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Contents

Section (i) Economics

<u>Sr. No.</u>	<u>Title</u>	<u>Page</u>
1	Phway Phway Aung¹ , *The Determinants of Growth on Rice Mills in Shwebo District	1
2	Sandar Aye , Customer Retention of Supermarkets in Mandalay	25
3	Myint Myint Naing , Relationship Marketing Tactics and Customer Loyalty of Restaurants in Mandalay	49
4	Yin Maw Myint , The Export Performance of Myanmar Garment Industry	75
5	Kyaing Kyaing Thet , Health and Development of ASEAN Countries	101
6	Khin Thida Nyein , Gender Inequalities and Economic Growth of Selected Countries	119
7	Aye Thu Htun , *Service Quality of Private Hotels in Mandalay	131
8	San San Myint , A Study on the Relationship between Specific Job Factor Satisfaction and Customer Perceptions of Service Quality: A Case Study of Myanmar Private Banking Industry	147
9	Than Than Soe , *An Analysis on Township Development Organization's Budget in Mandalay Region	175

Section (ii) Law

<u>Sr. No.</u>	<u>Title</u>	<u>Page</u>
1	Nan Kham Mai , *Analytical Study on the Legality of Multi-Level-Marketing	191
2	Moe Phyu Htun , Legal Protection on Prison Officials and Prisoners in Myanmar	207
3	Yin Yin Lae , Public Service Broadcastings as Reliable Sources for Human Right in Myanmar	227
4	Thu Zar Myint , Legal Protection against Domestic Violence in Myanmar	245
5	Me Me Linn , Practical Issues of Condominium Market in Myanmar	267
6	Tin Myo Myo Swe , Cultural Heritage Protection In Myanmar	289
7	Po Po Maung , Legal Framework on Sustainable Use of Rivers in Myanmar	303
8	NLam Roi Ja , The Protection Right of Foreign Investor in Myanmar	323
9	Khin HninnWint Kyaw , Specific Performance of International Sale Contract: English Law, Myanmar Law and CISG	339
10	Khin Thinn Thinn Oo , Protection of Product Designs: Trade Dress Approach	357
11	Myint Swe , General Exceptions Relating to the Act Done by a Person Bound by Law	377
12	Khine Wai Lin , Copyright Exception for Librarians	395

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THE DETERMINANTS OF GROWTH ON RICE MILLS IN SHWEBO DISTRICT*

Phway Phway Aung¹

Abstract

The objectives of this study are to identify the external and internal factors influencing the growth of the rice mills in Shwebo District, and to explore the main determinants on this growth. The growth is measured by the output (tons) and assets value. In external factors, government policy, competition, access to finance, financial support and irrigation support influence the growth of rice mills. With regards to internal factors, management experience, location, business plan and employee training are main influencing factors. It is found that the role of government is crucial for setting policy and providing supports for the development of rice mills. Government should use financial transparency to improve information asymmetry between millers and commercial banks and should initiate to provide supporting programs like modern technologies, better water management and road connectivity, access to electricity and affordable credit. For financial institutions, collateral restrictions should be relieved for rice millers. They should expand the type of assets as collateral, including movable and non-movable assets. They should promote financial services to these firms. The owners/managers should attempt to obtain the relevant knowledge and management competency and should also consider importance of demographic characteristics, supply chain, competition and local tax rate in setting up their mills. They need to apply niche differentiation strategy relevant with the nature of firms. They should keep and use financial data to make business decisions and take advice from experts for the survival of their business.

Keywords: determinants on growth, external and internal factors

Introduction

Agricultural sector is the backbone of Myanmar economy. Myanmar government has set up long-term plans and strategies to construct many dams, reservoirs, canals and river water-pumps to contribute adequate water supply for cultivation of all regions, especially for the dry zones in summer and this adequacy of water supply can help promote agricultural productivity. The

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growth of these firms is essential for an agro-based economy. But until now, there are many limitations and obstacles in this sector.

Among the agricultural products, rice is the most important cereal and main crop for domestic consumption. Traditionally, rice mills are mostly located in Lower Myanmar. Now paddy cultivation is expanding in Shwebo District of Sagaing Region through acquiring more water resource from the emergence of Thaphanseik and Karbo dams. As there is more paddy cultivation and increasing rice production, new rice mills were established in that area. In 2014, there were 152 registered rice mills in this area. Thus, the rice milling sector in this district is prominent for rice trading.

In fact, Myanmar rice milling sector is not in a favorable condition to meet the international standard as the quality of rice of Myanmar is still lower than that of other rice exporting countries such as Thailand, Vietnam, Pakistan and Cambodia. Great competition among those rice exporting countries and ever rising demands of quality of rice by world rice market including food safety put pressures on Myanmar rice industries. Therefore, to upgrade the milling sector is vital for the country. Upgrading this sector requires long-term credits from the government, technical and managerial knowhow and reliable electricity supply with low cost.

Rationale of the Study

Rice is designated as the national crop of Myanmar. Regarding foreign exports, the quality of rice is critical and for that reason, the rice milling sector plays a pivotal role. The more modernized and more advanced the mills are, the better the quality of rice, and for this, the price will be higher. Due to lack of modern machines and technology, the small traditional rice mills cannot produce good quality products in large scale and also create large amount of wastage. Political stability also remains as a problem on rice exportation even though many barriers on agricultural trade are recently abolished. Shwebo District has many advantages in rice industry more than other regions. These include the availability of raw materials, cheap labor, wide location, and smooth transportation with low cost. However, they still have problems and limitations by insufficient infrastructures mainly electricity supply, financial support and skills of workers.

Many researchers have conducted studies and surveys on rice milling sector in previous years. To the best of the present researcher's knowledge, they have identified the opportunities and barriers for the milling industry. But no research has been conducted on the influencing factors on the development of milling firms. And also the historical background of rice milling in the region did not mention in their studies. Thus, this study emphasizes on the determinants influencing the growth of the rice milling industry.

Objectives of the Study

The specific objectives of this study are:

- (1) To identify the external factors influencing the growth of the rice mills in Shwebo District,
- (2) To identify the internal factors influencing the growth of the rice mills in Shwebo District, and
- (3) To explore the determinants on the growth of the rice mills in Shwebo District.

Research Methodology

Regarding the research methodology, descriptive and exploratory methods are used in this study. Moreover, both primary and secondary data were used in this research. The data are collected from face-to-face interviews with owners/ managers using structured questionnaires. The survey instruments were composed of force-choice question and Likert scales. Some of the internal factors were obtained from using dummy variables: Yes or No questions. Based on the primary data, pair comparison T test and Backward Multiple Regression Analysis are applied to determine the important determinants of growth of output and assets of rice mills.

In Shwebo District, there are 152 registered industries in 2014. However, out of 152 mills, only 103 mills are currently in operation. Then, among these 103 running mills, only 98 rice mills have begun their operations either in or after 2007. For this study, 98 rice mills are selected to be observed to acquire the required information.

Definition of Rice Mills

Rice milling sector represents a major industry in Myanmar. Rice milling in the country is carried out in three categories: large-sized, medium-sized and small-sized rice mills through the milling capacity among the mills. Most of the rice mills are SMEs in terms of their capacity. In this study, the rice mills are defined as SMEs in accordance with Myanmar SMEs criteria. SMEs definition drafted by the SME Development Center in 2013 February is based only on two dimensions – employee and capital (without land value). This definition is separated for manufacturing and service sector. In manufacturing sector, the firms which have less than 100 employees and with an investment of 300 million kyat in capital (excluding land value) are included in small-sized firms group. Then, the firms which have 100 to 300 workers and have 300-2000 million (kyat) in firms' investment are defined as medium-sized enterprises. In accordance with this definition, the registered rice mills in Shwebo District still stand as SMEs in terms of capital and employees.

Factors Affecting on Growth of the Firms

There are many factors on the growth of the firms. The internal factors determine the success of the firm in the market structure whereas the external factors account for the additional determinants in affecting the firm's growth potential.

a. Internal Factors Affecting on Growth of the Firms

With reference to the review of recent SME growth literature, company growth is clearly influenced by a wide range of factors. Some of these are internal, and within the competence of owners/ managers to control or at least influence. The others, such as economic factors, are external to the firm and beyond the control of owners/ managers. Storey (1994) has extended this broad view of internal influences on company growth. He concluded that the growth process in small firms was driven by a combination of the three basic components. These are:

1. The characteristics of the entrepreneurs/owners/ managers
2. The characteristics of the small firm
3. The range of business development strategies associated with growth.

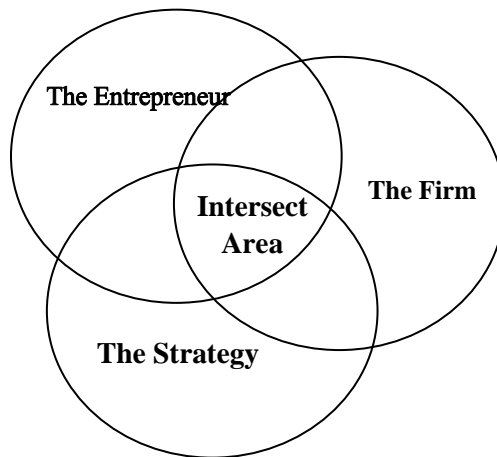


Figure 1: Storey's Small Business Growth Framework

Source: Storey D.J (1994). *Understanding the Small Business Sector*. London: Routledge Press.

The basic three components act as internal factors affecting the growth of small firms directly with the influence of the external factors. All internal factors need to combine appropriately in order for the firm to achieve rapid growth. The inner part of the intersecting area demonstrates the combination of the three factors that determine rapid business growth. Storey (1994) measured the growth of small firms by using various factors shown in the following Table 1 with a combination of three basic components

Table 1: Storey's Internal Growth Process - Factors Influencing Growth

Characteristics of Entrepreneur	Nature of Firm	Business Strategy
1. Motivation	1. Age	1. Workforce training
2. Unemployment	2. Sector	2. Management training
3. Education	3. Legal form	3. External equity
4. Management experience	4. Location	4. Technological sophistication
5. Number of founders	5. Size	5. Market positioning
6. Prior self-employment	6. Ownership	6. Market adjustment
7. Family background		7. Planning
8. Social marginality		8. New product
9. Functional skills		9. Management recruitment
10. Training		10. State support
11. Age		11. Customer concentration
12. Prior business failure		12. Competition
13. Prior sector experience		13. Information and advice
14. Prior firm size experience		14. Exporting
15. Gender		

Source: Storey D.J (1994). *Understanding the Small Business Sector*. London: Routledge

Storey summarized the individual elements which other researchers have shown through various surveys to have had an impact upon firm growth. Storey's comprehensive summary of the literature to outline the conceptual framework is adopted in this research. It should be noted that Storey's criterion for including a study in his review was that they might have used quantitative (preferably multivariate) analysis.

In this study of rice mills, the research model is derived from Storey's internal growth process. The relevant determinants of this study are chosen from this growth process. For the characteristics of owners/ managers, the determinants are used to test as influencing factors. In the nature of the firm, the age, size and legal form of the firms are tested as independent variables that affect the dependent variable (growth). From the point of view of firm strategies, the independent variables are business planning, marketing strategy, technological sophistication, employee training, new product or process innovation and exporting.

b. External Factors Affecting on Growth of the Firms

Businesses are affected by external environment that cannot be controlled such as political, economic, social, legal, technological, and environmental factors. These factors can rarely be affected by management decisions because they are external factors beyond the control of SMEs (Morrison (2006)).

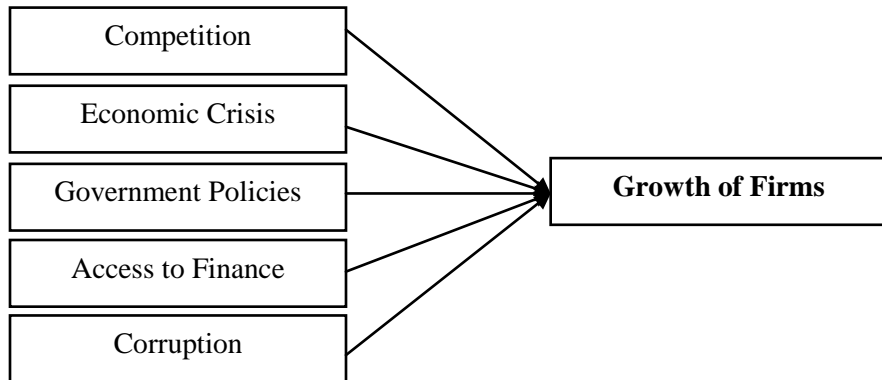


Figure 2: Morrison's External Factors Affecting on Growth of the Firms

Source: Morrison, J., (2006). *International Business Environment*: New York: Palgrave MacMillan.

Among the main external factors that affect the development and growth of SMEs are access to finance, and not neglecting here the other factors such as corruption, competition, government policies etc. Lack of capital from financial resources was a major barrier of SMEs. Also, SMEs in developing countries have difficulties in accessing bank loans as a consequence to the high risk for failing loans, low profitability and lack of collateral required by bank.

Measurement of Growth Rate

From the perspective of growth measurement, the firm growth measure is heterogeneous. Some studies measure growth by absolute sales growth over a period whereas other studies measure growth by relative employment growth over a period of time. The difference of measures of growth is mostly due to the purpose of the research as well as its perspectives.

Most previous researchers pointed out the growth of SMEs by measuring sales growth because it is not too difficult for researchers who would like to assess the data of the firm in comparison with other indicators.

Based on extensive reviews of the literature, Delmar (2003), Storey (1994) and Davidsson *et al.* (2006) list a range of growth indicators, which were used to measure growth, including assets, employment, market share, physical output, profits, sales, etc. There are three choices of indicators among the above alternatives:

- (1) Using a multiple indicator index,
- (2) Using alternative measures separately, and
- (3) Using the best and most appropriate indicator (Davidsson *et al.*, 2006).

The underlying theory for using a multiple indicator index (e.g., assets, employment sales and others) is that the same explanatory factors that facilitate or hinder growth across firms, but that this growth for some firms consists of only radically increased sales turnover without much change in assets or employment, whereas for other types of firms the result is a moderate and balanced growth across assets, employment and sales.

To use alternative measures separately, the underlying theory predicts that certain predictors would be related to growth in sales and market share, for example, whereas other predictors are regarded as influencing growth in employment and profits, respectively. If so, an appropriate approach is to include and analyze different growth indicators separately based on the different predictors (Davidsson *et al.*, 2006). The third choice would be to confine the study to only the growth indicator that is best matched with the proposed theory. This trend seems to receive an emerging consensus.

The most preferred indicator should be sales growth because it is not too difficult for researchers who want to assess the data of the firm in comparison with other indicators. The information on the sales of a firm is always in the financial statements of all firms. It is the most basic information that a firm could announce to the concerned people and organizations.

The next most popular indicator is employment growth, which represents 29.1 percent of the reviewed studies by Delmar *et al.* (2003). The indicator of employment growth is often applied to some purpose such as

policy makers' interest in fostering employment growth through entrepreneurship and for reasons of data availability.

The other indicators are less generally used or they are only applied in particularly narrow situations. The market share indicator may not clear differences in market share and may be not relevant for small firms, and comparing shares of firms operating in different markets may be not appropriate. The value of assets depends on the capital intensity of industries and it is difficult to assess knowledge assets. Physical output is not easy to be compared across industries. They reflect many other aspects of a firm and its size. Besides, it is perfectly possible for a large and/or growing firm to be unprofitable.

Therefore, in this study, the growth of rice mills is measured by using two growth measurements: assets growth and physical output (tons) growth during the selected duration because the growth cannot be easily measured by only one indicator.

Conceptual Framework

The 'determinants of growth' is a term for the purpose of this study to represent a range of possible positive or negative elements that, in isolation or in combination with other identifiable elements, may lead to the growth of a firm. In this study, the growth of rice mills is measured by using assets growth and physical output growth during the selected duration. This research has two main foci. The first part deals with internal and the second one deals with external growth factors. The empirical work has concentrated mainly on the investigation of effects of certain factors on growth of rice mills in Shwebo District. The analytical framework for this study is shown in Figure 3.

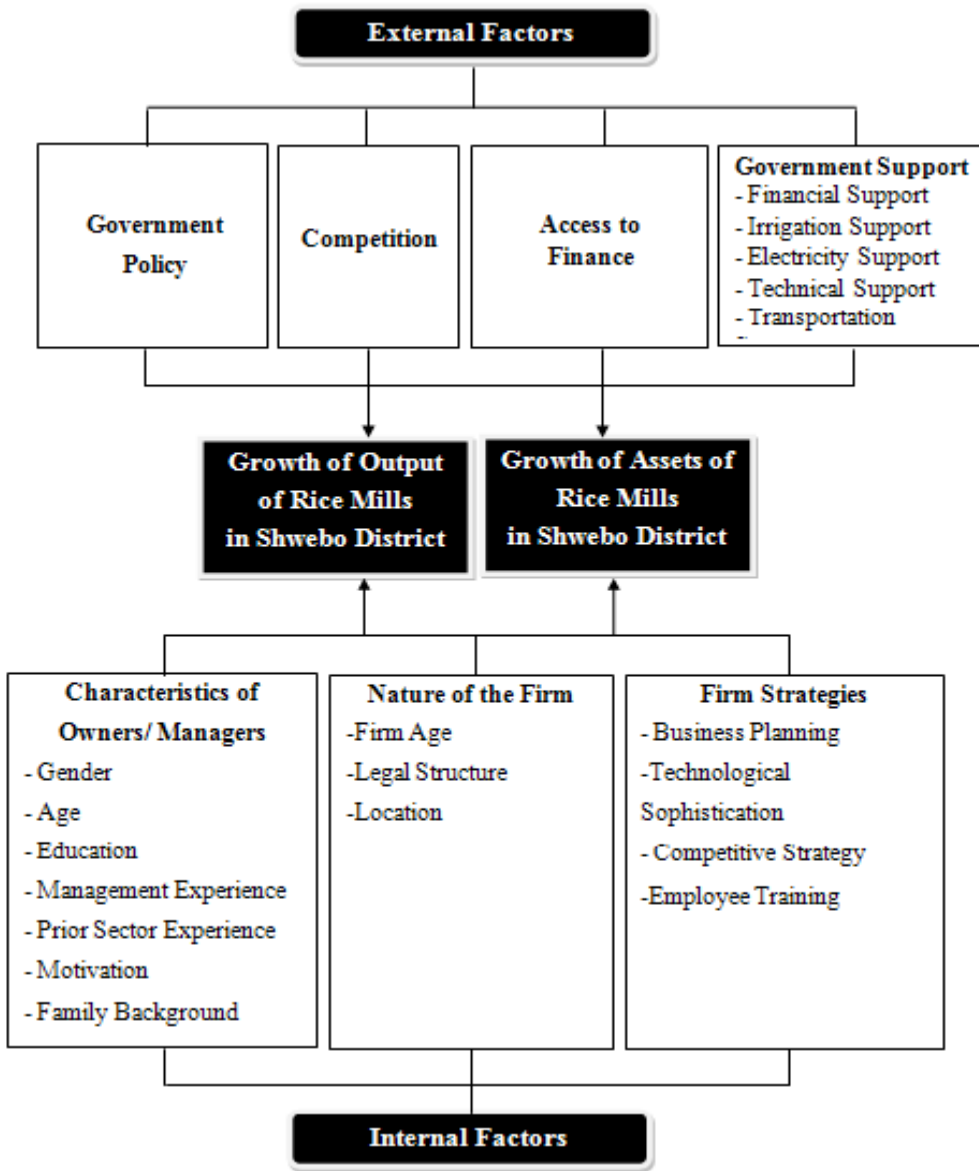


Figure 3: Analytical Framework of the Study

Source: Own Compilation based on Previous Studies

Based on this comprehensive review of the literature, the framework of growth on rice mills in this study identified four key variables which were examined to assess their relative impact on small firm growth: characteristics of the owner-manger, the nature of the firm, the firm strategies and the external factors, and the study examined their relationship with firm growth. Among growth measurement, physical output and asset absolute value are used as dependent variables in this study.

