ The Central Board shall obtain the approval of the Cabinet prior to the detention of a person against whom action is taken, in case such detention is considered necessary for a period longer than stipulated under Article 10(a).¹²⁹⁸ Secondly, if necessary, the movements of a person against whom action is taken can be restricted for a period of up to one year.¹²⁹⁹ However, the Central Board can implement the restrictions as described under Article 10(b) as follows

¹²⁹⁶ Article 9 of the State Protection Law 1975

¹²⁹⁷ Article 10 (a) of the State Protection Law 1975

¹²⁹⁸ Article 12 of the State Protection Law 1975

¹²⁹⁹ Article 10 of the State Protection Law 1975

(a) Designation of the territory to which the movements of the person against whom action is taken can be restricted

(b) Designation of the place where the person against whom action is taken shall reside

(c) Denial, as may be necessary, of travel

(d) Denial of possession or use of specific materials.¹³⁰⁰

The Central Board shall obtain the prior approval of the Cabinet in case it is considered necessary to extend the restrictions mentioned under Article 10(b).¹³⁰¹

In addition, the Central Board may direct any Public Service to carry out such measures accordingly in case measures are necessary to arrest or detain a person or to restrict a person's rights.¹³⁰² Moreover, the Cabinet or the Central Board can review and implement, as may be necessary, any order for restriction, arrest, detention, or denial of rights: (a) There will be at least one regular review every sixty days (b) Restriction orders may be altered or annulled if necessary (c) Arrest and detention orders may be altered or annulled if necessary (d) Denial orders may be altered or annulled if necessary.¹³⁰³ The Central Board shall also compile a regular report about its activities every ninety days.¹³⁰⁴ If necessary, the Cabinet can use the report mentioned in Article 17 to alter or annul any orders passed by the Central Board regarding restriction, arrest, detention, or denial of any rights of citizens.¹³⁰⁵

3.10.2.6 The person's detention

The State Protection Law 1975 allows the Cabinet to extend the detention or restriction of rights of a person against whom action is taken for a period from one hundred and eighty days up to three years.¹³⁰⁶ However, the Law was amended in 1991

¹³⁰⁰ Article 11 of the State Protection Law 1975

¹³⁰¹ Article 13 of the State Protection Law 1975

¹³⁰² Article 15 of the State Protection Law 1975

¹³⁰³ Article 16 of the State Protection Law 1975

¹³⁰⁴ Article 17 of the State Protection Law 1975

¹³⁰⁵ Article 18 of the State Protection Law 1975

¹³⁰⁶ Article 14 of the State Protection Law 1975

to decrease a person's detention for a period not exceeding one hundred and eighty days at a time up to a total of three years.¹³⁰⁷

3.10.2.7 Appeal

The State Protection Law 1975 allows any person against whom action is taken has the right of appeal while action is being taken.¹³⁰⁸ However, appeal can be made to the Cabinet regarding orders regulating restriction, arrest, detention or denial of rights laid down by the Central Board under this Law. The Cabinet can annul, alter or approve the order as may be necessary.¹³⁰⁹

3.10.2.8 Offences and Penalties

The State Protection Law 1975 gives details on cognizance of offences and penalties that any person against whom action is taken, who opposes, resists or disobeys any order passed under this Law shall be liable to imprisonment for a period of up to three years, or a fine of up to five thousand kyats, or to both.¹³¹⁰ However, the Law was amended in 1991 to increase maximum permissible terms of imprisonment from three to five years.¹³¹¹

3.11 Laws against corruption

Corruption is abuse or misuse of public power by state officials for private benefits.¹³¹² It causes a serious economic, social, political, and moral blight, especially in many emerging countries.¹³¹³ This multi-faceted problem has been viewed by the Myanmar authority as a serious threat to the Myanmar people as well as the business sector of the country. Corruption could prevent natural wealth such as that of extractive industries from

¹³⁰⁷ Section 2 of the Law (SLORC Law No. 11/91 dated 9 August 1991)

¹³⁰⁸ Article 19 of the State Protection Law 1975

¹³⁰⁹ Article 20 of the State Protection Law 1975

¹³¹⁰ Article 22 of the State Protection Law 1975

¹³¹¹ State Law and Order Restoration Council (SLORC) Notification No. 11/91, dated 9 August 1991.