Results/Finding

Effects of Rice Policy Changes on Growth of Output

In analyzing of the effects of rice policy change, the output tons of rice mills in Shwebo District are firstly used. This measurement is more reliable than assets because of the change in monetary exchange rate.

Table 2: Testing on Growth of Output

	t	df	Significant P-value
Output (2010)- Output (2009)	1.66	97	.101
Output (2011)- Output (2010)	3.49 ***	97	.001
Output (2012)- Output (2011)	-.147	97	.883

Source: SPSS Output

Notes: ** indicates that 't' is significant at 5% level,

*** indicates that 't' is significant at 1% level.

In 2010 and 2011, the calculated "t" value is significant at 1% level and the sign is positive. According to these results, the output growth of rice mills in Shwebo District is influenced by the effect of policy change in 2011. The calculated "t" value is not significant in comparing 2009 and 2010. Therefore it can be concluded that the output of 2010 is not appreciable in comparing with the output of 2009. Then, the output in 2012 is not substantial in comparing with the output in 2011 because the output tons decrease in 2012. In 2012, the production area decrease in Shwebo District as farmers shift their cultivation preferences to beans and pulses during the dry season and others exit farming due to prevailing low prices.

Effect of Rice Policy Changes on Growth of Assets

The effect of rice policy change is analyzed by using the value of assets invested by rice mills in Shwebo District.

Table 3: Testing on Growth of Asset

	t	df	Significant P-value
Assets (2010) - Assets (2009)	1.861	97	.066
Assets (2011) - Assets (2010)	9.112***	97	.000
Assets (2012) - Assets (2011)	8.427***	97	.000

Source: SPSS Output

Notes: ** indicates that 't' is significant at 5% level,

*** indicates that 't' is significant at 1% level.

The calculated "t" value of 2009 and 2010 is not significant. Therefore it can be concluded that the value of assets in 2010 is not significant in comparing with the assets of 2009. In 2011 which is one of the years of policy change, the calculated "t" value is significant at 1% level and the sign is positive; so it can be concluded that the assets value in 2011 is greater than these in 2010. In comparing 2011 with 2012, the calculated "t" value is also significant at 1% level. According to these results, the assets growth of rice mills in Shwebo District is influenced by the effect of policy change in 2011.

Analysis on External Influencing Factors on Growth of Rice Mills

In analyzing the external influencing factors, the government policy, competition, access to finance, and government supports are used as independent factors. Among many varieties of supports, the financial support, irrigation support, technical support, electricity support and transportation support are mainly measured in this study. The following multiple regression model is employed.

$$G_t = \beta_0 + \beta_1 PE_t + \beta_2 C_t + \beta_3 AF_t + \beta_4 FS_t + \beta_5 IS_t + \beta_6 TS_t + \beta_7 ES_t + \beta_8 TrS_t + \varepsilon_t \text{-----}(1)$$

where, G_t = the growth of the rice mills,

PE_t = Policy effect on rice mills,

C_t = Competition of rice mills,

AF_t = Access to Finance of the rice mills,
 FS_t = Financial Support of the rice mills,
 IS_t = Irrigation Support of the rice mills,
 TS_t = Technical Support of the rice mills,
 ES_t = Electricity Support of the rice mills,
 TrS_t = Transportation Support of the rice mills , and
 ε_i = random error term.

This model is estimated by using the backward methods. The growth of rice mills is measured by physical output and assets between 2007 and 2014, as dependent variables. The independent variables are analyzed as the influencing factors on the growth on rice mills.

(a) External Influencing Factors on Growth of Output

In analyzing the external influencing factors on the growth in physical output, the growth is measured by tons per year in 2007 and 2014. In the Backward Multiple Linear Regression Model, the growth in physical output of the selected rice mills is considered as dependent variables and the external influencing factors are considered as independent variables.

Table 4: Effects of External Factors on Growth of Output

	Unstandardized Coefficient		Standardized Coefficients	Calculate d 't' value	Sig P-value
	B	Std. Error	Beta		
1 (Constant)	-168.46***	29.31		-5.75	.000
Policy Effect	22.65***	7.36	.359	3.18	.002
Competition	14.51**	7.12	.193	1.97	.052
Access to Finance	32.71***	8.54	.421	3.83	.000
Financial Support	16.02**	8.18	.183	1.96	.053
Irrigation Support	18.32**	9.01	.197	2.03	.045
Technical Support	18.13**	8.62	.226	2.10	.038

Source: SPSS Output

Notes: ** indicates that 't' is significant at 5% level and
 *** indicates that 't' is significant at 1% level.

When the results are calculated by using the backward method, the best filled estimated multiple linear regression model is

$$\widehat{GO}_t = -166.46 + 22.65 PE_t + 14.51 C_t + 32.71 AF_t + 16.02 FS_t + 18.32 IS_t + 18.13 TS_t$$

According to estimated results, the firms' growth depends on competition, policy effect, access to finance, financial support, irrigation support and technical support on rice mills at 1% and 5% significant level respectively. It can be concluded that the more there are competition, policy effect, access to finance and other supports, the more there will be growth of rice mills in Shwebo District.

(b) External Influencing Factors on Growth of Assets

For the external influencing factors on the growth of assets, the growth is measured by current value of fixed assets in 2007 and 2014. The growth of assets of the selected rice mills is considered as dependent variables and the external influencing factors are considered as independent variables.

Table 5: Effects of External Factors on Growth of Assets

	Unstandardized Coefficient		Standardized Coefficients	Calculated 't' value	Sig P-value
	B	Std. Error	Beta		
1 (Constant)	-92153834.04***	11016978.00		-8.365	.000
Policy Effect	8992310.614***	2101994.741	.256	4.278	.000
Competition	5267312.487**	2243119.634	.140	2.348	.021
Access to Finance	5932581.248**	2683816.786	.134	2.211	.030
Technical Support	7608770.092***	2502947.519	.211	3.040	.003
Irrigation Support	6664694.383***	2135332.722	.185	3.121	.002
Financial Support	9290752.792***	2861864.480	.257	3.246	.002

Source: SPSS Output

Notes:** indicates that 't' is significant at 5% level and *** indicates that 't' is significant at 1% level.

When the results are calculated by using the backward method, the best filled estimated multiple linear regression model is

$$\widehat{GA}_t = -92153834.04 + 8992310.614 PE_t + 5267312.487 C_t + 5932581.248 AF_t + 7608770.092 TS_t + 6664694.383 IS_t + 9290752.792 FS_t$$

In accordance with the results, the firms' growth of assets depends on the policy effect, competition, access to finance, technical support, irrigation support and financial support of rice because they are significant at 1% and 5% level respectively.

Analysis on Internal Influencing Factors on Growth of Rice Mills

In analyzing the internal influencing factors on the growth of rice mills in Shwebo District, the growth in physical output and assets of the selected rice mills are also assumed as dependent variables. The factors of the characteristics of owners/ managers, the natures of the firms and the business strategies are assumed as the independent variables. To examine the possible relationships of these variables to growth, the following multiple regression model will be employed.

$$G_t = \beta_0 + \beta_1 G + \beta_2 A + \beta_3 EL + \beta_4 PSE + \beta_5 ME + \beta_6 M + \beta_7 FB + \beta_8 FA + \beta_9 LS + \beta_{10} L + \beta_{11} BP + \beta_{12} CS + \beta_{13} ET + \beta_{14} TS + \varepsilon_i \text{ ----- (2)}$$

- where,
- G_t = the growth of the rice mills,
 - G = Gender,
 - A = Age,
 - EL = Educational Level,
 - PSE = Prior Sector Experience,
 - ME = Management Experience,
 - M = Motivation,
 - FB = Family Background,
 - FA = Firm Age,
 - LS = Legal Structure,
 - L = Location,
 - BP = Business Planning,
 - CS = Competitive Strategies,
 - TS = Technology Sophistication,
 - ET = Employee Training and
 - ε_i = Random error term and ε_i follows normal distribution with mean zero and constant variance σ_ε^2 .

In analyzing the main determinants on the growth of rice mills in Shwebo District, the dependent and independent variables are measured by using regression analysis. The physical outputs and assets of these firms are measured between 2007 and 2014, as the dependent variables and the regression model runs separately in terms of dependent variables.

(a) Internal Influencing Factors on Growth of Output

The growth in physical output of rice mills is measured by tons per year in 2007 and 2014. The growth of output of the firms is considered as dependent variables and the influencing factors are considered as independent variables. The backward multiple linear regression model is used to explain the relationship between the growth of output of the rice mills and their internal influencing factors. When investigating the significant factors, the calculated 't' value for each coefficient is examined.

Table 6: Effects of Internal Factors on Growth of Output

	Unstandardized Coefficients		Standardized Coefficients	Calculated 't' value	Sig P-value
	B	Std. Error	Beta		
(Constant)	64.745***	11.712		5.528	.000
Management Experience	87.632***	12.611	.562	6.949	.000
Location	29.046**	11.309	.208	2.568	.012

Source: SPSS Output

Notes: ** indicates that 't' is significant at 5% level and*** indicates that 't' is significant at 1% level.

When the results are calculated by using the backward method, the best estimated multiple linear regression model is

$$\widehat{GO}_t = 64.745 + 87.632 ME_t + 29.046 L_t$$

According to the above table, management experience is significant at 1% significant level. The management experience is the skills and competencies needed for successful entrepreneurship as being forecasting and decision making under conditions of uncertainty. Furthermore, location is the influencing factor on the growth of rice mills in Shwebo District at 5% significant level. It can be found that Shwebo and Kantbalu Townships are

more developed and the water supplement is better than that of other townships.

(b) Internal Influencing Factors on Growth of Assets

For the growth of assets of rice mills, the values included current values of fixed assets such as machines, buildings, warehouses, engines, transformers, motor vehicles and others, except land. Current assets such as paddy, debtors and prepaid expenses are excluded in identifying the assets value. The assets value of rice mills is measured by current value in 2007 and 2014. In the multiple-linear regression model, the growth of assets of the firms is considered as dependent variable and the influencing factors are considered as independent variables.

Table 7: Effects of Internal Factors on Growth of Assets

	Unstandardized Coefficients		Standardized Coefficients	Calculated 't' value	Sig P-value
	B	Std. Error	Beta		
(Constant)	27294117.6***	8360649.7		3.265	0.002
Management Experience	37227451***	5799343.4	.524	6.419	0.000
Location	10856862.7**	4870707.7	.170	2.229	0.028
Employee Training	24098039.2**	9429395.1	.206	2.556	0.012

Source: SPSS Output

Notes: ** indicates that 't' is significant at 5% level and *** indicates that 't' is significant at 1% level.

When the results are calculated by using the Backward Method, the best estimated Multiple Linear Regression Model is

$$\widehat{GA}_t = 27294117.6 + 37227451 ME_t + 10856862.7 L_t + 24098039.2 EIT_t$$

According to the results, management experience is significant at 1% significant level. It can be found that the owners who have more management experience will attain growth of the firms. Furthermore, location is the influencing factor on the growth of rice mills in Shwebo District at 5% significant level. Therefore, it can be concluded that the location of the rice mills is a factor which influences their performance. In addition, the employees' training is significant at 5% level. It can be concluded that the more they trained the employees, the more they achieved the growth.

Analysis on External and Internal Influencing Factors on Growth of Rice Mills

In analyzing the main influencing factors on growth of output and of assets of the rice mills, the external and internal factors are analyzed simultaneously with a regression model. Therefore, the characteristics of owners/ managers, the nature of the firms, the business strategies, government policy, government support and competition are used as independent factors. The growth of assets and physical output (tons) of the rice mills is assumed as dependent factors. To study these factors of rice mills, the backward multiple linear regression model is used. Therefore the multiple linear regression model of firm's growth can be described as

$$G_t = \beta_0 + \beta_1 G + \beta_2 A + \beta_3 EL + \beta_4 PSE + \beta_5 ME + \beta_6 M + \beta_7 FB + \beta_8 FA + \beta_9 LS + \beta_{10} L + \beta_{11} BP + \beta_{12} CS + \beta_{13} ET + \beta_{14} TS + \beta_{15} PE_t + \beta_{16} C_t + \beta_{17} AF_t + \beta_{18} FS_t + \beta_{19} IS_t + \beta_{20} TS_t + \beta_{21} ES_t + \beta_{22} TrS_t + \epsilon_i \quad (3)$$

(a) External and Internal Influencing Factors on Growth of Output

In analyzing the influencing factors on the growth of physical output, the growth is measured by tons per year in 2007 and 2014.

Table 8: Effects of Internal and External Factors on Growth of Output

	Unstandardized Coefficient		Standardized Coefficients	Calculated 't' value	Sig P-value
	B	Std. Error	Beta		
1 (Constant)	-158.18***	28.426		-5.565	.000
Management Experience	37.194***	12.155	.242	3.060	.003
Location	19.697**	9.516	.133	2.070	.041
Business Plan	37.956**	16.311	.166	2.327	.022
Employee Training	47.304**	20.761	.185	2.278	.025
Policy Effect	16.128***	5.588	.258	2.886	.005
Competition	14.791**	6.317	.196	2.342	.021
Access to Finance	25.284***	7.805	.312	3.112	.003
Irrigation Support	30.557***	7.499	.332	4.075	.000
Financial Support	14.066**	6.374	.178	2.207	.030

Source: SPSS Output

Notes: ** indicates that 't' is significant at 5% level and *** indicates that 't' is significant at 1% level.

When the results are calculated by using the backward method, the best filled estimated multiple linear regression model is

$$\widehat{GO}_t = 158.187 + 37.194 ME_t + 19.697 L_t + 38.956 BP_t + 47.304 ET_t + 16.128 PE_t + 14.791 C_t + 25.284 AF_t + 30.557 IS_t + 14.066 FS_t$$

According to the above table, management experience, location, business plan, employee training, policy effect, competition, access to finance, irrigation support and financial support are the main influencing factors on the growth of output of rice mills in Shwebo District when analyzing both internal and external factors.

(b) External and Internal Influencing Factors on Growth of Assets

For the internal and external influencing factors on the growth of assets, the growth is calculated by current value of fixed assets in 2014 and the assets values are measured from 2007 to 2014. In these values, the land values and current amount of cash are not considered in this study. The calculated 't' value for each coefficient are examined.

Table 9: Effects of External and Internal Factors on Growth of Assets

	Unstandardized Coefficient		Standardized Coefficients	Calculated 't' value	Sig P-value
	B	Std. Error	Beta		
1 (Constant)	-54710250.79***	10108190.68		-5.412	.000
Management Experience	14833506.22***	4576564.77	.207	3.241	.002
Location	8571305.65**	3611417.09	.126	2.373	.020
Employee Training	20529977.61***	7198568.74	.175	2.852	.005
Policy Effect	5179040.57**	2386765.65	.149	2.170	.033
Competition	9181591.62***	2364753.57	.265	3.883	.000
Access to Finance	13680352.90***	3018034.45	.384	4.533	.000
Irrigation Support	10698147.14***	2732873.17	.260	3.915	.000
Financial Support	6383861.63***	2260424.91	.176	2.824	.006

Source: SPSS Output

Notes : *** indicates that 't' is significant at 1% level and** indicates that 't' is significant at 5% level.

When the results are calculated by using the backward method, the best filled estimated multiple linear regression model is

$$\widehat{GA}_t = -54710250.79 + 14833506.22 ME_t + 8571305.65 L_t + 20529977.61 ET_t + 5179040.57 PE_t + 9181591.62 C_t + 13680352.90 AF_t + 10698147.14 IS_t + 6383861.63 FS_t$$

According to estimated results, the firms' growth depends on the management experience of rice mills owners, location, employee training, competition, policy effect, access to finance, irrigation support and financial support at 1% and 5% significant level respectively.

Findings and Discussion

The rice mills in the sample are family-owned businesses and which are commercial organizations in which decision-making is influenced by multiple generation of a family, related by blood or marriage and also who are closely identified with the firms through leadership or ownership.

Moreover, the owners/managers only give internal training to their employees. However, the training often takes place in the form of informal competence and skills development and on-the-job training. The majority of owners do not give external training to employees such as how to operate and repair machines, computer training courses because almost all the employees had low educational levels. In accordance with the regression results, the employee training is a main determinant on the growth of output and of assets of rice mills. The lack of skills, low productivity, high turnover rate and lack of employees' training were among the main problems facing these mills and slow down growth.

In analyzing the external factors, it was found that government policy changes affected the growth of output and of assets of rice mills. In this study, before 2007, the estimated number of mills in Shwebo District was 96 which produced 15 tons and above a day and it increased to 140 mills after 2007. In 2007, the government of Myanmar allowed the private sector in rice trading not only in domestic markets but also in oversea markets after the rice procurement system had been abolished in 2003. So the millers, brokers and agents tried to possess the opportunities to export, distribute to local or foreign markets, to buy paddy from farmers or brokers, to mill themselves or purchase rice from others; and to advance cash to the farmers or to collect paddy from the brokers.

Competition also influences both the growth of outputs and of assets of the firms studied. It can be said that the more competition the firms face, the more likely they are to achieve growth. Obviously, in the short term, intense competition influences negatively on the growth of the firms. It means that the more competition the firm has to face, the less the growth is.

In addition, the government support has a strong effect on growth of assets of rice mills. To a large extent, the government support for business has been neglected, but there has been a growing emphasis by many programs providing more favorable environment for the private sector. From a variety of supports, irrigation support can increase the rice output. The main financial support provides businesses to achieve objectives and goals. Lack of and limited financial support from the government impedes businesses growth. In this study, most of the firms use their investment capital from personal savings or borrowing from friends and loans from commercial banks. Besides these supports, technical support also influences the growth of these mills. In this rice milling industry, this support is required for sophisticated technical knowledge, market opportunities and technological information to establish an efficient industry.

This study applied a model that captures only the direct effects on growth. Actually, the growth of rice mills may be influenced by many conditions such as weather condition, land condition, the quality of seeds and other geographical conditions, however all these factors are not considered in this study. The future studies should also consider other effects such as mediated or moderated effects. These effects may show better results.

Further studies should also consider many important external factors as variables in the analysis. For instance, corruption, globalization, laws and regulations, etc. in Myanmar appear as interesting variables for the analysis.

Additionally, in this study, the growth of rice milling is measured by only two factors: physical output and assets. In reality, the growth is measured by several variables such as market share, employees, sale and other performance. Therefore, the other measurements should be included in a continuing research area. This is a potentially important form of growth that should be considered in the design of future studies.

Moreover, in this study, the rice mills are studied only in Shwebo District because of limited time and effort. This study cannot consider the main area of rice production, Ayerwaddy Delta in Lower Myanmar. Therefore, all the areas which mainly produce rice in Myanmar should be studied in further researches.