¹³¹² Ivar Kolstad and Arne Wiig, 'Is Transparency the Key to Reducing Corruption on Resource-Rich Countries?' (2009) 37(3) World Development 521, 522

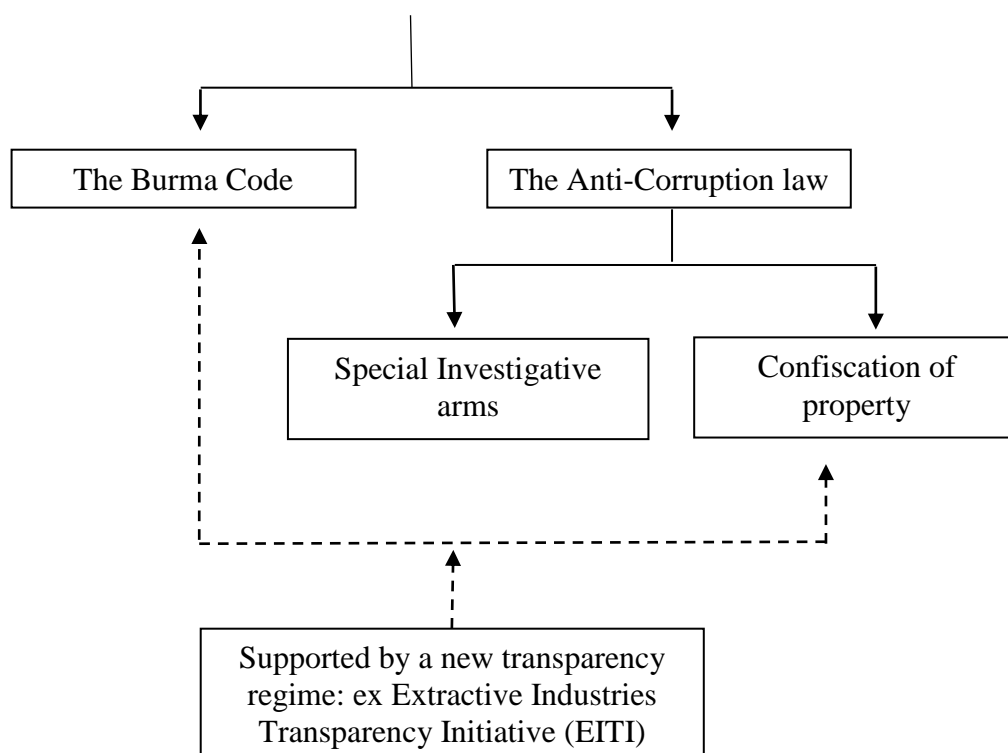
¹³¹³ Antonio Argandoña, 'The United Nations Convention Against Corruption and its Impact on International Companies' (2007) Journal of Business Ethics 74 481, 481.

reaching the people.¹³¹⁴ Acknowledging problems that could arise from corruption, the Myanmar legal system relies on the Penal Code (1861) and the Anti-Corruption Law (2012) to prevent and combat corruption. As illustrated by a table below, the Burma Code criminalises bribery and misappropriation of property by state officials. The Anti-Corruption law goes beyond mere criminalisation of bribery by forming the Bribery Eradication Commission as a key vehicle to tackle bribery. Moreover, it confiscates property due to becoming rich by bribery. Interestingly, going beyond criminal punishment, the Myanmar legal system relies on transparency and power of the people to prevent and combat corruption in the oil and gas industry.

Table: Overview of anti-corruption framework

Criminalisation of corruption:

Bribery and misappropriation of state property



¹³¹⁴ Nico Schrijver, *Sovereignty Over Natural Resources: Balancing Rights and Duties* (Cambridge University Press 2008) 308.

3.11.1 The Burma Penal Code (1861)

In Myanmar, anti-corruption offenses are basically recognised by the Myanmar Penal Code 1861. The law was enacted during the British colonisation era and has remained in force since then. It criminalises receipt of bribe and corruption facilitation. Moreover, it stipulates presumption of corruption. As regards misappropriation of property, there is provision in a section concerning criminal breach of trust.

3.11.1.1 Receipt of bribe

Regarding to Section 161 of the Burma Penal Code, receipt of a bribe is a criminal offence. It is a crime for a public servant or a person expecting to be a public servant to accept or obtain, or agree to accept, or attempt for himself or for any other person, any gratifications other than legal remuneration for official's performance or omission to perform his duty.

“**Section 161** states that Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or remuneration for doing or forbearing to do any official act or for showing or for bearing to show, in the exercise of his official functions, favor or disfavor to any person, or for rendering or attempting to render any service or disservice to any person with the Union Parliament or the Government or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”¹³¹⁵

3.11.1.2 Facilitating corruption

According to Section 162 of the Burma Penal Code, facilitating bribery is a criminal offence. It is a crime for any person to accept or obtain, or agree to accept, or attempt to obtain any gratification as a motive or remuneration for inducing, by corrupt or illegal means any public servant's performance, omission to performance of his

¹³¹⁵ Section 161 of the Burma Penal Code 1861

duty, or to render or attempt to render any service or disservice to any public official. Section 162 can be read as the following

Section 162 states that: “Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or remuneration for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favor or disfavor to any person, or to render or attempt to render any service or disservice to any person with the Union Parliament or the Government or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Apart from facilitating corruption by corrupt or illegal means, Section 163 of the Burma Penal Code criminalizes facilitating by exercising of personal influence. Section 163 can be read as the followings:

Section 163 states that: “Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or remuneration for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official function of showing favor or disfavor to any person, or to render or attempt to render any service or disservice to any person with the Union Parliament or the Government or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, with both.”¹³¹⁶

¹³¹⁶ Section 163 of the Burma Penal Code 1861

Apart from punishing a person facilitating corruption, the Burma Penal Code stipulates that a public servant abetting the offences as stipulated by Section 162 and 163 shall be punished. Section 164 states that:

“Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description of a term which may extend to three years, or with fine, or with both.”¹³¹⁷

3.11.1.3 Presumption of corruption

Regarding Section 165 of the Burma Penal Code, it is a crime for a public servant to demand, accept or agree to accept, for himself or any valuable object without consideration, or for consideration he knows to be inadequate, from any person he knows to have been, to be, or likely to be, involved in any proceeding or business transacted or about to be transacted by, or in connection with, such public servant. The Section can be read as the following

“Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”¹³¹⁸

¹³¹⁷ Section 164 of the Burma Penal Code 1861

¹³¹⁸ Section 165 of the Burma Penal Code 1861

3.11.1.4 Criminal breach of trust

Under the Burma Penal Code, misappropriation of property by state officials is categorised as criminal breach of trust. A person will commit a breach of trust when he or she is in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do.¹³¹⁹ Apart from this provision, there is a provision specifically concerning breach of trust by state officials as the following:

“Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”¹³²⁰

3.11.2 The Anti-Corruption law

3.11.2.1 Bribery under the Anti-Corruption law

However, the Myanmar legal system does not only rely on the Burma Penal Code to combat corruption, but also the Anti-Corruption law. These two laws do not contradict each other but operate alongside. Similar to Section 161 of the Burma Penal Code, Article 3 of the Anti-Corruption law defines “Bribery” and “Bribe” as the followings

(a) “Bribery” means the promising, offering or discussing or giving to an authorized official, directly or indirectly, of an undue advantage, for the

¹³¹⁹ Section 405 of the Burma Penal Code 1861

¹³²⁰ Section 409 of the Burma Penal Code 1861

official himself or another person or entity, in order that the official acts or refrains from acting in the exercise of his officials duties, in order to obtain or retain business or other undue advantage

(b) “Bribe” means the consideration or receiving without giving reasonable price, with the purpose of bribery or giving money, property, gifts, service fee, entertainment and other illegal benefits”¹³²¹

Length of imprisonment for bribery stipulated by the Anti-Corruption Law 23/2013 is longer than that of Section 161 of the Burma Penal Code. Article 55, 56, and 57 of the Anti-Corruption Law categorizes public servant into three groups. Each group will be imprisoned for different length of terms.

Section 55 states that: “If any Political Post Holder is convicted for committing bribery, he/she shall be punished with imprisonment for a term of not more than 15 years and with a fine.”

Section 56 states that: “Other than Political Post Holder, if any other Authorized Person is convicted for committing bribery he/she shall be punished with imprisonment for a term of not more than 10 years and with a fine.”