Finally, in this research, the effects of financial market imperfections and market uncertainty are not examined separately using information from the same set of private rice millers. Both factors exhibit significant effects on investment of private rice millers. Therefore, further research should strongly emphasize on the financial and market conditions of rice milling industry.

Summary

Myanmar's agriculture has enormous potential given its abundant resources and excellent market positioning. With the right reforms and targeted investments, the country can look forward to large growth in this sector that can foster dramatic and inclusive development across the economy. The relevant support should be provided not only for the rice millers but also for the farmers. Besides, the main purpose for the agriculture sector is to export rice and pluses. To do so, quality control and extensive support to farmers for multi source of seeds need to be improved. Major investments are needed to improve irrigation and drainage so as to restructure what appears to be growing weather instability. Moreover, improving in economic regulations and policies are the most powerful instruments to help Myanmar trigger structural changes along its rice value-chain necessary to capitalize on new market opportunities. Due to the lack of external training in machine maintenance and repairs, the costs of rice mills maintenance increase because these firms need to hire technicians from foreign countries to repair their machines. To do so, they should provide their employees with more education, know-how, and necessary training programmes. Both financial market imperfections and uncertainty appear to hurt investment of private rice millers in Shwebo District. The private rice millers mainly use internal funds to finance investment because their access to credit is limited. Thus, the banks should have a much clear understanding of the characteristics of those SMEs which survive and grow, compared with the enterprises which fail to survive.

The government policy plays an important role in increasing competitiveness of rice mills in the liberalization process. It is needed to enhance financial transparency from the side of private rice millers so as to improve the acute problem of information asymmetry between millers and commercial banks. Besides, the Ministry of Agriculture and Irrigation (MOAI) or the government should formulate some rules and regulations or laws that stimulate informal lending sources to become formal ones.

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References

- Davidsson, P., Achtenhagen, L., & Naldi, L. (2006), What do we know about small firm growth? In *Handbook of Entrepreneurship Research* (Vol. 2).
- Delmar, F., Davidsson, P. & Gartner, W. (2003), Arriving at the High-Growth Firm. *Journal of Business Venturing*, 18(2).
- Ministry of Commerce (2011), *Annual Report (2011-12)*, Directorate of Myanmar Agricultural Produces.
- Morrison, J. (2006), *International Business Environment: Global and Local Marketplaces in a Changing World* (2nd Edition). New York: Palgrave MacMillan.
- Myanmar Development Resource Institute (2013). *Framework for Economic and Social Reforms, Policy Priorities for 2012-15*. Center for Economic and Social Development, MDRI
- Myat Thein (2004), *Economic Development of Myanmar*. Institute of Southeast Asian Studies, Singapore.

- Nay Myo Aung. (2012), *Production and Economic Efficiency of Farmers and Millers in Myanmar Rice Industry*. V.R.F. Series, No.471. Institute of Developing Economics.
- Penrose, E. (1959), *The Theory of the Growth of the Firm*. New York: Oxford University Press.
- Porter, M.E. (1991), Towards a Dynamic Theory of Strategy, *Strategic Management Journal*, 12.
- Porter, M.E. (1980), *Competitive Strategy*, New York: Free Press.
- Storey, D. J (1994), *Understanding the Small Business Sector*. London: Routledge Press.
- Storey, D., Watson, R. and Wyncarczyk, P. (1989), Fast Growth Small Businesses: Case Studies of 40 Small Firms in Northern England. Department of Employment, *Research Paper No. 67*.
- Tin Htut Oo, U. & Kudo, T., (2003), *Agro-based industry in Myanmar Prospects and Challenges*. ASED, Institute of Developing Economies, IDE-JETRO.

CUSTOMER RETENTION OF SUPERMARKETS IN MANDALAY

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Abstract

The research paper analyze the customer retention of supermarkets in Mandalay by using behaviour perspective models (BPM). The required data for this study were collected from the consumers who shop at 3 year-old supermarkets in Mandalay by using 1 in 10 systematic sampling methods. The data is analyzed by using simple and multiple regression measurements to test BPM model. According to the results, there exist significant and positive relationships between customer retention and other variables. The main influential factor in customer retention is social factor in behaviour settings. Moreover, customer retention is influenced by regulatory, temporal and physical appearance of the supermarket and the convenience of the store locations, efficiency of customer service such as right price, right quality and convenience opening and closing times. Behaviour settings and learning factors also effect consumer response, and consumer responses effect reinforcement and punishment. Finally reinforcement effect customer retention. The results of the research also indicate that Supermarkets need to consider consumers' behaviour by providing different types of product and services to retain customers. They need to apply differentiation customer retention strategy in relevant with the nature of consumer shopping behaviour. The study also recommends that supermarkets should conduct continuing research to monitor and address issues contributing to customer switching and retention.

Keywords: Customer Retention, Behaviour Perspective Model

Introduction

A supermarket is a business enterprise that provides a range of products and related services. It does not produce any physical product of its own in the usual sense. Instead, it adds value by acquiring existing products from suppliers, assembling them in regional warehouses, distributing them to local stores, and finally selling the supplier's products to local customers. A supermarket, a form of grocery store, is a self-service store offering a wide variety of consumer goods like food and household merchandise, and some industrial products, organized into departments. The supermarket offers a

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wider selection of products than a traditional grocery store but its size is smaller than a hypermarket or superstore.

Supermarkets play an important role in the urban peoples' life. Myanmar people tend to prefer going and shopping at supermarkets as they want a variety of choice in terms of product line and the product width. They increasingly and apparently wish to enjoy the good facilities, the experience of the comfortable shopping environment provided by supermarkets. They want to buy kitchen utensils, modern fashionable branded clothes in supermarkets without having to waste time and energy. Thus, many people go to supermarkets to purchase products, which increases the sale volume of the supermarkets. Moreover, services of supermarkets have improved dramatically over the past decade and consumers can now buy a variety of goods such as meat, fruit, vegetables, traditional food, fresh and dried seafood, groceries and other household items in supermarkets. Moreover, people are attracted by the convenience, hygiene and variety of choice available in supermarkets. Today, consumer goods play a very important role in people's daily lives and the consumer goods industry has gradually developed. As a result, the role of retailing and supermarkets has become critical in the Myanmar consumer market.

Today, in Myanmar, most people have resorted to shopping in supermarkets due to the change in lifestyle. Lifestyles of customers change every day, and people wish to enjoy comfortable and high living standards. Therefore, supermarkets have become a place not only for women who afford to buy almost everything, the convenience and pleasure of one-stop shopping but also for recreational purposes as a place to attract youngsters and seniors. Moreover, supermarkets are very convenient for some working consumers in contrast to other traditional markets; as supermarkets open until late evening, and consumers who work very late can buy almost all their needs after work. For this, they prefer shopping at supermarkets. Consequently, supermarkets play an important role in today's lifestyle.

Moreover, supermarkets are available in many locations and provide different services and special incentives. They provide assorted, quality, freshness, and variety of commodities. To respond to customers' needs and wants, efficiency and effectiveness of the staff's performance, interpersonal

skills and prompt services are essential factors in the mainstream of running supermarkets.

There have been numerous researches on relationship marketing locally and globally. However, to the best of the researcher's knowledge, there may be few researches on customer retention, especially on customer retention in service industry in Myanmar. Therefore, this research tries to study customer retention of supermarkets in Mandalay because supermarkets are becoming increasingly customer-oriented in accordance with the basic principles of relationship marketing, which focuses on customer retention as its main goal.

Supermarkets are retail businesses. Retail is the sale of goods and services directly to the end-users. A retailer purchases goods or products in large quantities from manufacturers directly or through a wholesale, and then sells smaller quantities to the consumer for a profit.

Retailing includes subordinated services, such as delivery. The term "retailer" is also applied where a service provider services the needs of a large number of individuals, such as for the public (Levy, M. and Weitz, AB, 2009). Shops may be on residential streets, streets with few or no houses or in a supermarket. Shopping streets may be for pedestrians only. Sometimes a shopping street has a partial or full roof to protect customers from participation.

Nowadays, as many supermarkets come into existence, the competition among supermarkets is increasing. When retailers develop their strategies, they need to explore consumers' shopping habit and consumers' behaviour change in order to create effective marketing strategies. Many researchers have highlighted that traditional marketing strategies such as 4Ps alone are not sufficient to maintain the market share by the firms in this age of global competition. The Marketing challenge for supermarket is to determine the most appropriate consumer to choose as their target market which in turn will determine the best marketing mix design. In this study, target market for supermarkets such as fast and furious consumers who wants to find items quickly and be able to get in and out of the supermarket as fast as possible, a day out consumers who want to like shopping and are happy to spend a long part amounts of their time browsing and looking through stores and they are

interested in their layout and design and gourmet focus consumers who want to seek higher quality products (and foods in supermarkets) and are willing to pay a price premium. They tend to equate “value” with higher quality and some of these consumers derive social status from their purchasing behavior. Typically, these consumers are middle to upper social class, underpinned by higher levels of both education and employment status.

Many authors have proposed several modern marketing strategies. One of the modern marketing strategies for attracting customers is relationship marketing. Relationship marketing differs from other forms of marketing such as 4Ps strategy in that it recognizes the long-term value of customer relationships and extends communication and sales promotional messages. A key principle of relationship marketing is applying various means and practices to ensure repeated sale from pre-existing customers by satisfying requirements, i.e. the retention of customers.

Moreover, it is necessary for supermarkets to prompt the customers to purchase and gain customer satisfaction. Customer stimulation is a "lean forward" strategy designed to increase both sales and profitability. Successful retailers know precisely what makes their customers tick, what happens to them while in their stores, and how to stimulate consumers to buy (Tom Asacker, 2010). Moreover, behaviour perspective model proposed by Foxall is also suitable for customer stimulation (Foxall, G . R. and M. Yani-de-Sorian, 2005). Therefore, this behavior perspective model will be used in this study to investigate how supermarkets in Myanmar can carry out customer retention.

Customer retention (CR) is a crucial area of study in the field of relationship marketing that is mainly concerned with keeping customers in the long term. It is essential for all firms in the service sector in the present consumer market. This is because customers are considered a real asset to firms, the majority of which are facing consumer base losses to a considerable degree.

Customer retention is also an activity that a selling organization undertakes in order to reduce customer defections. Successful customer retention starts with the first contact an organization has with a customer and continues throughout the entire lifetime of a relationship. A company’s ability to attract and retain new customers is not only related to its product or

services, but strongly related to the way it services its existing customers and the reputation it creates within and across the marketplace.

According to Ron and Blohowiak (1997), customer relationship is very vital for the success of any business. It can be used to retain customers by handling in the most appropriate and effective way. However, successful implementation is difficult to many companies, mostly because they do not understand that customer relationship requires company-wide, cross-functional, customer-focused, business process and re-engineering. Customer retention is a key for any business to survive, since a customer is the boss of a business.

Rationale of the Study

The purpose of the study is to explore the factors which influence the customer retention of supermarkets in Mandalay. Mandalay used to be the cultural center of Myanmar and it still remains as the hub with the richest Myanmar culture, arts, artisans and architecture, as well as the most important center of Buddhist teaching and learning in Myanmar.

Not only local but also foreign buyers go shopping in supermarkets in Mandalay which are more convenient than traditional markets. Thus, the role of the supermarket becomes vital nowadays. Arising high level of competition is driving supermarkets in Mandalay to increase consumer satisfaction to maintain the market. Therefore, supermarkets not only have to establish good relationship with their customers but also maintain them and increase their loyalty. By this means, supermarkets can offer better products and services to obtain long-term relationship with the customers and retain them. Moreover, it is also reported that the cost of selling to existing customers is lower than the cost of selling to new customers. Therefore, customer retention is crucial for the success and survival of the supermarkets.

With increasing competition, the key to supermarkets' survival is customer retention. To retain customers, supermarkets need not only to cater superior services to meet the changing needs and life styles of shoppers such as greater selection of healthy foods, better lighting, and enough space but also maintain long run relationship with the customers. This trend in marketing research and practice has been recognized by a number of supermarkets as successful business strategies.

Such kind of indispensable effective strategies for supermarkets can be different depending on culture, geographical location and other factors. Moreover, consumer's needs are sophisticated and it is imperative that supermarkets have to look creative and original strategies for building long term and stable relationships with their customers to retain customers. Relationship marketing is appropriate for investigating customer behaviours.

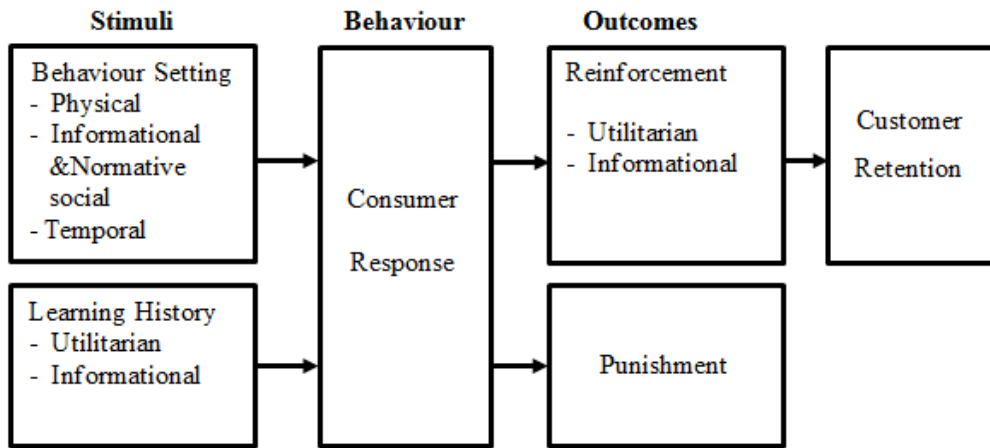
According to Farquhar et al.,(2004) the goal of customer retention is aimed at benefiting both parties to facilitate exchanges, makes relationship exchanges more possible, reduces transaction costs, and maximizes the relationship's economic and non-economic benefits in order to repeat the exchange processes in the future. In relationship marketing, supermarkets try to investigate customers' behaviors and then try to find means to affect consumers' behaviour by providing different types of incentives in the form of products and services to retain customers. Therefore, this study intends to find out the customer retention of supermarkets in Mandalay.

In relationship marketing, supermarkets try to investigate customers' behaviors and then try to find means to affect consumers' behaviour by providing different types of incentives in the form of products and services to retain customers. Therefore, this study intends to find out the customer retention of supermarkets in Mandalay. The research objectives are -

- (1) To investigate the effect of behaviour setting on consumer response of supermarkets in Mandalay
- (2) To identify the effect of learning history on consumer response of supermarkets in Mandalay
- (3) To find out the effect of consumer response on reinforcement and punishment of supermarkets in Mandalay
- (4) To study the effect of reinforcement on customer retention of supermarkets in Mandalay

Analytical Framework

As presented in figure 1, this study focuses to analyze the customer retention of supermarkets in Mandalay.



Sources: Own Compilation Based on Behavioural Perspective Model by Foxall

The above analytical framework is based on Foxall (1998) model. The model explains consumer behaviour with reference to pre-behaviour antecedent and post-behaviour consequential learning contingencies in order to translate person-situation interaction relationships in different behaviour contexts. According to the results of factor analysis, it is found that there are two social factors: informational & normative social factors, two learning history factors: informational & utilitarian learning history factors and two reinforcements: utilitarian & informational reinforcement. In the analytical model, pre-behaviour is determined as stimuli which drives consumers to make the right decision for purchase. Pre-behaviour includes behaviour setting and learning history of a specific consumer. Pre-behaviour leads to consumers' choice for buying decision which is called behaviors of a specific consumer. Likewise, pre-behaviour leads to consumers responses due to some factors of the behaviour settings. And also, the right action for buying decision of behaviour stage is followed by outcome stage in which consumer faces positive or negative reinforcement on the products they purchase. This stage is called utilitarian & informational reinforcement or punishment stage. This means that a specific consumer has broad knowledge and experience on the products they purchased. Thus, based on this knowledge and experience, the consumer learned by self and firmly decides the products the consumer purchased and deserved to be purchased next times due to having good, notable and warranted quality and good image on a certain brand. This

decision depends on the former two stages. This is called positive reinforcement. Otherwise, consumers learned by self and firmly decide the product consumers purchased is not worth to be purchased next times due to bad quality and unremarkable image on brand. Consumers learned by self from the aspect of negative reinforcement. In the analytical model, outcome stage includes either utilitarian & informational reinforcement or that of punishment. The studies continue to explore only the results of positive reinforcement that means customer retention for a particular supermarket.

Methodology and the Research Design

In this research, both primary and secondary data were used. The sampling method applied is systematic sampling method. The required data for this study were collected from the consumers who shopped at 3 year old supermarkets in Mandalay by using 1 in 10 systematic sampling methods. The measurement is conducted by both means; the questionnaire for the customer and interview for the managers. This study emphasizes customer retention behavior based on Foxall's (2007) 'The Behavioural Prespective Model (BPM)'. According to the working definition of supermarkets¹, in 2015, there were 12 supermarkets operated by 6 retailing firms in Mandalay. The supermarkets with 3 years in operation were studied. There are 5 supermarkets: City Mart, Ocean, Gandamar wholesale, Fuji and Orange supermarket.

In each supermarket, 50 customers were taken as samples. Among these customers, those who come to shop on Saturday and Sunday were collected by using 1 in 10 systematic random sampling methods. According to the saying of supermarket shopping experience by customers, although an average of 500 customers usually come to shop on Saturday and Sunday, 50 customers (only 10%) were collected randomly. Therefore, the sample size is 251 customers. The reasons why the data were collected on Saturday and Sunday are that varieties of staff can come to shop as the offices close, students and families can come to shop more than on the official days, and

¹ **Working definition of Supermarket** is a self-service store offering broad selection of goods such as food, make-up and hygiene, stationery, kitchen appliance, cleansing goods and under a single roof and it occupies a large amount of floor space.

customers from Mandalay can come to shop that can represent various classes of customers.

Results/ Finding

Analysis on Customer Retention of Supermarkets

To prove thesis objectives, multiple linear regression model is used in this thesis. This model is a statistical technique that uses several explanatory variables to predict the outcome of a response variable. The model is

$$Y_i = \beta_0 + \beta_1 X_{1i} + \beta_2 X_{2i} + \dots + \beta_k X_{ki} + u_i$$

- where
- Y_i = dependent variable,
 - β_0 = intercept,
 - $\beta_1, \beta_2, \dots, \beta_k$ = slopes,
 - $X_{1i}, X_{2i}, \dots, X_{ki}$ = independent variables,
 - u_i = random error term.

Table 1: Effect of Behavior Setting Factors on Consumer Responses

Model	Unstandardized Coefficients		Standardized Coefficients	Calculated 't' value	Significant P value
	B	Std. Error	Beta		
1 (Constant)	.230	.159		1.449	.149
Informational Social	.329***	.044	.379	7.436	.000
Normative Social	.114**	.053	.107	2.137	.034
Temporal	.244***	.056	.250	4.361	.000
Regulatory	.260***	.066	.225	3.966	.000
R	.837				
R square	.700				

Source: survey data (2015)

***, **, Indicates that 't' is significant 1% , 5% level

Four out of the five independent variables had a significant correlation with approach, with physical factors not correlating significantly.

$$Res = 0.230 + 0.329 Si + 0.244 Tem + 0.260 Reg + 0.114 Sn$$

According to this Table, the all factors are significant at 1 % level. Therefore, it can be concluded that all behaviour setting factors significantly effect the response of customers of supermarket. It is found that the estimated value of coefficients for informational social factor is highest and the second value of coefficient is temporal and the third value of coefficients is regulatory factors and the fourth value of coefficients is normative social factor.

The result shows that informational social factor is significant at 1% level and normative social factor is significant at 5% level. The coefficient value of informational social is 0.329 and normative social is 0.114. A social factor (normative social and informational social) is significant among behaviour setting. Social factor is the main influencing factors on consumer's responses of supermarkets. In this study, the customers choose to shop in supermarket due to abundant products, popular and a good opportunity to shop with family and friends; sales personal are friendly and nice with focus on individual customers, have knowledge to serve rapidly has a modern feel and has lots of well-known stores. It can be concluded that social factors affect consumer's response factors. Therefore, social factors are critical for customer retention of supermarket industry.

Another influencing factor on consumer's responses of supermarket is temporal factor. The results show that, temporal factor is significant at 1 % level. The reason of customer retention of supermarket is a lot of time has to be spent queuing in the supermarket, time enough to do everything, Without rush and opening and closing time is convenient. Therefore, it can be concluded that, this factor is crucial as well as other factors.

Moreover, the customer retention of the supermarkets in Mandalay is influenced by regulatory factors. It is important for supermarkets to obtain, maintain and increase the potential customers and existing customers through the regulator factors they have and applied. These factors are parking is not restricted, security personnel are visible, provides fresh food and meat, count bill clearly, special discount, offer promotion and right price and quality products. Therefore, it affects the customer retention of supermarket in Mandalay.

When examining the effect of the situational stimuli on responses, physical, normative social, informational social, temporal and regulatory factors have a significance. As a result, the overarching objective that

consumer response is affected by variables in the behaviour setting is partially supported.

In summary, the results confirm the role of the consumer behaviour setting in the BPM and objective 1, which predicts that the behaviour setting would have an effect on consumer behaviour: in this study, consumer response. The results suggest that social factors are more commonly related to consumer response than other factors in the behaviour setting.

Table 2: Effect of Learning History on Consumer Responses

Model	Unstandardized Coefficients		Standardized Coefficients	Calculated 't' value	Significant P value
	B	Std. Error	Beta		
1 (Constant)	0.288**	0.144		1.997	.047
Utilitarian learning history	0.534***	0.055	0.491	9.627	.000
Informational learning history	0.425***	0.053	0.410	8.028	.000
R	.840				
R square	.705				

Source: survey data (2015)

When the results are calculated by using the backward, the best estimated multiple linear regression model is

$$\text{Res} = 0.288 + 0.534\text{ULH} + 0.425\text{ILH}$$

According to Table 2, utilitarian learning and informational learning are significant at 1% level. The coefficient value of utilitarian learning history is the highest and it is 0.534. The coefficient value of informational learning history is 0.425. According to the results, learning history (utilitarian learning and informational learning) is significant level among pre-behaviour factors. Learning factor is the main influencing factors on consumer's responses of supermarkets. In this study, the customers choose shopping in supermarket due to good mood, saving time, getting feedback on purchase from friends, good service offered, solving customers' compliant immediately, reasonable price/quality ratio, being important to visit supermarket for ability to buy everything and a lot of choices and are more economical.

It can be concluded, that the Beta value of utilitarian learning history is (.491) which increases more than the Beta value of information learning history (.410). Therefore, utilitarian learning history does appear to show a large significant correlation with responses (approach). Customer who score higher on the utilitarian learning history component value acquisition of positive feedback, keeping up with current fashions and believe it is important to be seen in the right sort of places. It is a description of learning history that offers some indications of how they might expect the measure to inform behaviour. If learning history is to be considered as the "encouraging / inhibiting propensities to respond based on utilitarian, informational and aversive consequences of prior responding"(Leek, Maddock et al., 2000), then it is expected that higher scores on the measure of utilitarian and informational learning history should correspond to increases in likelihood of responding.

In addition, the analysis of customers' response by utilizing pre-behaviour namely behaviour setting and learning history, it is found out that the responses are good. Because physical, exploratory, communication and performance satisfaction can be concluded as good, responses of customers become also good and customer retention can be achieved out. Therefore, the objective of "consumer response is affected by variables in the learning history" is fully supported.

Table 3: Effect of Consumer Responses on Utilitarian Reinforcement

Model	Unstandardized Coefficients		Standardized Coefficients	Calculated 't' value	Significant P value
	B	Std. Error	Beta		
1 (Constant)	.769***	.131		5.881	.000
Responses	.765***	.034	.816	22.304	.000
R	.816				
R square	.666				

Source: survey data (2015)

When the results are calculated by using backward, the best estimated multiple linear regression model is

$$UR = 0.769 + 0.765 \text{ Res}$$

According to Table 3, an approach response is significant at 1% level. The coefficient value of approach responses is 0.765. Utilitarian reinforcement, which considers the functional and enjoyable reinforcing elements of visits, in terms of productivity, efficiency, satisfaction and effectiveness displays a large correlation with approach. Therefore, consumers who report higher levels of such reinforcement are likely to be more willing to approach the supermarket, encompassing likelihood of patronage, exploration in store, willingness to communicate with others, and performance satisfaction.

Table 4: Effect of Consumer Responses on Informational Reinforcement

Model	Unstandardized Coefficients		Standardized Coefficients	Calculated 't' value	Significant P value
	B	Std. Error	Beta		
1 (Constant)	1.570***	.177		8.888	.000
Responses	.477***	.046	.546	10.292	.000
R	.546				
R square	.298				

Source: survey data (2015)

When the results are calculated by using the backward, the best estimated multiple linear regression model is

$$IR = 1.570 + .477 Res$$

According to Table 4, an approach response is significant at 1% level. The coefficient value of approach responses 0.477, therefore, this result of approach responses is positive correlation between dependent variable and independent variable. Like utilitarian reinforcement, informational reinforcement returns a large significant correlation with approach. Therefore, consumers who report higher levels of such informational reinforcement are likely to be more willing to approach the supermarket, encompassing likelihood of patronage, exploration in store, willingness to communicate with others, and performance satisfaction.

Table 5: Effect of Consumer Responses on Punishment

Model	Unstandardized Coefficients		Standardized Coefficients	Calculated 't' value	Significant P value
	B	Std. Error	Beta		
1 (Constant)	2.510***	.267		9.409	.000
Responses	.223***	.070	.198	3.184	.002
R	.198				
R square	.039				

Source: survey data (2015)

When the results are calculated by using the backward, the best estimated multiple linear regression model is

$$PU = 2.510 + .223 \text{ Res}$$

According to Table 5, an approach response is significant at 1% level. The coefficient value of responses is 0.223; therefore, this result of responses is positive correlation between dependent variable and independent variable. Although supermarkets conduct pre-behaviour (physical, social, temporal, regulatory and learning factors) to become good for consumer response, customer retention cannot be maintained as a result of shortage of goods by the supplier who cannot send in time, timely fulfillment cannot be carried out for the customers' desire; the price is higher than competitor's businesses, and they change to purchase in other supermarkets. Hence, in order to avoid this, supermarkets are practicing supply change management systematically and continue to retain the customers.

Table 6: Effect of Reinforcement on Customer Retention

Model	Unstandardized Coefficients		Standardized Coefficients	Calculated 't' value	Significant P value
	B	Std. Error	Beta		
1 (Constant)	1.856***	.217		8.565	.000
Informational Reinforcement	.366***	.072	.358	5.061	.000
Utilitarian Reinforcement	.159**	.067	.167	2.367	.019
R	.479				
R square	.230				

Source: survey data (2015)

When the results are calculated by using the backward, the best estimated multiple linear regression model is

$$CR = 1.856 + 0.159UR + 0.366IR$$

According to Table 4.39, reinforcement is significant at 1% level. The coefficient value of utilitarian reinforcement and informational reinforcement are 0.159 and 0.366.

After analyzing behaviour such as physical, social, temporal, regulatory, learning factors, it is continued to study reinforcement and punishment which is post- behaviour. Mutual benefits between supplier and retailer can also enhance mutual advantages between customers and supermarkets in such a way that good quality products are supported by the supplier, retailers sold at reasonable price and proper price, and promotion events are held by some business person by giving discount and free samples. Moreover, CSR activities (e.g, education, environment, community livelihood and health) are under taken by the supermarkets which are recognized by the public, trust enhance on the supermarket, and increase repeated by purchase by the customers.

From a behavioural perspective, supermarkets should pay attention to all the behavioural elements that drive retention; this will give a good explanation of how retailers can maintain and strengthen relationships with existing customers. Reinforcement (utilitarian and informational) is significant level among behaviour setting. Reinforcement is the main influencing factor on customer retention of supermarkets. According to the results, the supermarkets retain their customers due to saving time to visit this

supermarket, felt good after shopping prefer the products that they buy from the supermarket, recommend to others; positive attitude to this supermarket, as the best for shopping, always remember only this supermarket and loyalty to this supermarket increased because of service delivery, at least to go to this supermarket three times. Therefore, the objective of "reinforcement effect on customer retention" is fully supported.

To sum up, the results of statistical analysis of relationship between customers and suppliers show that the majority of the surveyed supermarket is how to retain their customers by achieving high customer satisfactions by exercising BPM such as pre-behaviour (behaviour setting-physical, social, temporal, regulatory and learning history) and post-behaviour (reinforcement and punishment). And then, reinforcement appeared to affect retention of customers. According to major findings of this study, behaviour setting and learning history are more for customer retention. Therefore, the success of supermarkets depends on good retention strategies. Thus, the supermarket is to build up high performance of these retention strategies. As a result, the more they concentrate on behaviour perspective model in their workplace, the greater benefits they will acquire from high satisfaction of their customers and effectively retained their existing customers and new customers.

Discussions

According to the survey results, it was found that the majority of supermarket consumers are the younger age group and middle age group. The reason is that today's youths are more interested in shopping than old people. Moreover, many middle-aged people are married and they enjoy shopping with family.

The findings of this study show that many of the supermarket consumers are the females who are the dominant group. Naturally, women are more interested in shopping than male, whether the lady is old or young, she appreciates the beauty and has to do household chores. That may be the reason for women to go shopping to the supermarkets in order to buy the necessities which are available at one place. Moreover, it can be concluded that there are gender differences in shopping motivations and beliefs, with females significantly favouring hedonic motivation (of which social shopping is a dimension) when shopping than males.

Furthermore, most of the supermarkets consumers have a relatively high educational background and also, they are government staff, company staff, and self-employed and independent. Moreover, it is known that most of the supermarket consumers are government staff because they have less private time for shopping and it is convenient for them to shop at the supermarkets where varieties of goods are available.

Additionally, the findings indicate that most supermarket consumers spend their personal and family cash in shopping and shop at the supermarket. According to the results, the income of majority of customers is between Ks 1 lakh – 2 lakhs and 2 lakhs – 3 lakhs because most of the customers are government staffs and company staffs. Therefore, it can be concluded all customers are found to have fair amount of income. Regarding the average monthly shopping times, most consumers shop twice a month. Consumers mostly purchase food, make-up and hygiene and stationary at supermarkets. Concerning the consumers' choice of supermarkets in terms of service, product quality and price, varieties of products, most consumers prefer City Mart & Ocean.

The first objective is to investigate the effect of behavior setting on consumer response of supermarkets in Mandalay. The findings show that the behaviour setting element is one of the main pre-behaviour retention drivers. As illustrated previously, the behaviour setting was categorized into four elements according to the BPM: physical setting, social setting, temporal setting and regulatory setting. Among the four behaviour setting factors in the BPM, social factors have been found to have the strongest relations with consumer response. Moreover, the findings show that the social setting is the main factor affecting consumer choices, especially when a customer has a lack of experience of the purchased object.

The second behaviour setting that influences consumer choice is the temporal setting and it was found to have a positive influence on their choice. The main temporal elements found essential for creating possible stimuli for customers include when shopping in supermarkets, consumer flexibility regarding the opening and closing time of it is convenient, not to rush in the supermarket. It can be concluded that temporal factors have effect on consumer responses.

Moreover, the regulatory setting also influences consumer responses. The main studied elements that were found to be critical for customer retention were flexibility in parking without restraint, availability of fresh food and meat, reliability in bill paying and frequent promotions.

To summarize, the behaviour setting elements were found to be essential because marketers communicate a selection of stimuli to customers in the market place. Therefore, behaviour setting is stimulation for customer retention of supermarket. Each behaviour setting element plays a critical role in delivering and contributing to the specific types of discriminative stimuli aimed at the consumer in a repeat-purchase context, which signals behavioural consequences when interacting with the customer's learning history.

The second objective is to identify the effect of learning history on consumer response of supermarkets in Mandalay. While the social setting is essential for the relationship's continuation, the building of strong social bonds relies on establishing a high degree of interaction between customers and suppliers. These continuous interactions are seen as a process that enhances and accumulates the customer's learning and knowledge. If positive experiences are established, the possibility of customer retention will greatly increase. This opinion is expressed by learning history findings. The consumers' knowledge comes from the learning and experiences about product, prices, promotion and services of supermarkets. Supermarkets offer different products at one place at right price, and right quality. Supermarkets use several promotion techniques to attract consumers. Hence, most consumers get their knowledge about supermarkets from their experiences and much information provide by sales promotions, word-of-mouth recommendation from others and mass media advertising. Supermarket consumers enjoy such advantages as product variety, right quality and price, saving times and fulfilling needs by shopping at supermarkets. Especially, supermarket consumers can shop in a relaxed atmosphere with high standard than traditional markets. Therefore, it can be concluded that learning history is found to be one of the main pre-behaviour retention drivers. Moreover, learning history is strong, not only customer repeats purchase but also supermarkets retained customer.

The third objective is to find out the effect of consumer response on reinforcement and punishment of supermarkets in Mandalay. The factors

loading results show that reinforcement has two factors such as utilitarian reinforcement and informational reinforcement. According to the results, it can be concluded that an approach response is significant. The coefficient value of approach responses is good. Like utilitarian reinforcement, informational reinforcement returns a large significant correlation with approach. Reinforcement, which considers the functional and enjoyable reinforcing elements of visits, in terms of productivity, efficiency, satisfaction and effectiveness displays a large correlation with approach. Therefore, consumers who reported higher levels of such reinforcement are likely to be more willing to approach the supermarket, encompassing likelihood of patronage, exploration in store, willingness to communicate with others, and performance satisfaction.

It is found that among the factors such as having much cost for going to supermarkets, being difficult to go, having complexation to search the items in the supermarket, and moving to buy from other supermarkets, it is not only convenient for the customers but also less to buy from other supermarkets. Hence, it is learnt that customer retention of supermarkets is strong and punishment become less.

Otherwise, if behaviour setting provided to customers from the supermarkets is weak, customers would not continue to encourage and as a result, their retention would not surely be good. If so, supermarkets have to re-prepare how to respond their weakness according to the feedback.

The main objective is to study the effect of reinforcement on customer retention of supermarkets in Mandalay. According to the results, utilitarian reinforcement is found to be the main customer post-behaviour driver. The results show that the utilitarian reinforcement stimulates customer retention behaviour and supplier choice positively. In other words, the more positive and satisfactory the consequences gained by customers through owning, using and consuming right products/services, the higher the repeated behaviour possibility will be. The main post-behaviour consequences that contribute most to customer retention are the branded product and varieties of product bought within the supermarket offer. The results reconfirm that the main supermarket service component that encourages customers to become involved in long-term relationships with suppliers. Attracting new customers and extending relationships with current customers depends on the amount

and type of utilitarian reinforcement consequences that will gain when a consumer evaluates suppliers before deciding to enter into a long-term relationship with one of them.

Regarding the indirect and intangible benefits received by consumers, informational reinforcement is also found to be one of the main customer behaviour drivers. The main informational reinforcement that was found to stimulate customers into buying supermarket offerings is the positive self-satisfaction values that are received through using firms' products and services in terms of improving relationships and interactions with others. Additional benefits found to be essential in the process of choosing a supplier are factors such as positive feedback from others and feeling safe and secure when using a supermarket service. The functionality effect of informational reinforcement is significant as it enhances customers' positive sensorial feelings which encourage them to favour relationships with one particular supplier over its rivals because it satisfactorily meets hedonic needs. Therefore, according to the results, informational learning history does appear to show a large significant correlation with responses (approach-avoidance). People who score higher on the informational learning history component value acquisition of positive feedback, keeping up with current fashions and believe that it is important to be seen in the right sort of places. People who score highly on this dimension also tend to score highly on approach-avoidance scores also, so consumers may be more likely to approach supermarket that they believe will yield high levels of informational reinforcement. It can be concluded that reinforcement factors affect customer retention.

Summary

Customer retention is the important basis for customer relationship. Therefore, this study explores the effect of customer retention of supermarkets. Based on the findings of the study, customer retention is most influenced by social factors. Surveyed results describe that sale personal participation in the majority of the stores are still at initial stage such as products information sharing to consumers and acceptance of suggestions. Such participations contribute to get highly committed sale personal and achieve high sale volume to some extent. The majority of the supermarkets conduct temporal settings by using store opening hours, a specific time of

day/season, the time available for consumers. Moreover, the regulatory setting also influences consumer responses. The main studied elements that were found to be critical for customer retention were flexibility in regard to parking which is not restricted, provides fresh food and meat, count bill clearly and offer promotion often. The social setting is essential for the relationship's continuation; the building of strong social bonds relies on establishing a high degree of interaction between customers and suppliers. These continuous interactions are seen as a process that enhances and accumulates the customer's learning and knowledge. Learning history is found to be one of the main pre-behaviour retention drivers. Moreover, learning history is strong, not only customer repeats purchase but also supermarkets retained customer. The factors loading results show that reinforcement has two factors such as utilitarian reinforcement and informational reinforcement. The main post-behaviour consequences that contribute most to customer retention are the branded product and varieties of product bought within the supermarket offer. The results reconfirm that the main supermarket service component encourages customers to become involved in long-term relationships with suppliers. Attracting new customers and extending relationships with current customers depends on the amount and type of utilitarian reinforcement consequences that will gain when a consumer evaluates suppliers before deciding to enter into a long-term relationship with one of them. The main informational reinforcement that was found to stimulate customers into buying supermarket offerings is the positive self-satisfaction values that are received through using firms' products and services in terms of improving relationships and interactions with others. Additional benefits found to be essential in the process of choosing a supplier are factors such as positive feedback from others and feeling safe and secure when using a supermarket service.

Limitations and Further Research

This study focuses only on customer retention of supermarkets in Mandalay. Therefore, future study will need to cover the whole country of Myanmar, such as Yangon, Naypyidaw, Mawlamyaing, and Patheingyi so that it can reveal different effects perhaps due to different geographical, cultural contexts and level of urbanization. Therefore, the analysis of the customer

retention on supermarkets in other major cities will be useful extension of this study. The study of the relationship between customer retention and behaviour perspective model used by supermarkets in other major cities will also certainly provide BPM which can improve retaining consumers, superior value and build long-term relationship between customers and supermarkets in Mandalay. In addition, this study examined impact of customer retention on supermarket in term of behaviour setting (pre-behaviour and post-behaviour). Thus, further study should include other measurements of employees' retention on supermarkets in terms of employee motivation, employee satisfaction and employee loyalty on firms by using behaviour perspective model. The use of BPM to other industry such as restaurants, education and consultancies should also be areas of future research possibly leading to achieving useful outcomes to draft customer retention strategies in relevant industries. Since the scope of the present study is limited only to the reinforcement and punishment, it is suggested for further studies to carry out punishment and the feedback from it in consequence. In conclusion, it is hoped that the findings of the present research would be, more or less, very advantageous to the fellow researchers who have keen interest in customer retention and it also calls for further researches in other related areas of customer retention.