Section 57 states that: “Other than the Political Post Holder and the Authorized Person, if any person is convicted for committing bribery, he/she shall be punished with imprisonment for a term of not more than 7 years and with a fine.”

3.11.2.2 Institutional framework of anti-corruption regime

Both Penal Code and the Anti-Corruption law suggest that bribery is a criminal offence. However, the Anti-Corruption law forms special investigative arms for the purpose of bribery eradication. Questions then arise as to determine how these special

¹³²¹ Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013), Section 3 (a) and (b).

organizations perform their functions and how they can interact with the existing investigative arms such as the Police.

(1) The Bureau of Special Investigation and the Police

Under the Myanmar anti-corruption regime, the Bureau of Special Investigation (“BSI”) has played a vital role in investigating corruption. The BSI was originally created by the Nu Government in 1951 as the People's Property Protection Police. It had extensive investigative powers and operated under the guidance of a Special Investigations Administrative Board. The role of the BSI was mainly to investigate corruption among political leaders and government employees. As noted by Bo Maung, the Deputy Director of the Bureau of Special Investigation, the BSI investigates offences and upon completion of gathering of evidence, lodges requests in court to taking legal proceedings against the alleged culprits.¹³²²

Apart from the BSI, the Police Force is authorised to investigate corruption under the Code of Criminal Procedure.¹³²³ It was noted by San Win, the Director of the Union Attorney General’s Office, that the BSI is responsible for serious corruption cases and other corruption cases are referred to the Myanmar Police Force for investigation.¹³²⁴ If the case is not strong enough for filing before the court and it is necessary to take other action, such a case is referred to the government department concerned for taking departmental action.¹³²⁵

(2) The Bribery Eradication Commission

More recently the commission of bribery eradication was specially instituted under the Ant-Corruption Law to investigate bribery offences. The Commission is

¹³²² Bo Maung, ‘Myanmar and Anti-corruption’ (The United Nations Asia and Far East Institute, April 2014) <[http://www.unafei.or.jp/english/pdf /PDF_GG5_Seminar/GG5_Myanmar2.pdf](http://www.unafei.or.jp/english/pdf/PDF_GG5_Seminar/GG5_Myanmar2.pdf)> accessed 25 May 2015, 222.

¹³²³ Ibid.

¹³²⁴ Ibid.

¹³²⁵ Ibid.

charged with forming and assigning the duties of the Preliminary Scrutinising Team and the Investigation Team as necessary.¹³²⁶ It is responsible for receiving and scrutinising complaints, and rejecting those lacking any basis.¹³²⁷ Where a complaint is to be followed up, the Commission has to assign duties to the Investigation Team regarding entering into buildings, searching, and confiscating items as evidence in accordance with instructions.¹³²⁸ Upon receiving the investigation report or other substantive information, the Commission shall instruct the head of the Investigation Team or Chief Investigator to press charges at the court of relevant jurisdiction, if it is found that an accused person has committed the offence of bribery.¹³²⁹

3.11.2.3 Procedure under the Anti-Corruption law

Under the Anti-Corruption law, power to initiate the investigation is vested upon the Parliament. Firstly, the president or the Pyithu Hluttaw speaker or the Amyother Hluttaw speaker may assign the commission to investigate and submit relating to the bribery.¹³³⁰ Secondly, the Pyithu Hluttaw or Amyothar Hluttaw representatives may submit the proposal to the relevant Hluttaw under the law in connection with any political post holder who is becoming rich by bribery, misusing the power relating to the designation or committing bribery.¹³³¹ Thirdly, the relevant Hluttaw speaker is capable of informing the relevant commission about bribery and misusing of power.¹³³²

The person who is suffered by the bribery may send the information and the complaint according to the stipulations, to the commission or commission office or work committee, working team, preliminary scrutinizing team and any enquiry committee formed under this law or relevant government department, any organization in connection with the bribery or any authorized person is becoming rich by

¹³²⁶ Section 16 (a) of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³²⁷ Section 16 (l) of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³²⁸ Section 16 (m) of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³²⁹ Section 18 of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³³⁰ Section 43 (a) of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³³¹ Section 43 (b) of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³³² Section 43 (c) of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

bribery.¹³³³ Upon receiving the aforesaid complaint, the commission office, the work committee, the working team, the preliminary scrutinizing team and the enquiry committee or the relevant government department, any organization are required to take immediate actions.¹³³⁴