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References

- Ang, L. and F. Buttle (2006). "Customer retention management processes." *European Journal of Marketing* 40(1/2).
- Fagerstrøm, A. (2005). The Behavioural Perspective Model: A Proposed Theoretical Framework to Understand and Predict Online Consumer Behaviour. Paper Presented at the EMCIS 2005 Annual Conference. Cairo, Egypt.
- Foxall, G. R. (1992). "The Behavioral Perspective Model of Purchase and Consumption: From Consumer Theory to Marketing Practice." *Journal of the Academy of Marketing Science* 20(2).
- Foxall, G. R. (1993). A Behaviourist Perspective on Purchase and Consumption. *European Journal of Marketing*, 27, 7-16.
- Foxall, G. R. & Greenley, G. E. (1999). Consumers' Emotional Responses to Service Environments. *Journal of Business Research*, 46, 149-158.
- Foxall, G. R. and G. E. Greenley (2000). "Predicting and Explaining Responses to Consumer Environments: An Empirical Test and Theoretical Extension of the Behavioural Perspective Model." *Service Industries Journal* 20(2).
- Foxall, G. (2007). Predicting Consumer Choice in New Product Development: Attitudes, Intentions and Behaviour Revisited. Marketing Intelligence and Planning.
- Levy, M. and Weitz, A.B. (2009). Chapter 1 – Introduction to the World of Retailing, *Retailing Management*, 7th Edition, Erwin McGraw-Hill, China.

RELATIONSHIP MARKETING TACTICS AND CUSTOMER LOYALTY OF RESTAURANTS IN MANDALAY

Myint Myint Naing*

Abstract

This research paper identifies the relationship marketing tactics (RMTs) of restaurants in Mandalay and to analyze the impact of relationship marketing tactics on customer satisfaction and trust, which in turn, affect customer loyalty. In this research, both descriptive and exploratory research methods are applied based on surveyed restaurants. To conduct this research, 34 owners or managers are randomly selected and 452 customers are selected by using systematic sampling method from the scope of 34 restaurants. The results show that the surveyed restaurants used RM tactics such as customer orientation, service quality and interpersonal communication. Tangible rewards are less used by the surveyed restaurants. The findings of the research revealed that relationship marketing tactics (customer orientation, service quality and interpersonal communication) have significant and positive impact on the customer satisfaction and loyalty. Customer satisfaction impacts positively on customer trust, which in turn, impacts positively on customer loyalty. After that, trust impacts positively on customer loyalty. In addition, this research has revealed that in comparing the effect of customer satisfaction, trust and RMTs on customer loyalty, trust has a stronger and more positive impact on customer loyalty. According to the findings, this research recommends owners and managers to emphasize more on customer orientation, service quality and interpersonal communication in order to achieve their RM efforts. In addition, the findings of this research provide important implications for owners and managers to highlight the essential role of relationship marketing in achievement of sustained competitive advantage through customer loyalty by adopting RM tactics. Therefore, owners and managers should commit to the implementation of RM tactics.

Keywords: Relationship Marketing Tactics, Customer Satisfaction, Customer Trust, Customer Loyalty.

Introduction

As the competitive environment becomes more turbulent, the most important issue the sellers face is not only to provide excellent quality

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products or services but also to keep loyal customers who will contribute to the long-term profits of the organizations. To compete in such a competitive marketplace, marketers are forced to realize marketing strategies, are no longer appropriate to achieve competitive advantage. Therefore, relationship marketing has become an alternative means for organizations to build strong, ongoing associations with their customers.

Relationship Marketing (RM) has received a great deal of attention from academic scholars in marketing. As a part of marketing strategy, relationship marketing seeks to acquire and retain customers by providing good quality customer services. It has become one of the keys to succeed in acquiring strong competitiveness in the present markets because of its implications for access to markets, generation of repeated purchase, creation of exit barriers and the view that benefits all parties..

Relationship Marketing Tactics (RMTs) are core to the success of relationship marketing strategy. Effective relationship marketing tactics may help marketers to acquire customers, keep customers, and maximize customer profitability, and finally build up customer loyalty. Several scholars have proposed various Relationship Marketing Tactics that can be used in RM to help bring about long-term relationships with customers. The most common RMTs proposed by various scholars that can be used to manage customer relationships are customer orientation (Ravald and Gronroos, 1996; Leverin and Liljander, 2006; Korunka et al., 2007), service quality (Parasuraman et al., 1988; Zeithamal et al., 1996), interpersonal communication (Berry, 1995; Gronroos, 1995; De Wulf et al., 2001, 2003) and tangible rewards (Berry, 1983). Such kinds of relationship marketing tactics have already been proven effective in promoting customer loyalty by many researchers. Therefore, many relationship marketing tactics are widely applied in today's business especially in the service industry such as restaurants.

Nowadays, due to increased employment of women outside the home and extensive changes in lifestyle, the consumption of restaurant food is growing, and consequently the Mandalay restaurant industry provide a very good market for this industry. On the other hand, competition is also increasing in the restaurant industry in Mandalay. Emergence of new chain restaurants and their dedication to opening new branches is an indication of competitive industry. With increasing competition between restaurants in

Mandalay, attracting new customers can no longer guarantee profits and success, but retaining existing customers is of more importance. In fact, a competitive environment offers customers more alternative choices such as customer orientation, service quality, interpersonal communication and tangible rewards. Therefore, they can select their favorite option from several alternatives. Consequently, customer loyalty is considered to be a vital factor for success, survival and profitability of the restaurant industry in Mandalay.

Customer loyalty and marketing tactics are even more important in new emerging competitive restaurant industry in Myanmar as the country has adopted significant political and economic reforms in all sectors. For example, there are many more new restaurants now in Yangon and Mandalay compared to the time when reforms have not yet been introduced. However, it is speculated that most of these newly emerged restaurants might not be aware of the importance and even the existence of RMTs and hence they might not be using them as a marketing strategy. Therefore, there is a need to identify which RMTs have been practiced in local restaurant industry and the influence of RMTs on customer loyalty. This is the whole purpose of this study. Such kind of study is significant in that after investigating the practice of RMTs and relationship between RMTs and customer loyalty, marketing advice could be given to the restaurant industry in Mandalay for effective marketing planning on selection RMTs in order to increase customer loyalty.

In the study, the restaurants to be studied were selected from Mandalay, the city is chosen because of its large concentration and has a wide variety of restaurants and also has a huge market potential. Being one of the commercial hubs and the second largest city of Myanmar, Mandalay has a large consumer market for restaurant industry. Moreover, Mandalay is heavily populated, and a hotspot for tourism highly likely for the vast potential of restaurant businesses in Mandalay will thrive to grow further more in the near future. Therefore, to prepare for the growing market, restaurant industry in Mandalay should promote customer loyalty if effects of RMTs on customer loyalty can be revealed. Another motivation to select Mandalay rather than others, the choice of RMTs practice in Mandalay has not thoroughly been exercised so that the potential for customer loyalty has not yet been validated for practice by the industry.

Objectives of the Study

Objectives of this study are (i) to identify the relationship marketing tactics of the restaurants in Mandalay, (ii) to explore the effect of relationship marketing tactics on customer satisfaction and customer loyalty of the restaurants in Mandalay, (iii) to analyze the effect of customer satisfaction on customer trust and customer loyalty of the restaurants in Mandalay, and (iv) to examine the effect of customer trust on customer loyalty of the restaurants in Mandalay.

Method of Study

The data on the RMTs and customer loyalty were collected from the restaurant industry in Mandalay. There are many restaurants in Mandalay now. According to Mandalay City Development Council, there are 1893 restaurants which were registered in 2015. Out of them 1050 restaurants had one year of operation. The restaurants in Mandalay that meet two criteria (i) at least 20 employees and (ii) at least one year of operation were analyzed in this study. Since customer relationships take time to be built, the study selected only those restaurants that had been in operation for at least one year at the time this study was undertaken. There were a total of 257 restaurants which meet these criteria.

In this study, the two-stage sampling method was used to collect the required data. At the first-stage, 34 restaurants which represent 13% of total numbers of restaurants in Mandalay were selected from the total of 257 restaurants by using simple random sampling method. At the second stage, 680 regular customers were selected by using 3 in 1 systematic sampling method. Therefore, 20 regular customers from each restaurant were selected for the survey. Among these customers, those who come to restaurant on Saturdays and Sundays were collected. Required data are collected from the regular customers at the opening the restaurants for the last whole day. Data collection and analysis are conducted based on survey data from the period July 2015 up to September 2015.

Concept of Relationship Marketing

Berry (1983) defined RM as the building of long term interactive relationships, particularly with customers. Healy et al., (2001), described RM as “a dyadic buyer-seller relationship that tends to ignore the role of other elements in the distribution channel and the role of other stakeholders.”

Relationship marketing adopts a customer focus and its main benefits include greater customer retention, increased loyalty, reduced marketing costs, and greater profits. Relationship marketing is orientated to the long-term. The goal is to deliver long-term value to customers, and the measure of success is long-term customer satisfaction (Murphy et al., 2005).

Relationship Marketing Tactics

Relationship marketing is carried out with many relationship marketing tactics, which are widely to be applied in today’s business. Many tactics may have potential to influence relationship quality and retaining customers. There have been various ways for marketers to implement relationship marketing tactics, which are expected to have impact on customer retention and loyalty. More recent researchers have proposed the design of different RMTs to put RM into practice. For instance, De Wulf and Odekerken-Schroder (2003) showed that in general, RMTs such as direct mail, preferential treatment, and tangible rewards play an important role in influencing consumer trust. In a related study, De Wulf et al., (2003) demonstrated the importance of using different RMTs such as direct mail, preferential treatment, interpersonal communication, tangible rewards, product price, product quality, and service quality to impact on consumer perceptions of relationship investment which can in turn affect relationship quality and consequently behavioral loyalty.

Conceptual Framework of the Study

This study mainly focuses on common RM tactics used by the restaurants and there is a need to analyze the relationship between those RM tactics and customer satisfaction, RM tactics and customer loyalty, customer satisfaction and trust, customer satisfaction and customer loyalty and trust and customer loyalty. Therefore, conceptual framework is structured based on the

relationship between common RM tactics and customer satisfaction, RM tactics and customer loyalty, customer satisfaction and trust, customer satisfaction and customer loyalty and trust and customer loyalty in the restaurants which is shown in next section.

Customer Orientation and Customer Satisfaction

According to Korunka et al., (2007), customer orientation is an essential ingredient for customer satisfaction especially in service organizations. Customers expect frontline staff to explain and answer questions regarding the service in their own area and also to have a general knowledge about various functional aspects of the company. This increases their satisfaction with the service. Employees who are customer oriented are regarded as “critical to long-term relationship development” (Dunlap et al., 1988) as cited in Beatty et al., (1996). Beatty et al., (1996) empirically confirmed this finding in their study. This study would expect the restaurants in Mandalay that are customer-oriented to create positive experiences for their customers. In addition, this study would also expect such restaurants to create satisfied customers. According to them, customer orientation is likely to lead to customer satisfaction which would in turn lead to customer loyalty.

Service Quality and Customer Satisfaction

Many researchers perceived service quality as critical issue in the hospitality industry. Zeithaml (1998) defined service quality as the judgment of a customer about a product overall excellence. Service quality has a significant impact on the customer purchase intentions (Cronin & Taylor, 1992). Lee (1998) concluded that the perceived product and service quality had an effect on customer satisfaction and directly influenced customer loyalty.

According to Zeithaml et al., (1996), service quality leads to favorable behavioral intentions which in turn lead to customer retention. Schmitt (2003) argued that if customers receive positive experiences about the service offer, satisfaction will occur naturally. Many researchers have showed that service quality perceived by customers will directly influence customers' satisfaction in the service firm. In restaurant industry which belongs to service industry, service quality is an important indicator to assess a service provider's

performance. Offering a high quality service is considered to be a visible way to create customer satisfaction, as well as obtaining competitive advantages and building a long-term relationship with customers. Therefore, service quality has positive effect on customer satisfaction.

Interpersonal Communication and Customer Satisfaction

Berry (1995) suggested that encouraging two-way communications is a promising method by which service providers can build trust in their service. Similarly, Gutek et al., (2002)'s study demonstrates (1) that customers reported higher levels of trust in service providers with whom they regularly interacted, and (2) that customers were likely to be more loyal to such service providers. The reason is that it becomes easier to obtain direct feedback and to establish rapport when there are regular interactions with customers. Personal interactions are therefore important since they create satisfied customers and thus lead to the development and maintenance of relationships through the establishment of trust between the exchange partners.

Tangible Rewards and Customer Satisfaction

Various scholars have discussed the central role that tangible rewards such as price can play in a firm's marketing strategy. De Wulf and Odekerken-Schröder (2003)'s study shows that retailers can influence the levels of trust that customers have in their services by rewarding those customers who patronize their products. Berry (1983) as cited in Berry (1995) affirmed that pricing services in a way that encourages repeat purchases is one of the strategic elements of RM. Most restaurants cannot afford to offer their customers the tangible rewards that big firms offer because of their limited capital base. However, they can offer "small" rewards such as seasonal greeting cards, key rings, and diaries to their regular customers. This is expected to create positive feelings in the minds of their customers and thus customer satisfaction and thus leads them to loyalty. In addition, the price that restaurants charge for their product can have an influence on the way their customers perceive them. Consequently, the restaurants that offer a lower price to their customers in comparison to their competitors have possibilities of attracting more buyers and creating a feeling of satisfaction in the minds of their customers. Customers may also be satisfied with the restaurant that

offers tangible rewards to them. Therefore, tangible rewards has positively related to customer satisfaction.

Relationship Marketing Tactics and Customer loyalty

The service providers' main goal is to establish long-term relationships with customers, to gain their loyalty. Relationship marketing tactics is getting really important for marketers as a tool to meet this goal. Relationship marketing tactics can be said to be a process that can allow an organization to concentrate its limited resources on the greatest opportunities to increase sales and achieve a sustainable competitive advantage (Kotler, 1983). Relationship marketing tactics are conscious actions taken by a company or person who are designed to cause people to want to buy their goods or services. Relationship marketing tactics would retain existing customers and gain their trust and satisfaction through a high-quality communication and thus leads them to loyalty. Relationship marketing tactics (RMTs) improve customer satisfaction and consequently increase customer loyalty. (Lai et al., 2009). Relationship Marketing Tactics (RMTs) is different procedures to execute RM in practice. Through these tactics (such as customer orientation, service quality, interpersonal communication and tangible rewards) (Peng & Wang, 2006), companies' marketing experts are looking to build an effective customer oriented relation to attract and retain customers and make them loyal to company.

Relationship marketing tactics might be one of the best ways for service providers to retain customers and building customer loyalty. Many empirical studies have provided evidences that relationship marketing tactics have impact on behavioral loyalty which affects customer retention (Peng and Wang, 2006). Therefore, RM tactics is positively related to customer loyalty.

Customer Satisfaction and Customer Trust

The existing literature shows that satisfaction with the product or service is related to trust in the service provider. Research also shows that satisfaction with the product or service can lead to customer loyalty (e.g., Oliver, 1999; Yu et al.,) though it does not always guarantee loyalty (e.g., Oliver, 1999; Leverin and Liljander, 2006). Despite the minor differences in

opinion, it is well acknowledged in the literature that customer satisfaction is a major building block for customer loyalty. It is essential for restaurants to create satisfaction for their customers in order to attract new customers and to build strong relationships with existing customers. This can reduce the intensive competition they face among themselves and also from large firms within the industry. Customers who are satisfied with a restaurant's services may gain confidence in the restaurant and become committed and loyal to the restaurant in the longer run. Therefore, customer satisfaction is positively related to trust among the restaurant in Mandalay.

Customer Satisfaction and Customer Loyalty

The relationship between satisfaction and loyalty has been observed in several studies. Customer satisfaction is one of the most important outcomes of the marketing activities in the restaurant industry (Kandampully & Suhartanto, 2000). The satisfaction of business customers leads to customer loyalty (Fornell, 1992). Oliva et al., (1992) stated that in the relationship between customer loyalty and customer satisfaction that customer loyalty will increase significantly when satisfaction accomplishes a certain level and at the same time customer loyalty will drop dramatically if the satisfaction level drops to a certain point. Highly satisfied customers tend to be more loyal customer than the customers who were merely satisfied (Tepeci, 1999). Additionally, a number of studies has confirmed a significant positive relationship between customer satisfaction and loyalty (Chi, 2005). If consumers are satisfied with the product or service, they are more likely to carry on purchasing.

Customer Trust and Customer Loyalty

Morgan and Hunt (1994) argued that trust is a key construct in encouraging client retention and building successful relationships. Consistent with this argument, Ganesan's (1994) studied on the determinants of long-term orientation in buyer-seller relationship further provides evidence which suggests that trust is indeed a critical component for building long-term relationships between both parties to the exchange process. Peppers and Rogers (2006) argued that when customers trust the company to act in their best interests, they wish to deal more with that company and therefore become

more loyal to the company. Many researchers have suggested that customers' trust is a significant role in building long-term relationship and achieving customer loyalty. Beatty et al., (1996) found in their study that customer loyalty emerged whenever customers perceived that there is trust in their relationship with the service provider. Therefore, trust is positively related to customer loyalty.

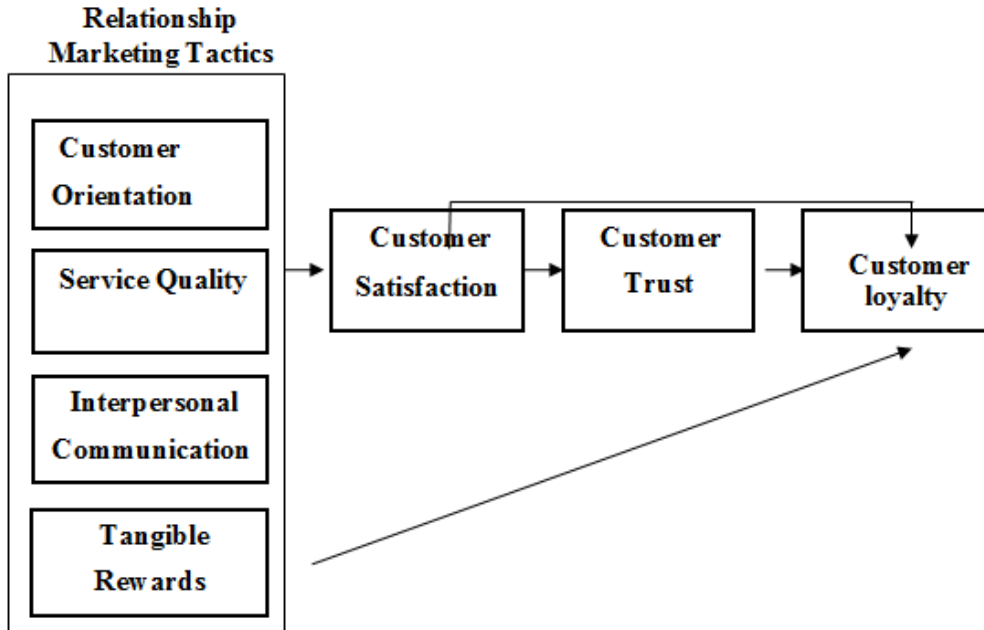


Figure: Conceptual Framework of the study

Source: Own Compilation based on Previous Studies

In the conceptual framework based on theoretical framework, four crucial factors are needed to determine customer relationship marketing in terms of customer orientation, service quality, interpersonal communication, and tangible rewards that can get customer satisfaction which lead to customer trust that also leads to customer loyalty. Thus, in the study, conceptual framework is to examine whether of customer orientation, service quality, interpersonal communication, and tangible rewards are the important factors for achieving customer satisfaction and loyalty. Correspondingly, it is needed to investigate whether customer satisfaction is a vital factor for determining to customer trust and loyalty. Similarly, it is necessary to examine whether

customer trust is a critical factor for determining to customer loyalty in the restaurants in Mandalay.