3.11.2.4 Property due to becoming rich by bribery

Under the Anti-Corruption Law, property due to becoming rich by bribery can be confiscated by the state. To confiscate this illegal wealth, the law requires the authorized person to declare his or her property. The Commission shall issue the notification after scrutinizing, for the list of the names of the authorized personnel who are responsible to declare, asking from the relevant department, organization in connection with the ownership of money, property, liability and assets.¹³³⁵ The authorized personnel who are responsible to declare under the aforesaid requirement, shall send the declaration to the commission once in a year the list of the family owned money, property, liability and assets of the same business headed by him, in accord with the stipulations.¹³³⁶ Details of the declaration are the followings

(a) The copy of the supporting document stating how they own their money, and properties

(b) The copy of the supporting document, if the properties are transferred and sold, and if they have paid for the income tax from the sale proceed and

(c) The list of money and property, liability and assets received from inland and abroad together with the ownership document for the money and property according to sub-section (a) and (b).¹³³⁷

If the authorized person who is responsible to send the declaration for the list of money, property, liability and assets, dies, his successor, legal

¹³³³ Section 44 of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³³⁴ Section 45 of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³³⁵ Section 47 of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³³⁶ Section 48 of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³³⁷ Section 49 of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

representative or trustee shall submit the declaration to the commission for the list of money and property owned by the deceased.¹³³⁸ If any authorized person is convicted of committing wilful default to submit the supporting document of money, property, liability and assets within the stipulated time prescribed by the commission under this law or submitting false document or concealing these data, he shall be punished with imprisonment for not more than 5 years and with a fine.¹³³⁹

The above declaration process allows the Commission to obtain necessary information about property due to becoming rich by bribery. The next step is to use this information. The commission shall assign the preliminary scrutinizing team to scrutinize and submit in connection with the money and property owned by any authorized person who becomes rich by bribery according to the enquiry report of the enquiry committee.¹³⁴⁰ The preliminary scrutinizing team shall submit to the commission about the finding on scrutinizing with opinion and remark whether the said money and property should be confiscated or not after acquiring the necessary evidences according to the law, assigned by the commission.¹³⁴¹ The commission, after scrutinizing that enquiry report submitted by the preliminary scrutinizing team:

(a) shall pass the order to be confiscated as state property for the said money and property, if it is the true evidence that they are obtained by the bribery

(b) shall return the said money and property to the authorized person, if he can show the evidence that he obtain them in compliance with the lawful mean.¹³⁴²

If it is found with evidence, the commission shall give back the confiscated money and property to other person, who acquire and transfer them legally in good faith, not to the accused.¹³⁴³

¹³³⁸ Section 50 of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³³⁹ Section 61 of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³⁴⁰ Section 51 of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³⁴¹ Section 52 of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³⁴² Section 53 of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

3.11.3 Extractive Industries Transparency Initiative (EITI)

The previous sections suggest that the criminal-based legal instruments, those relying on criminal punishment and formal enforcement mechanisms such as the Police and the Bribery Eradication Commission, are expected to serve as deterrence to bribery and misappropriation of state property. However, the Myanmar legal system goes beyond this criminal-based model and has accepted transparency as a tool to tackle corruption in the oil and gas industry alongside criminal laws. A good example in this respect is implementation of the Extractive Industries Transparency Initiative (EITI), which is a kind of soft law (กฎเกณฑ์หรือแบบแผนที่ไม่ได้มีผลผูกพันในทางกฎหมายโดยเคร่งครัด)¹³⁴⁴.

3.11.3.1 Historical background of the EITI in Myanmar

On the 16th of July 2012, U Soe Thein expressed the Myanmar government's intention to implement the EITI during a roundtable meeting with the EITI International Secretariat.¹³⁴⁵ After several statements made by both U Soe Thein and Thein Sein regarding EITI implementation in Myanmar, a formal commitment to become an EITI Candidate country was finally made in December 2012 through the Presidential Decree no. 99/2012.¹³⁴⁶ President Thein Sein made a substantial similar statement during his first visit to the United Kingdom at Chatham House on the 15th of July 2013, where he stated that:

“We are eager to become a signatory to the Extractive Industries Transparency Initiative, or EITI, to ensure maximum transparency as well as work to attract new investment and develop our natural resources. We wish to avoid the so-

¹³⁴³ Section 54 of Anti-Corruption Law Pyidaungsu Hluttaw, Law No. 23 (2013)

¹³⁴⁴ Piti Eiamchamroonlarp, ‘Combating corruption in the Petroleum Sector: Implementation of Extractive Industries Transparency Initiative (EITI)’ (2015) 4(2) Ramkhamhaeng Law Journal 33-70.