Results/ Finding

Analysis of Relationship Marketing Tactics Used by Restaurants

The first objective of the study is to identify the relationship marketing tactics (RMTs) of restaurants in Mandalay. The relationship marketing tactics of selected restaurants are measured for customer orientation, service quality, interpersonal communication and tangible rewards by using five-point Likert scales. Customer orientation, service quality, interpersonal communication and tangible rewards are measured with (6) items, (13) items, (5) items and (4) items respectively. The calculated mean values of owners' agreement for customer orientation, service quality, interpersonal communication and tangible rewards are described in Table (1) with standard deviation.

Table 1: The Overall Mean Value of Relationship Marketing Tactics

RMTs	Mean	Standard Deviation
Customer Orientation	4.26	0.17
Service Quality	3.73	0.53
Interpersonal Communication	4.98	0.06
Tangible Rewards	1.43	0.86

Source: Survey Data (2015)

According to Table (6), in comparing the overall mean values of RM tactics, it is found that the overall mean value of interpersonal communication is the largest. It can be said that interpersonal communication is the most influential practices in the surveyed restaurants. The second largest overall mean value is that of customer orientation. The third largest overall mean value is that of service quality. It is found that tangible rewards is not practice because the overall mean value of that practice is less than 3.5. The results indicate that restaurants mostly used customer orientation, service quality, and interpersonal communication.

Analysis on the Effect of Relationship Marketing Tactics on Customer Loyalty

The second objective of this study is the effect of RMTs on customer satisfaction and customer loyalty of restaurants in Mandalay. To prove this objective, linear regression analysis is used.

Effect of Relationship Marketing Tactics on Customer Satisfaction

To measure the effect of relationship marketing tactics on customer satisfaction of the restaurants in Mandalay, the multiple linear regression model is used. In analyzing the effect of relationship marketing tactics on customer satisfaction of the restaurants in Mandalay, customer orientation, service quality, interpersonal communication, and tangible rewards are used as independent variables and customer satisfaction is assumed as dependent variable. The multiple linear regression model of RM tactics on customer satisfaction can be described as

$$CS = \beta_0 + \beta_1CO + \beta_2SQ + \beta_3IC + \beta_4TR + U_i$$

Where CS = Customer Satisfaction

CO = Customer Orientation

SQ = Service Quality

IC = Interpersonal Communication

TR = Tangible Rewards

U_i = the error term

$\beta_0, \beta_1, \beta_2, \beta_3, \beta_4$ are constants. Firstly, calculated F value is examined to determine whether the multiple linear regression model can explain the effect of relationship marketing tactics on customer satisfaction. Since calculated F value is significant at 1% level, the multiple linear regression model can explain the effect of relationship marketing tactics on customer satisfaction. To investigate the significant factors, the calculated t value for each coefficient is examined. The calculated t values are presented in Table (2).

Table 2: Effect of Relationship Marketing Tactics on Customer Satisfaction

RMTs	Unstandardized Coefficient		Standardized Coefficient	t	Sig
	B	Std. Error	Beta		
1 (constant)	1.155	.145		7.987	.000
Customer Orientation	.165***	.036	.204	4.602	.000
Service Quality	.158***	.052	.149	3.053	.002
Interpersonal Communication	.405***	.049	.414	8.268	.000
F	119.919***				
R	0.668				
R ²	0.446				

Source: Survey Data (2015)

a. Dependent Variable: customer satisfaction

***, statically significant at 1% level respectively.

The multiple linear regression model is estimated by using backward method.

The estimated regression model is

$$\begin{aligned}
 CS &= 1.155 + 0.165 CO + 0.158 SQ + 0.405 IC \\
 t &= (7.987) (4.602) (3.053) (8.268) \\
 P - \text{Value} &= (0.000) (0.000) (0.002) (0.000) \\
 F &= 119.919*** \\
 R^2 &= 0.446
 \end{aligned}$$

Since the calculated F value is statistically significant at 1% level, this multiple linear regression model can present the relationship of satisfaction level of customer and customer orientation, service quality and interpersonal communication. Since t values of customer orientation, service quality and interpersonal communication are statistically significant at 1% level, customer orientation, service quality and interpersonal communication influence the satisfaction level of customer. The results demonstrate that the customer orientation, service quality and interpersonal communication have significant positive effects on customer satisfaction. Therefore, it can be said that these factors increase customer satisfaction of the restaurants in Mandalay.

According to above results, the restaurant owners who want to obtain long-term relationship with customers must adopt different tactics such as customer orientation, service quality and interpersonal communication to get customers' satisfaction. The above findings indicated that the relationship marketing tactics are positively associated with customer satisfaction. Therefore, the restaurant owners can foster and increase customer satisfaction through customer orientation, service quality, and interpersonal communication.

Effect of Relationship Marketing Tactics on Customer Loyalty

To measure the effect of RMTs on customer loyalty of restaurants in Mandalay, the multiple linear regression model is used. In analyzing the effect of RMTs on customer loyalty of restaurants in Mandalay, customer orientation, service quality, interpersonal communication, and tangible rewards are used as independent variables and customer loyalty is assumed as dependent variable. The multiple linear regression model of RM tactics on customer loyalty can be described as

$$CL = \beta_0 + \beta_1 CO + \beta_2 SQ + \beta_3 IC + \beta_4 TR + U_i$$

Where CL = Customer Loyalty

CO = Customer Orientation

SQ = Service Quality

IC = Interpersonal Communication

TR = Tangible Rewards.

U_i = the error term

$\beta_0, \beta_1, \beta_2, \beta_3, \beta_4$ are constants. This model is estimated by using the backward methods. Firstly, calculated F value is examined to determine whether the multiple linear regression model can explain the effect of RMTs on customer loyalty. Since calculated F value is significant at 1% level, the multiple linear regression model can explain the effect of RMTs on customer loyalty. To investigate the significant factors, the calculated t value for each coefficient is examined. The calculated t values are presented in Table (3).

Table 3: Effect of Relationship Marketing Tactics on Customer Loyalty

RMTs	Unstandardized Coefficient		Standardized Coefficient	T	Sig
	B	Std. Error	Beta		
1 (constant)	1.989	.160		12.443	.000
Customer Orientation	.152***	.043	.185	3.552	.000
Interpersonal Communication	.306***	.050	.316	6.066	.000
F	54.732***				
R	0.448				
R ²	0.200				

Source: Survey Data (2015)

a. Dependent Variable : customer loyalty

***, statistically significant at 1% level respectively.

The estimated multiple linear regression model is

$$\begin{aligned}
 CL &= 1.989 + 0.152 CO + 0.306 IC \\
 t &= (12.443) (3.552) (6.066) \\
 P - \text{Value} &= (0.000) (0.000) (0.000) \\
 F &= 54.732*** \\
 R^2 &= 0.200
 \end{aligned}$$

According to the results from the Table (3), since the calculated F value is statistically significant at 1% level, this multiple linear regression model can present the relationship of loyalty level of customer and customer orientation and interpersonal communication. Since t values of customer orientation and interpersonal communication are statistically significant at 1% level, customer orientation and interpersonal communication have effect on customer loyalty. The signs of coefficient of customer orientation and interpersonal communication are positive, that implies the better the customer orientation and interpersonal communication, the more the loyalty level of customers. The results indicate that the customer orientation and interpersonal communication have significant positive effects on customer loyalty. Therefore, it can be said that these factors increase customer loyalty of the restaurants in Mandalay. According to the surveyed results, customer orientation is the first priority for most restaurants in Mandalay. Customer

orientation helps the restaurants to get a better opportunity. In addition, interpersonal communication is an important ingredient for the success of restaurants because it enables owner-managers and employees to satisfy customer needs through the creation of positive experiences, and to attract new customers. Therefore, based on the results from the multiple linear regression model, it can be concluded that the customer orientation and interpersonal communication have positive effect on customer loyalty.

Effect of Customer Satisfaction on Customer Trust

The simple linear regression model is used to explain the effect of customer satisfaction on trust. In this model, customer satisfaction is considered as independent variable and trust is considered as dependent variable. Therefore, simple linear regression model of the effect of customer satisfaction on trust can be described as

$$T = \beta_0 + \beta_1 CS + U_i$$

Where T = Trust

CS = Customer Satisfaction

U_i = the error term

β_0 , β_1 are constants. To investigate the significant factors, the calculated t value for each coefficient is examined. The calculated t values are presented in Table (4).

Table 4: Effect of Customer Satisfaction on Customer Trust

	Unstandardized Coefficient		Standardized Coefficients	t	Sig
	B	Std. Error	Beta		
1(constant)	1.235	.153		8.064	.000
Customer Satisfaction	.677***	.040	.627	16.892	.000
F	285.328***				
R	0.627				
R ²	0.393				

Source: Survey Data (2015)

a. Dependent Variable : Trust

***, Statistically significant at 1% level.

T	=	1.235 + 0.677 CS
t	=	(8.064) (16.892)
P-value	=	(0.000) (0.000)
F	=	285.328***
R ²	=	0.393

Since the calculated F value is statistically significant at 1% level, this multiple regression model can present the relationship of trust level of customer and customer satisfaction. According to Table (4), t value of customer satisfaction is statistically significant at 1% level. Therefore, customer satisfaction is the significant factor affecting on customer trust in the restaurant industry. The coefficient of customer satisfaction is positive. Therefore, it can be said that the trust increases whenever customers are highly satisfied. The restaurants are essential to create satisfaction for their customers in order to attract new customers and to build strong relationships with existing customers. This can reduce the intensive competition they face among themselves and also from large firms within the industry. Customers who are satisfied with a restaurant's services may gain confidence in the restaurant and become committed and loyal to the restaurant in the longer run. Therefore, it can be concluded that, customer satisfaction is a significant factor for trust in the restaurants.

Effect of Customer Satisfaction on Customer Loyalty

To measure the effect of customer satisfaction on customer loyalty of restaurants in Mandalay, the multiple linear regression model is used. In analyzing the effect of customer satisfaction on customer loyalty of restaurants in Mandalay, customer satisfaction is used as independent variables and customer loyalty is assumed as dependent variable. The multiple linear regression model of customer satisfaction on customer loyalty can be described as

$$CL = \beta_0 + \beta_1 CS + U_i$$

Where CL = Customer Loyalty

CS = Customer Satisfaction

U_i = the error term

β_0 , β_1 are constants. To investigate the significant factors, the calculated t value for each coefficient is examined. The calculated t values are presented in Table 5.

Table 5: Effect of Customer Satisfaction on Customer Loyalty

	Unstandardized Coefficient		Standardized Coefficient	t	Sig
	B	Std. Error	Beta		
1(constant)	1.675	.154		10.853	.000
Customer Satisfaction	.521***	.040	.524	12.888	.000
F	166.111***				
R	0.524				
R ²	0.275				

Source: Survey Data (2015)

a. Dependent Variable : Loyalty

***, Statistically significant at 1% level.

$$\begin{aligned}
 CL &= 1.675 + 0.521CS \\
 t &= (10.853) (12.888) \\
 P\text{-value} &= (0.000) (0.000) \\
 F &= 166.111*** \\
 R^2 &= 0.275
 \end{aligned}$$

Since the calculated F value is statistically significant at 1% level, this multiple regression model can present the relationship of loyalty level of customer and customer satisfaction. According to Table (5), t value of customer satisfaction is statistically significant at 1% level. Thus, customer satisfaction is the significant factor affecting on customer loyalty in the restaurant industry. The coefficient of customer satisfaction is positive. Therefore, it can be said that the loyalty increases whenever customers are highly satisfied. According to the surveyed results, customer satisfaction has a positive effect on customer loyalty. Satisfied customers form the foundation of any successful restaurant because customer satisfaction leads to repeat purchases, brand loyalty, and positive word of mouth. Customers who are satisfied with a restaurant's services may gain confidence in the restaurant and become committed and loyal to the restaurant in the longer run. Therefore, it

can be concluded that customer satisfaction is positively related to customer loyalty.

Effect of Customer Trust on Customer Loyalty

The simple linear regression model is used to explain the effect of trust on customer loyalty. In this model, trust is considered as independent variable and customer loyalty is considered as dependent variable. Therefore, simple linear regression model of the effect of trust on customer loyalty can be described as

$$CL = \beta_0 + \beta_1 T + U_i$$

Where CL = Customer Loyalty

T = Trust

U_i = the error term

β_0, β_1 are constants. To investigate the significant factors, the calculated t value for each coefficient is examined. The calculated t values are presented in Table (6).

Table 6: Effect of Customer Trust on Customer Loyalty

	Unstandardized Coefficient		Standardized Coefficient	t	Sig
	B	Std. Error	Beta		
1(constant)	1.640	.139		11.822	.000
Trust	.527***	.036	.572	14.612	.000
F	213.522***				
R	0.572				
R ²	0.327				

Source: Survey Data (2015)

a. Dependent Variable : Loyalty

***, Statistically significant at 1% level.

$$CL = 1.640 + 0.527 T$$

$$t = (11.822) (14.612)$$

$$P\text{-value} = (0.000) (0.000)$$

$$F = 213.522***$$

$$R^2 = 0.327$$

Since the calculated F value is statistically significant at 1% level, this multiple regression model can present the relationship of customer loyalty and trust. According to Table (6), trust is significant at 1% level. Thus, customer trust is the significant factor affecting on customer loyalty in the restaurant industry. The coefficient of customer trust is positive. Therefore, it can be said that the customer loyalty increases whenever customer trust highly. In surveyed restaurants, the owners of the restaurants considered that trust is important to long-term relationships and enhancing customer loyalty. Many researchers have suggested that customers' trust is a significant role in building long-term relationship and achieving customer loyalty. Therefore, it can be concluded that trust is positively related to customer loyalty.

Effect of RMTs, Customer Satisfaction and Customer Trust on Customer Loyalty

To measure the effect of RMTs, customer satisfaction and customer trust on customer loyalty of restaurants in Mandalay, the multiple linear regression model is used. In analyzing the effect of RMTs, customer satisfaction and customer trust on customer loyalty of restaurants in Mandalay, RMTs, customer satisfaction and customer trust are used as independent variables and customer loyalty is assumed as dependent variable. The multiple linear regression model of RMTs, customer satisfaction and customer trust on customer loyalty can be described as

$$CL = \beta_0 + \beta_{1RMTs} + \beta_{2CS} + \beta_{3T} + U_i$$

Where RMTs = Relationship Marketing Tactics

CL = Customer Loyalty

CS = Customer Satisfaction

T = Trust

U_i = the error term

$\beta_0, \beta_1, \beta_2, \beta_3$ are constants. To investigate the significant factors, the calculated t value for each coefficient is examined. The calculated t values are presented in Table (7).

Table 7: Effect of RMTs, Customer Satisfaction and Customer Trust on Customer Loyalty

	Unstandardized Coefficient		Standardized Coefficient	t	Sig
	B	Std. Error	Beta		
1(constant)	1.106	.161		6.850	.000
RMTs	.107	.050	.107	2.144	.033
Customer Satisfaction	.216	.055	.217	3.960	.000
Trust	.352	.045	.382	7.759	.000
F	88.744***				
R	0.616				
R ²	0.379				

Source: Survey Data (2015)

a. Dependent Variable : Loyalty

***, Statistically significant at 1% level.

$$\begin{aligned}
 CL &= 1.106 + 0.107RM\ Ts + 0.216CS + 0.352T \\
 t &= (6.850) (2.144) (3.960) (7.759) \\
 P\text{-value} &= (0.000) (0.033) (0.000) (0.000) \\
 F &= 88.744*** \\
 R^2 &= 0.379
 \end{aligned}$$

According to Table (7), RMTs, customer satisfaction and trust is significant at 1% level. In addition, customer trust is the most significant factor affecting on customer loyalty in the restaurant industry because the estimated value of its coefficient is the highest.

Conclusion

Major findings from this study reveal that most restaurants employ customer orientation, service quality and interpersonal communication. However, tangible rewards are less significantly used by the surveyed restaurants. This study concludes that these RM tactics are not differently being adopted among the surveyed restaurants. It means that customer orientation, service quality and interpersonal communication are identical among the surveyed restaurants.

In analyzing the effect of RM tactics on customer satisfaction, the results of multiple linear regression model show that relationship marketing tactics: customer orientation, service quality and interpersonal communication have a positive effect on customer satisfaction. According to the results, interpersonal communication is the most important factor affecting customer satisfaction in the restaurant industry. After interpersonal communication, customer orientation is the second most important factor influencing customer satisfaction in the restaurant industry. The third most important factor influencing customer satisfaction is service quality. All these factors positively affect customer satisfaction in the restaurant industry.

In analyzing the effect of RM tactics on customer loyalty, the results of multiple linear regression model show that relationship marketing tactics: customer orientation and interpersonal communication have a positive effect on customer loyalty. According to the results, interpersonal communication is the most important factor affecting customer loyalty in the restaurant industry. After interpersonal communication, customer orientation is the second most important factor influencing customer loyalty in the restaurant industry. The results demonstrate that the customer orientation and interpersonal communication have significant positive effects on customer loyalty. Therefore, it can be said that these factors increase customer loyalty of the restaurants in Mandalay. In comparing the effect of RM tactics on customer satisfaction and customer loyalty, RM tactics are more influential on customer satisfaction than customer loyalty.

In analyzing the effect of customer satisfaction on customer trust, the results of multiple linear regression model show that customer satisfaction is also the most important factor affecting customer trust in restaurants. Major finding from this study has revealed that customer satisfaction has a positive effect on customer trust. Therefore, it can be implied that the higher the satisfaction, the more the trust level of customers.

From the result of analysis, it is found that customer satisfaction has positive relationship with customer loyalty. Thus, customer satisfaction is the significant factor affecting on customer loyalty in the restaurant industry. The coefficient of customer satisfaction is positive. Therefore, it can be said that the loyalty increases whenever customers are highly satisfied.

In analyzing the effect of customer trust on customer loyalty, the finding of this study shows that trust positively impacts on customer loyalty. Trust is a significant predictor of customer loyalty. The reason why trust was a significant influence of customer loyalty in the restaurants could be because of the natural tendency of customers to go back to a service provider who they trust. This is especially true in developing countries where trust levels usually fluctuate because of a general lack of consistency in service delivery. This finding is compatible with the multitude of previous studies, almost all of which show that RMTs has a positive effect on customer satisfaction and customer loyalty. Also, satisfaction has a positive effect on trust and loyalty. And then customer trust has a positive effect on loyalty.