¹³⁴⁵ EITI, ‘Myanmar reaffirms intention to implement the EITI’ (EITI, 18 July 2012) <<https://eiti.org/news-events/myanmar-reaffirms-intention-implement-eiti>>accessed 26 June 2015.

¹³⁴⁶ Presidential Decree No.99/2012, Notification No 99/2012 (14 December 2012)

called ‘resource curse’ and make sure that revenue from our natural wealth is used to reduce poverty, not fuel corruption.”¹³⁴⁷

In December 2013, President Thein Sein gave a similar statement as the one given in London during a meeting with Clare Short of the EITI International, indicating that EITI implementation would be a tangible benefit of ongoing political and economic reforms

“We want to use the EITI to ensure that resources are developed and managed in a transparent manner for the sustainable benefit of our people. Political and economic reforms are an important part of the democratisation process. Becoming a member of the EITI will be a tangible result of these reforms.”

¹³⁴⁸

Eventually, Myanmar was admitted as an EITI Candidate country by the EITI Board on the 2nd of July 2014.¹³⁴⁹ In accordance with the EITI Standard, Myanmar is required to publish its first EITI Report within 18 months of becoming a Candidate and to be validated within two and half years of becoming a Candidate.¹³⁵⁰ In the light of these Requirements, the EITI Board indicated in its decision that Myanmar is required to publish its first Report by the 2nd of January 2016 and to be validated by the 2nd of January 2017.¹³⁵¹

¹³⁴⁷ Thein Sein, ‘Myanmar’s Complex Transformation: Prospects and Challenges’ (Chatham House, 15 July 2013) <<http://www.chathamhouse.org/sites/files/chathamhouse/public/Meetings/Meeting%20Transcripts/150713Sein.pdf>> accessed 26 June 2015, 3.

¹³⁴⁸ EITI, ‘Myanmar reaffirms intention to implement the EITI’ (EITI, 18 July 2012) <<https://eiti.org/news-events/myanmar-reaffirms-intention-implement-eiti>> accessed 26 June 2015.

¹³⁴⁹ EITI, ‘Myanmar admitted as EITI Candidate’ (EITI, 2 July 2014) <<https://eiti.org/news/myanmar-admitted-eiti-candidate>> accessed 17 July 2015.

¹³⁵⁰ Ibid.

¹³⁵¹ Ibid.

3.11.3.2 Aims and functions of the EITI

The EITI report-making process consists of an independent auditor collecting, for a given period, government data on payments from extractive industry companies.¹³⁵² On the other hand, the independent auditor is responsible for collecting company data on payments to government during the same period.¹³⁵³ In other words, the host government and operating companies are required to report disaggregated details of revenues and payments respectively to the auditor.¹³⁵⁴ The outcome of this process is an EITI report which is expected to facilitate dialogue about the management of natural resources.¹³⁵⁵ For example, if a discrepancy is identified and there is no convincing reason in the report, CSOs and the public can ask the relevant questions.¹³⁵⁶

Table: EITI report-making process		
Steps	Activities	Oversighting by the MSG
Data collection	Extractive corporations disclose their payments and the government discloses receipts of revenues to an Independent administrator.	The MSG appoints an Independent administrator.
Reconciling process	An Independent administrator reconciles the payments.	<ul style="list-style-type: none"> - The MSG reviews the draft EITI Report. - The MSG approves and publishes the final EITI Report.
Production of the report	Including the information as required by the EITI Requirements.	

¹³⁵² Christopher Gilbert Sheldon et al., *Innovative Approaches for Multi-Stakeholder Engagement in the Extractive Industries* (The World Bank 2013) 26.

¹³⁵³ Ibid.

¹³⁵⁴ Anwar Ravat and Sridar P Kannan (eds), *Implementing EITI for Impact: A Handbook for Policy Makers and Stakeholders* (The World Bank 2012) 63.

¹³⁵⁵ Clare Short, 'The development of the Extractive Industries Transparency Initiative' (2014) 7(1) JWELB 1, 13.

¹³⁵⁶ Sheldon et al. (n1352) 26.

Table: EITI report-making process		
Steps	Activities	Oversighting by the MSG
Usage	The public of an EITI-implementing country including individuals and CSOs are expected to use the EITI Report to hold the government accountable.	The MSG must ensure that the EITI Report is comprehensible, actively promoted, and publicly accessible and contributes to public debate.

As illustrated by the above table, the outcome of the EITI process is an EITI report. This report is expected to play an influential role in facilitating public debate over natural resource management.¹³⁵⁷ Being provided with revenue information, the people and civil society groups can work to municipal a democratic debate over the effective use and allocation of oil and gas revenues and public finance in order to meet development objectives, improve public services, and redistribute income.¹³⁵⁸ Where no convincing explanation for a discrepancy between receipts and payments can be found, the people would demand that the government explain.¹³⁵⁹ Moreover, this more transparent environment would make it more difficult for governmental officials to mismanage and take personal advantages from oil and gas revenues.¹³⁶⁰

3.11.3.3 Interaction between the EITI and the existing criminal-based regime

It could be said that the EITI, its transparency regime, and the informed public could contribute to combating bribery and oil and gas revenue misappropriation in Myanmar. They are not, of course, capable of directly criminalising or

¹³⁵⁷ EITI, 'Myanmar reaffirms intention to implement the EITI' (EITI, January 2012) <<https://eiti.org/news-events/myanmar-reaffirms-intention-implement-eiti>>accessed 26 June 2015.

¹³⁵⁸ Virginia Haufler, 'Disclosure as Governance: The Extractive Industries Transparency Initiative and Resource Management in the Developing World' (2010) 10(3) Global Environmental Politics 53, 59.

¹³⁵⁹ Sheldon et al. (n1352) 26.

¹³⁶⁰ Alexandra Gillies, 'Reputational Concerns and the Emerge of Oil Sector Transparency as an International Norm' (2010) 54(1) International Studies Quarterly 103, 103.

punishing corrupt state officials, but they can play a role in deterring corrupt practices and in identifying these practices. Transparency instruments do not rely on the court-imposed penalties because the power of deterrence could come from the people.¹³⁶¹ Broadly speaking, the public could also play investigative and judging roles alongside the formal state institutions such as the BSI, the Police Force, the Bribery Eradication Commission, and the Court. The widespread availability of information, especially on the internet, could act as a force for good, both revealing dubious activities and making it more difficult to hide such activities in the first place.

Table: Supportive relationship of the Myanmar anti-corruption regime and the EITI		
Issues	Criminal-based instruments	The EITI
Legally-binding effects	Yes	No
Functions	Criminalisation and criminal punishments	Promoting availability of information
Investigative arms	The BSI, the Police Force, and the Bribery Eradication Commission	Technology and the internet
Judge	The court	The public
Results	Criminal sanction	Democratic debates
Interactions	Punishing the identified corrupt practices	Identifying corrupt practices

However, as highlighted by the last row of the above table, the EITI and its transparency regime cannot replace the criminal law instruments, but rather can work in conjunction with them. For transparency-based legal instruments to work effectively,

¹³⁶¹ Paul Collier, 'Laws and Codes for the Resource Curse' (2008) 11 Yale Hum. Rts. & Dev. L.J. 9, 27.

criminal sanctions in the context of a robust legal regime are crucial. Despite promoting a system of accountability, transparency does not axiomatically constitute accountability.¹³⁶² In order to accomplish accountability, transparent information should facilitate both formal and informal enforcement of the law and sanction of wrongdoing.¹³⁶³ If the EITI report finally leads to exposure of oil and gas revenue misappropriation but the legal system is unable to punish a wrongdoer, the EITI report would play no stronger role than allowing the Myanmar people to witness their government illegally gaining interest at their expense.

¹³⁶² Ian Gary and Nikki Reisch, 'Chad's Oil: Miracle or Mirage' (Catholic Relief Services and Bank Information Center, 1 February 2005) <www.bicusa.org/proxy/Document.9546.aspx> accessed 23 September 2015, 90.

¹³⁶³ Ibid.

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