In analyzing the effect of RMTs, customer satisfaction and customer trust on customer loyalty, the finding of this study shows that RMTs, customer satisfaction and trust have positive impact on customer loyalty. In comparing the effect of RMTs, customer satisfaction and customer trust on customer loyalty, customer trust is the most significant effect on customer loyalty. As the overall view of results, customer trust is more influential on customer loyalty than RMTs and customer satisfaction.

Therefore, the main contribution of this study is that relationship model of RMTs has been built up successfully and non necessity for the restaurants in Mandalay to promote customer satisfaction by using proper tangible rewards has been revealed. This result is quite significant for the restaurants in Mandalay to maintain market share and customer loyalty in today's highly competitive market in restaurant and service industry.

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References

- Berry, L. L. (1983). Relationship Marketing. *Journal of the Academy of Marketing Science*, 23(4), 236-245.
- Berry, L. L. (1995). Relationship Marketing of Services-Growing Interest, Emerging Perspectives. *Journal of the Academy of Marketing Science*, 23(4), 236-245.
- De Wulf, K., & Odekerken-schroder, G., & Lacobucci, D. (2001). Investment in Consumer Relationships: A Cross-Country and Cross-Industry Exploration. *Journal of Marketing*, 65(4), 33-50.
- De Wulf, K., & Odekerken-schroder, G. (2003). Assessing the Impact of a Retailer's Relationship Efforts on Consumers' Attitudes and Behaviour. *Journal of Retailing and Consumer Service*, 10, 95-108.
- Gronroos, C. (1995). Relationship Marketing: the Strategy Continuum. *Journal of the Academy of Marketing Science*, 23(4), 252-254.

- Healy, M., Hastings, K., Brown, L., & Gardiner, M. (2001). The Old, the New and the Complicated: A Trilogy of Marketing Relationships. *European Journal of Marketing*, 35(1-2), 182-193.
- Korunka, C., Scharitzer, D., Carayon, P., Hoonakker, P., Sonnek, A., & Sainfort, F. (2007). Customer Orientation among Employees in Public Administration: A Transnational, Longitudinal Study. *Applied Ergonomics*, 38(3), 307-315.
- Kotler, P. (2003). *Marketing Management*, 11th ed. New Jersey: Pearson Education
- Leverin, A., & Liljander, V. (2006). Does Relationship Marketing Improve Relationship Satisfaction and Loyalty? *International Journal of Bank Marketing*, 24(4), 232-251.
- Morgan, R. M., & Hunt, S. D. (1994). The Commitment-Trust Theory of Relationship Marketing. *Journal of Marketing*, 58, 20-38.
- Oliver, R. L. (1999). Whence Consumer Loyalty? Special Issue. *Journal of Marketing*, 63, 33-44.
- Parasuranman, A., Zeithaml, V. A., & Berry, L. L. (1988). SERVQUAL: A Multiple Item Scale for Measuring Consumer Perceptions of Service Quality. *Journal of Retailing*, 64(1), 12-40.
- Peppers, D. & Rogers, M. (2006). Customer Royalty: A Matter of Trust. *Sales and Marketing*, 158(5), 22-24.
- Ravald, A., & Gronoos, C. (1996). The Value Concept and Relationship Marketing. *European Journal of Marketing*, 30(2), 19-30.
- Zeithmal, V., & Bitner M. (1996). *Service Marketing*, 2nd Ed. New York: McGraw-Hill.

THE EXPORT PERFORMANCE OF MYANMAR GARMENT INDUSTRY

Yin Maw Myint^{*}

Abstract

This research intends to analyze firm, managerial and environmental factors affecting the garment industry and to explore the impact of these factors on the firm's export performance. The descriptive and exploratory research methods are used. The results show that firm size, firm technology, export marketing strategy, management commitment, management attitude and perceptions and international experience, insufficient electricity, port difficulties, bureaucratic requirements, financial assistance and technical assistance had substantial impact on the firm export performance. This study makes important theoretical contributions to export performance, suggesting that the resource-based view incorporating some environmental characteristics is a valid framework within which to study the export performance of garment industry in Myanmar. The garment manufacturers should attempt to expand firm size and adopt advanced manufacturing technology, apply better export marketing strategies under the proper management systems with the technical assistance from the Myanmar Garment Manufacturer Association and finance assistance from the government. With regard to the export barriers, the garment manufacturers should reassign the resources of the firm in order to overcome the barriers such as insufficient electricity and port difficulties.

Keywords: Export performance, firm, management, export assistance, export barrier

Introduction

Export is one of the driving forces for economic development in many emerging economies. Export provides a way to assist a nation to improve its balance of payment, trade deficit, employment rate and overall standard of living. Usually by producing manufactured goods for export, the industrial development follows certain recognizable phases from a primitive agricultural subsistence economy to a sophisticated one. Depending on the extent of its respective industrial development, a country may be classified as a "developing country" or "developed country". Industrialization is an indispensable element of a country's general socioeconomic growth and

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development. For developing countries, it is widely recognized that industrial development is imperative to reduce poverty and to attain sustainable economic growth. Although industrialization is of vital importance for economic growth, there is no consensus on how to develop industries and where to start.

A list of literature argues that developing countries should concentrate on promoting labour intensive industries and exports first due to their low capital stock and relatively abundant labour force. Therefore many developing countries are attempting to follow this path. However, the interesting observation is that not all developing countries are reaping the benefits of promoting labour intensive industries in terms of employment generation and sustaining economic growth (Khondoker and Kalirajan, 2009).

Generally, developed countries can produce new products in the market because of their supremacy in scientific innovation and research according to Vernon's product life cycle theory. Once the technology becomes standardized for the newly introduced product, the production base gradually shifts to other countries mainly to slice down the production and marketing costs. The garment industry is the typical industry that has been relocating from the developed to developing countries in the way that the product life cycle theory predicts. There are some countries that supports the Vernon's product life cycle theory. Historically, a number of the presently developed countries, for example, UK, USA and Japan started their industrialization process first through the development of garment industry. In the 1950s, the garment industry developed in Japan, and in the 1960s the country became the largest exporter of garment in the USA. In the 1970s, the garment industry gradually developed in the East Asian countries, and by the end of the decade, Hong Kong, Korea, Taiwan and Singapore, presently known as the newly industrialized countries (NICs), emerged as prominent global garment exporters.

Finally, since the 1980s, the industry has been gradually developing in other Asian and Latin American countries and presently some developing countries such as, China, India, Bangladesh and Vietnam have emerged as the major garment exporters. Therefore, historically the garment industry has been migrating from the high-income counties to low-income countries, while playing a critical role on the early stage of industrial development process in

the host economies. Observing its critical role on the industrial development process, the garment industry is referred as the typical starter industry (Gereffi, 1999). It is learned that rapid growth is generated in a limited number of economic activities such as textiles or garments or food products.

Since garment industry employs a huge number of labors, labor cost is prime factor for competitiveness. However, the lower labor cost alone could not be adequate to achieve the growth of the garment industry. A variety of factors also play an important role in their growth. Labor productivity is one of the important factors that depends on level of investment in training. Another factor is labor relation since every employer and potential investor in garment sector desires for loyalty and obedience worker while worrying about any kinds of demonstration, labor strike and riot that results from poor employee relation.

Kudo (2010) pointed the cost of logistics as playing an important role in international competitiveness of garment industry. Since competitiveness of garment industry rests upon speed of response to international fashion trend and the cost and time taken to transport from client countries to operating countries and from operating countries to international market, the lower logistics cost inevitably leads to higher competitive advantage. Lower logistics cost and time depends on the length of travel, the seaport and port facilities, the license requirement and efficiency of license processing and custom clearing at the port and finally the frequency and size of vessels enter into the port (Tewari, M., 2006).

In addition to above factors, the policy and strategy adopted by the government are prime interest for potential investor in garment sector. The investors are very much concerned with government measures to attract foreign investment and to encourage exports such as tax concession, grants and subsidies, loans and privileges given to special economic zones. Presence or absence of these factors largely determines the growth of garment industry. The investors in garment sector are also attracted by the special rights and preferences given to that country by major customer countries like United States of America (USA) and Japan that come through multilateral and bilateral agreements between the countries. The growth of garment sector is mainly dependent upon the country's ability to attract international investors

in garment sector who have already networks with global garment supply chain.

While a large number of studies are available on the role of exports on overall economic growth (e.g., Salvatore and Hatcher, 1991; Moschos, 1989), few studies directly examine the determinants of the success of exports, particularly the labor-intensive exports by the developing countries. Using information from four countries in Asia, Dollar, Hallward-Driemeier and Mengistae (2005) demonstrate that business environment and infrastructure critically affect the growth of the labor-intensive garment industry and garment exports by developing countries. A study that uses a more direct approach to examine the determinants of labor-intensive exports by the developing countries was done by Ninkovic (2009). She empirically demonstrates that besides labor and capital, home countries' transport infrastructure as well as transportation costs, critically determine the garment exports by the developing countries.

Myanmar is still one of the developing countries in the world and has a huge potential for the development in future in the light of country's strategic location, abundant natural resources, availability of educated labor force. Myanmar is a country suitable for labour-intensive industries, and it can attract more firms from the advanced ASEAN members and other countries where workers' wages have risen. One of the most obvious advantages of Myanmar is the availability of abundant, cheap and relatively well-educated labour. The working age population (15-59 years of age) increased from 23.47 million (57.55 percent of the total population) in 1990-91 to 36.94 million (61.79 percent of the total) in 2010-11 (CSO, 2011). It is reasonable to believe that there are a large number of unemployed and under-employed workers in the labour markets of Myanmar.

Although Myanmar's economy itself is highly dependent on the natural resources sector at present, to become an industrialized country in the near future, Myanmar must further develop and strengthen its garment and other labor-intensive industries (Kojima, E., 2011). In fact the garment industry in Myanmar is only manufacturing industry involved in global and regional production networks. Myanmar garment industry integrates with the international production and distribution network, through observations on its export markets and raw material imports. In 2013, the main export products of

Myanmar are natural resources having a 44.66% share as a top item and the textile and garment products (13.13 %) the second largest export item. Garments are the major and virtually the only industrial product among export commodities.

However, the garment industry in the period between 2011 and 2015 is not as much as expected due to a number of constraints. Shortage of infrastructure, mainly availability of regular power supply, rising logistics costs and labor relations stand at the top among these barriers. Myanmar needs to reduce the barriers that hinder the growth of the garment industry to grasp the arising opportunities in time and to take advantage for the growth. In a nutshell, the growth of Myanmar garment industry as a main engine for country's economic development during its transition period is dependent upon the country's ability to reduce these barriers.

Concerning environmental threats to Myanmar garment industry, there is an increased level of competition from low cost manufacturers around the world. The Myanmar garment industry is under tremendous pressure to increase productivity, to improve performance, to become better production quality, and to advance the management systems. In order to develop the garment industry, it is important for the government and industry to understand the antecedents and moderators of export performance of garment industry. Therefore, efforts are needed to explore the determinants of export performance of garment industry in Myanmar.

Method of the Study

This study is conducted based on the descriptive and exploratory research methods to arrive at findings and conclusion. Descriptive method is used to present the firm and managerial characteristics that are currently adopted in garment factories. The exploratory research method is used to explore the characteristics which explain the impact of firm, managerial and environmental characteristics on export performance of garment factories.

Sampling frame is obtained from the member list in Myanmar Garment Manufacture Association. Almost all garment factories operating in Myanmar have to be registered at the Association in order to obtain necessary certifications such as country of origin certificate and documents for export.

All the garment factories registered in MGMA are not export-oriented garment factories. In 2014, there were about 350 garment factories registered in the MGMA. To qualify for the study, it is better if the registered garment factories have more than five-year international experiences. There were about 150 registered garment factories which have at least seven-year international experience. Among these factories, 32 garment factories which represent 20 percent of them are chosen for the survey. As a sampling technique, the simple random sampling method is used.

The study is conducted based on both primary data and secondary data. The required data are obtained from the sample of garment factories by using the method of face-to-face interview with owners and general managers of garment factories that are currently operating. During the interviews, their perceived opportunities on Myanmar garment industry are explored. Not only structured questionnaires but also personal interview is used to collect both quantitative and qualitative primary data. Primary data are used to explore the factors affecting the export performance of garment factories in Myanmar. Secondary data used in this study are obtained from the Myanmar Garment Manufacturer Association and other various sources such as previous researches, websites, annual reports, newspapers, statistical data and bulletins. A questionnaire with organized with a formalized set of questions in order to obtain information from the respondents.

Findings and Discussions

According to the general profile of sample garment manufacturing firms, most firms are locally-owned firms representing fifty percent, followed by foreign-owned firms and joint venture firms. At present, according to the structure of the garment industry, most garment manufacturing firms in the industry are locally-owned firms. As the nature of the garment industry is low capital-intensive industry, the findings reveal that maximum capital investment of garment firms is between five hundreds to one thousand Kyats millions. It can be found that the maximum number of employees in the sample garment firms are in the range of between one thousand to two thousands employees because the nature of garment industry is labour intensive. Regarding the number of years of operation in export-oriented garment industry, most firms have between ten to twenty years of operation in

the industry. For the majority of garment firms, the maximum number of export destination is between five to ten export countries. The main export countries of garment manufacturing firms are Japan, Korea and Spain.

Effect of Firm Characteristics on Export Performance

In analysis of firm characteristics affecting the export performance of garment manufacturing firms, there are two main factors: firm characteristics and export performance. Firm characteristics such as firm size, firm age, firm export experience, firm technology, export marketing strategy, innovation and ownership structure are chosen as independent variables. Export performance measures such as export sales value and labour efficiency are chosen as the most common dependent variables. To examine the possible relationships between firm characteristics and export performance of garment manufacturing firms, the following multiple linear regression model is employed.

$$EP = \beta_0 + \beta_1 FS + \beta_2 FA + \beta_3 FEE + \beta_4 FT + \beta_5 EMS + \beta_6 I + \beta_7 OS + \varepsilon_i \quad (1)$$

Where, EP = Export Performance, FS = Firm Size, FA = Firm Age

FEE = Firm Export Experience, FT = Firm Technology

EMT = Export Marketing Strategy, I = Innovation, O = Ownership Structure ε_i is random error term and ε_i follows normal distribution with mean zero and constant variance σ_ε^2 .

In analyzing the firm characteristics affecting the export performance of garment manufacturing firms, the dependent variables, firm characteristics, and independent variables are measured by using regression analysis. The export sales value and labour efficiency measurement in 2013 are used as the dependent variables.

Table 1: Coefficient Table for Firm Characteristics and Export Sales

Firm Characteristics	Export Sales		Calculated 't' value	Significant 'P' value
	Regression coefficient (β)	Standardized Error		
(Constant)	-96762678.137***	21651269.507	-4.469	.000
Firm Size	8450.407***	2263.838	3.733	.001
Export Marketing; Strategy	20862151.978***	6442061.871	3.238	.003
Firm technology	9616171.715**	3667771.326	2.622	.014

Source: SPSS Output

Notes: ** indicates that 't' is significant at 5% level and
*** indicates that 't' is significant at 1% level.

When the results are calculated by using the multiple regression analysis, the best estimated multiple linear regression model is

$$EP = -96762678.137 + 8450.407 FS + 20862151.978 EMS + 9616171.715 FT$$

According to Table 1, at the 0.05 level of significant regression analysis, firm size, a dimension of firm characteristics, has a direct positive impact on export sales of garment firms at 1% significant level. Also, export marketing strategy, a dimension of the independent variable, has a significant positive effect on export sales value at 1% level. In addition, firm technology of the garment firms is also significant at 5% level and the sign of coefficient is positive. However, other dimensions of firm characteristics such as firm age, firm export experience, ownership structure and innovation are not significantly related to export sales as 'P' value is greater than 0.05.

Table 2: Coefficient Table for Firm Characteristics and Labour Efficiency

Firm Characteristics	Labour efficiency		Calculated 't' value	Significant 'P' value
	Regression coefficient (β)	Standardized Error		
(Constant)	-50229.895***	15750.889	-3.189	.003
Export Marketing Strategy	11106.691**	4455.778	2.493	.019
Firm technology	6771.023**	2744.599	2.467	.020

Source: SPSS Output

Notes: ** indicates that 't' is significant at 5% level and
*** indicates that 't' is significant at 1% level.

When the results are calculated by using the multiple regression analysis, the best estimated multiple linear regression model is

$$EP = -50229.895 + 11106.691 \text{ EMS} + 6771.023 \text{ FT}$$

As can be seen from Table 2, at the 0.05 level of significant regression analysis, export marketing strategy, a dimension of the independent variable, has a significant positive effect on labour efficiency of garment manufacturing firms. In addition, firm technology of the garment firms is also significant at 5% level and the sign of coefficient is positive. However, it is found that other dimensions of firm characteristics such as firm size, firm age, firm export experience, ownership structure and innovation are not significantly related to efficiency of garment manufacturing firms as 'P' value is greater than 0.05.

It is observed that the firm characteristics of garment manufacturing firms have an impact on performance of the garment industry. The firm characteristics specified are firm size, firm export marketing strategy and firm technology. Therefore, firm characteristics constitute as one of the determinants of the performance of the garment industry in Myanmar.

A positive association with firm size and export sales is noted with indication that larger firms are more capable of bearing the large investments and high risks associated with exporting to obtain more export sales. However, it is found that there is negative relationship between firm size and labour efficiency of garment firms. This statistical result means that the more the firms are smaller, the more they achieve the labour efficiency.

With regard to the impact of firm size on export performance, this finding agrees with that of Duenas-Caparas (2006) examined the determinants of export performance of the Philippine manufacturing sector. Their study indicated both a positive linear and negative non-linear relationship between firm size and export performance for the Philippine clothing sector, but the results were not statistically significant in the food processing and electronics sectors. Several empirical studies show relatively efficient firms in developing countries tend to be large. Larger firms are more efficient than smaller ones. Efficient firms grow and survive, while inefficient firms exit the industry. However, a positive correlation between efficiency and size might also arise if larger firms have more competent management.

With respect to association between export marketing strategy and the export performance of garment firms, it is observed that there is an association of export marketing strategy with export performance of garment firms in the industry. So the garment firms improve their export sales by using the export marketing strategies. The result of this relationship between export marketing strategies and export performance is consistent with previous export performance literatures. For analytical purposes, a total of four different marketing strategy variables are examined: product differentiation, promotion, distribution channels and price strategy. According to the analysis results, importance of marketing strategies for export performance perceive sufficiently by the exporters of garment manufacturing firms. Actually, the most promising predictor of performance other than the environmental conditions and managerial characteristics should be export marketing strategies and the use of these strategies. Because marketing strategies and management characteristics are controllable by firm whereas environmental conditions cannot be changed. Therefore, the export marketing strategy is an important factor for the export performance of the garment industry in Myanmar.

Concerning the firm technology, the statistical results show that there is a positive relationship between garment manufacturing technology and export performance. Implementation of advanced manufacturing technologies has been recognized as a main factor that enriches competitiveness in the garment manufacturing firms. Thus adopting advanced production methods, quality assurance process and quality management in the garment manufacturing firms increase higher export performance such as export sales volume and efficiency. Garment manufacturing firms that are more committed to technological activities achieve greater export performance. Thus, garment firms that are more strongly committed to technological activities also have a strong commitment to international markets. This result is consistent with the finding of previous studies and of particular relevance for companies that are not particularly technology-intensive, in which the role of exports can redress this initial disadvantage.

Owners and managers in garment manufacturing firms should be aware that manufacturing technology strategy must be implemented in their firms in order for them to obtain high export sales and efficiency over their

rivals. For garment manufacturing firms, experts or supervisors who could make up sample units for clients distribute techniques of each step to operators. If the processes are special and weird, clients usually provide necessary technology with their trainers. Garment operation processes are not very complicated and need no high-tech (except for computerized sewing machines) but expertise or repeated operation is very important and contributes to quality as well as efficiency in production.

Effect of Managerial Characteristics on Export Performance

In analysis of managerial characteristics affecting the export performance of garment manufacturing firms, there are two main factors: managerial characteristics and export performance. Managerial characteristics such as managerial attitude and perception, management commitment, international experience and formal education are chosen as independent variables. The most common used export performance measures such as export sales volume and labour efficiency are chosen as dependent variables. To examine the possible relationships between managerial characteristics and export performance of garment manufacturing firms, the following multiple linear regression model is employed.

$$EP = \beta_0 + \beta_1 IE + \beta_2 E + \beta_3 MAP + \beta_4 MC + \varepsilon_i \quad (2)$$

Where, EP = Export Performance, IE = International Experience,
E = Education, MAP = Management Attitude and Perception,
MC = Management Commitment

ε_i is random error term and ε_i follows normal distribution with mean zero and constant variance σ_ε^2 .

Table 3: Coefficient Table for Managerial Characteristics and Export Sales

Managerial Characteristics	Export Sales		Calculated 't' value	Significant 'P' value
	Regression coefficient (β)	Standardized Error		
(Constant)	-57028357.624***	8572215.208	-6.653	.000
Managerial Attitude and Perception	8373731.356***	2202996.833	3.801	.001
Managerial Commitment	9309347.581***	3232782.212	2.880	.008
International Experience	3393543.653**	1655528.390	2.050	.050

Source: SPSS Output

Notes: ** indicates that 't' is significant at 5% level and
*** indicates that 't' is significant at 1% level.

When the results are calculated by using the multiple regression analysis, the best estimated multiple linear regression model is

$$EP = -57028357.624 + 8373731.356 \text{ MAP} + 9309347.581 \text{ MC} + 3393543.653 \text{ IE}$$

According to Table 3, at the 0.05 level of significant regression analysis, managerial commitment has a direct positive impact on export sales of garment firms. Also, managerial attitude and perception upon export barriers, export advantages and export risk has a significant positive effect on export sales at 1% level. In addition, international experience of managers is also significant at 5% level and the sign of coefficient is positive.

However, it is found that formal education level of managers, a dimension of the independent variable, is not significantly related to export sales as 'P' value is greater than 0.05.

Table 4: Coefficient Table for Managerial Characteristics and Labour Efficiency

Managerial Characteristics	Labour Efficiency		Calculated 't' value	Significant 'P' value
	Regression coefficient (β)	Standardized Error		
(Constant)	-12816.842**	5253.314	-2.440	.021
Managerial Commitment	5705.632***	1350.064	4.226	.000
International Experience	-2749.428**	1014.558	-2.710	.011

Source: SPSS Output

Notes: ** indicates that 't' is significant at 5% level and *** indicates that 't' is significant at 1% level.

When the results are calculated by using the multiple regression analysis, the best estimated multiple linear regression model is

$$EP = -12816.842 + 5705.632 MC - 2749.428 IE$$

As can be seen from Table 4, at the 0.05 level of significant regression analysis, managerial commitment has a direct positive impact on labour efficiency of garment firms. Also, international experience of manager is significant at 5% level and the sign of coefficient is also negative. However, it is found that other dimensions of managerial characteristics such as education level and management attitude and perception are not significantly related to labour efficiency of garment manufacturing firms as 'P' value is greater than 0.05.

With regard to the impact of the managerial characteristics on export performance, management attitude and perception, management commitment and international experience have been examined. It is observed that the managerial characteristics of garment manufacturing firms have an impact on the export performance of the garment industry. Therefore, managerial characteristics constitute as one of the determinants of the performance of the garment industry in Myanmar.

Regarding the managerial attitude and perception, the statistical results indicate that management attitudinal determinants affect the export sales value of the garment manufacturing firms. However, there is no relationship

between these management's perceived export advantages, barriers and risks and labour efficiency measurement. There is a positive relationship between manager's perceptions of the relative advantage of exporting and firm's export performance. It can be concluded that there exists good prospects for the export-oriented garment industry as managers in the industry possesses positive attitude towards export advantages, export barriers and export risks that is essential for effective businesses management. Managers in the Myanmar garment industry are found to have potentials for the future growth of export performance of the garment industry.

Moreover, management commitment greatly influences the export performance of garment industry. There is a positive relationship between management commitment and export performance in terms of export sales value and labour efficiency. These findings show that managers in garment manufacturing firms effectively engage in export control and planning, regular visits to the export market and quality assurance processes because commitment to export is considered as one of the most important determinants of export performance and explains the differences in export sales between companies. This findings agree with the majority of previous studies which have identified a positive relationship between management commitment and export performance.

It can be concluded that high management commitment follows successful export marketing strategies that help to enhance export performance of the garment industry. It confirms the theoretical justification of the export commitment telling that the firm which devotes the necessary resources and competences to the export activity will be successful on the international markets. This is directly linked to the personal commitment and motivation of the manager.

With respect to international experience of managers, it is found that experience positively affects the export sales of garment manufacturing firms. However, it is found that there is also a negative relationship between experience and labour efficiency of garment firms. These findings show that export sales value of garment manufacturing firms totally benefit managers with international experience competence although the efficiency cannot be achieved. A competent garment manufacturing firm, because of its international experience, knows the differences in environmental conditions

and is more likely to select the most attractive market for the venture and adapt the marketing strategy to accommodate the specific needs of the market. From the findings of this study, it is found that export sales value of garment manufacturing firms totally benefit managers with international experience competence. It can be noted that export experience of a manager had positive effects on the export sales value of the garment industry.

It is found that the relationship between managers' experience and export performance in terms of export sales and labour efficiency measurement are both positive and negative. Managers with greater experience in the garment industry build a network around themselves, so it is easier for them to handle obstacles faced in the international markets. Experienced managers are less open to international development and business practice compared with younger managers who are dynamic and practice new approach in managing. This result is similar to Contractor et al.'s (2005) study which explains about export performance of international new ventures between Indian and Taiwanese software industry. It was found that due to little experience, younger managers use internet and formal or informal networks to reach out to foreign customers. By doing this, they have better export performance compared with experienced managers who ignored it. So, they could associate the negative effect between export performance and experience.

Effect of Environmental Characteristics on Export Performance

In analyzing the environmental characteristics affecting the export performance of garment manufacturing firms, environmental characteristics such as export assistance and export barriers are considered as independent variables. The chosen variables for export barriers are inflexible foreign exchange rate, lack of government assistance, restrictive rules and regulations, bureaucratic requirements, port difficulties, road difficulties, insufficient electricity. The chosen variables for export assistances are technology, finance (loan), subsidy, management training and tax exemption. The most common used export performance measures such as export sales volume and labour efficiency are used as dependent variables. To examine the possible relationships between these environmental characteristics and export

performance of garment manufacturing firms, the following multiple linear regression model are employed.

$$EP = \beta_0 + \beta_1 IER + \beta_2 LGA + \beta_3 RR + \beta_4 BR + \beta_5 IE + \beta_6 PD + \beta_7 RD + \beta_8 TA + \beta_9 F + \beta_{10} S + \beta_{11} MT + \beta_{12} TE + \varepsilon_i \quad (2)$$

Where, EP = Export Performance, IER = Inflexible Exchange Rate
 LGA = Lack of Government Assistance
 RR = Restricted Rules and Regulations
 BR = Bureaucratic Requirements, IE = Insufficient Electricity
 PD = Port Difficulties, RD = Road Difficulties
 TA = Technology Assistance, F = Finance (loan)
 S = Subsidy, MT = Management Training,
 TE = Tax exemption

ε_i is random error term and ε_i follows normal distribution with mean zero and constant variance σ_ε^2 .

Table 5: Effect of Environmental Characteristics on Export Sales

Export Assistance and Export Barriers	Export Sales		Calculated 't' value	Significant 'P' value
	Regression coefficient (β)	Standardized Error		
(Constant)	-15295536.739	7979856.261	-1.917	.066**
Finance	7274434.634	1035143.682	7.027	.000***
Insufficient electricity	-3491292.622	1197452.232	-2.916	.007***
Technology Assistance	4352613.191	1635469.289	2.661	.013**

Source: SPSS Output

Notes: ** indicates that 't' is significant at 5% level and *** indicates that 't' is significant at 1% level.

When the results are calculated by using the multiple regression analysis, the best estimated multiple linear regression model is

$$EP = -15295536.739 + 7274434.634 F - 3491292.622 IE + 4352613.191 TA$$

As can be seen from Table 5, it is found that export assistance such as finance is significant at 1% level and the sign of coefficient is also positive. At the 0.05 level of significant regression analysis, insufficient electricity, as a dimension of environmental characteristics, has a direct negative impact on

export sales of garment firms. At the 0.05 level of significant regression analysis, technical assistance has a positive direct relationship with export sales value of garment firms.

However, it is found that other environmental characteristics such as bureaucratic requirement, inflexible foreign exchange rate, management training, restrictive rules and regulations, subsidy, lack of government assistance and port difficulties and road difficulties are not significantly related to export sales as ‘P’ value is greater than 0.05.

Table 6: Effect of Environmental Characteristics on Labour Efficiency

Environmental Characteristics	Labour Efficiency		Calculated ‘t’ value	Significant ‘P’ value
	Regression coefficient (β)	Standardized Error		
(Constant)	15054.559**	6370.660	2.363	.025
Finance loan	3098.735***	801.141	3.868	.001
Port Difficulties	-2908.904**	1055.209	-2.757	.010
Insufficient electricity	-1950.909**	934.027	-2.089	.046

Source: SPSS Output

Notes: ** indicates that ‘t’ is significant at 5% level and
 *** indicates that ‘t’ is significant at 1% level.

When the results are calculated by using the multiple regression analysis, the best estimated multiple linear regression model is

$$EP = 15054.559 + 3098.735 F - 2908.904 RR - 1950.909 IE$$

According to statistical results, financial support (finance) is significant at 1% level and the sign is positive. Transportation difficulties in port is also significant at 5% percent level and the sign of coefficient is negative. Moreover, insufficient electricity is significant at 5% level.

However, it is found that other environmental characteristics such as finance (loan), road difficulties inflexible foreign exchange rate, technical assistance, management training, restrictive rules and regulations, subsidy, lack of government assistance and tax exemption are not significantly related to labour efficiency as ‘P’ value is greater than 0.05.

With regard to the impact of the environmental characteristics on export performance, finance assistance, technical assistance, insufficient electricity, port difficulties and bureaucratic requirements have been examined. It is observed that the environmental characteristics of garment manufacturing firms have an impact on the export performance of the garment industry. Therefore, environmental characteristics constitute as one of the determinants of the performance of the garment industry in Myanmar.

This study attempts to evaluate exporters' perceptions of the problems they face in exploiting their full competitive potential in the international market. The statistical results show that there is a negative relationship between insufficient electricity, a dimension of export barrier, and export performance. It can be concluded that the garment firms without sufficient electricity can increase export performance in terms of export sales and labour efficiency measurement. In Myanmar, a shortage of electricity is one of the most serious problems in the garment industry as well as other manufacturing sectors. Therefore, most manufacturers in the garment industry had to use their own and share generators to facilitate their operations.

With respect to port difficulties, the statistical results show that there is a negative association between port difficulties and export performance in terms of labour efficiency measurement. It can be concluded that the more the firms don't have port difficulties, the more they achieve the labour efficiency. In terms of transportation difficulties, the port was the biggest complaint for garment manufacturing firms. Port infrastructure that face the garment industry includes a wide range of areas, such as customs performance, physical infrastructure, inland transport, and efficiency in cargo handling. Their smooth functioning helps provide goods and services on time and at a lower cost. The perceptions of garment firms on these issues can identify important bottlenecks. This survey includes the suggestions of the garment manufacturing firms for improving the port infrastructure. The poor quality of infrastructure, whether poor roads or ports, or power supply, adds to the cost of doing business. Myanmar like other developing countries face these problems, but the degree may differ from country to country.

The confirmation of a negative relationship between the perception of barriers and the export performance of garment manufacturing firms empirically confirms the fact that garment firms increase their export sales

and the labour efficiency due to, among other factors, better knowledge of the behavior of markets in general and to the capacity to reassign their resources to exports. This is an important observation and contribution to the empirical studies mentioned previously. The perceived export barriers differ mainly for the garment firms in the industry.

With respect to bureaucratic requirement, there is a positive relationship between bureaucratic requirement and the export sales of garment firms. It can be concluded that the firms perceived more bureaucratic requirements can have high export sales. It is observed that firms in the industry comply with the bureaucratic requirements for exporting garments. Government regulations or industry standards for goods can impact trade in at least three ways: they can facilitate exchange by clearly defining product characteristics and improving compatibility and usability; they also advance domestic social goals like public health by establishing minimum standards or prescribing safety requirements; and finally, they can hide protectionist policies.

With respect to the association between finance assistance and export performance in terms of export sales and labour efficiency, it is observed that there is an association between finance assistance and export performance of garment manufacturing firms. The statistical results indicate that when the garment manufacturing firms have the finance assistance for their businesses, they can increase their export performance. Finance assistance for garment manufacturing is particularly important for better performance, as extra resources are required for foreign market entry and expansion. With these extra resources, garment firms create or develop existing international networks or hire human resources with international expertise. Furthermore, garment firms can use these resources to develop plans which build upon a much more sophisticated analysis of the foreign environment. This lead to fewer mistakes and improved export performance of the garment manufacturing firms.

With respect to the association between technical support of industry association and export performance of garment manufacturing firms, it is observed that there is a positive relationship between technical supports and export performance of garment manufacturing firms. As technical supports are associated with the labour efficiency of garment manufacturing firms, most of

these firms in the industry have access to adequate amounts of technical supports from the industry association. This support affects the labour efficiency of garment manufacturing firms to transform from cutting-making-packing manufacturing system to free-on-broad manufacturing system.

Suggestions based on findings

Garment exporters are the contributors to the development of the foreign trade of the nation, and these exports help in raising the standard of living of the people of the nation. Garment exporters can improve their export by using results of this study and considering the determinants affecting the export performance. The statistical analysis does not enable to answer all the issues listed in the literature review about export performance determinants of garment manufacturing firms. However some clear relationships have stood out from this study. The role played by these determinants affecting the export performance is clearly identified.

Garment manufacturers are better at making decisions and its policy is considered to be firm characteristics, managerial characteristics and environmental characteristics influencing on the export performance and decisions that will lead to increased exports. Firm characteristics such as firm technology and export marketing strategy, managerial characteristics such as management commitment, managerial attitude and perceptions and international experience are considered as the most important company's asset for success on the export performance. Export assistance programs such as finance and technical support and bureaucratic requirements lead to increased export performance. Insufficient electricity and port difficulties have negative relationship with export performance and its enforcement in decisions will increase exports performance of garment manufacturing firms.

It is important to implement a well-designed export marketing strategy that can indeed determine export success, since the overwhelming majority of the marketing strategy variables are significantly associated with overall export performance. Product quality, pricing strategy, distributional channel support, and promotional activities are found to influence positive performance in export markets. These findings can assist business managers in their endeavor to formulate sound export marketing strategies and achieve success in international markets. Because the design and implementation of a

coherent export marketing program is a dynamic task, managers should provide continuous monitoring, evaluation, and revision, according to the specific conditions prevailing in export markets at a particular point in time.

Garment manufacturers should also consider the degree of emphasis given to each marketing strategy parameter by depending on the firm's specific export marketing objectives. For example, if the objective is to improve sales performance indicators, special consideration should be given to the adaptation of marketing strategy, while higher profitability can be achieved by employing a market-led pricing strategy.

Garment manufacturers should be more committed to technological activities to achieve greater export performance. It is because the firms that are more strongly committed to technological activities also have a strong commitment to international markets. It is because the quality of final product determined various factors especially two factors that contribute maximum are raw material and machine (technology). As the firms' competitiveness depends on the ability to pay the cost of technology and access to technology, it is important for the garment manufacturers to purchase directly the machinery and equipment from suppliers who supply the technicians to train the staff or to send local technicians to install and maintain equipment with the training provided by the suppliers.

Garment manufacturers in the garment industry should invest in new machineries and productivity-enhancing technology. Individual factories may also increase their access to new machinery by creating joint-venture with foreign investors who will provide up-to-date technology and machinery or the capital to invest.

It is important for small firms to increase export performance in the markets are also necessary, by promoting cross-learning linkages between large firms and small firms, providing technological service support, providing the support of counseling and mentoring, knowledge and skills upgrading and promoting the knowledge on production, management, finance and marketing. However, after a certain threshold, firms which are too large may be obstructed by 'diseconomies of scale' in their production, and therefore programs should introduce to assist them to enhance the export activity. Similarly, cross-cultural training programs between small and large firms

should implement that might be useful. After a certain threshold, large firms might not be able to engage in export activity, since they are stuck with outdated physical capital and traditional management styles, but small firms are more proactive, flexible, and aggressive than older firms.

From a management perspective, it is important to understand that well-designed export commitment programs are effective only to the extent that the firm has a committed team that is favorably predisposed toward export planning and control, regular visits to the export market and quality assurance processes. As the management commitment is clearly crucial in business initiation, development and performance, the export-oriented garment firms should assess its role in influencing export performance. The firms should optimize and excel in all components of management commitment.

It is important to develop the management skills of managers and supervisors of garments firms, especially in the areas of financial management and production and operations management. Garment manufacturers should collaborate among firms, especially in availing of common service facilities. This could serve to reduce the capital investments made by individual firms.

It is important to bear in mind the constraints such as insufficient electricity and port difficulties placed on garment firms by the environment. Because insufficient electricity and port difficulties can threaten to increase the firm's export performance, manager should try to reduce their negative effects. It is important to reassign the resources of the firm in order to overcome the export barriers such as insufficient electricity and port difficulties. The proper reassigning of the resources can result in higher level of export performance.

Summary

The results of this research shows that the firm characteristics such as firm size, firm technology and export marketing strategy, managerial characteristics such as management attitude and perceptions, management commitment and international experience, and environmental characteristics such as finance, technical assistance and insufficient electricity are the factors affecting the export performance of garment manufacturing firms. From the regression results, the firm characteristics variables (i.e. firm age, firm export

experience, innovation and ownership structure are statistically non-significant with export performance of garment manufacturing firms. Also, the following managerial characteristics variable (i.e. education) is statistically non-significant with export performance. Finally, the following environmental characteristics variables (i.e. export barriers such as inflexible foreign exchange rate, lack of government assistance, restrictive rules and regulations, road difficulties and export assistance such as subsidy, management training, and tax exemption) are statistically non-significant. The literature is still characterized by the lack of consensus of the impact of these characteristics on export performance and the findings are sometimes conflicting (Zou & Stan, 1998). These divergences may be attributed to (1) differences in methodology, in terms of design, sampling, sample size, data collection, and response rates; (2) the country of the study, the information source, and moment in time when the data were collected; (3) differences in statistical analysis, in terms of method, reliability and validity issues, discussion and interpretation of the data.

Limitations and further research

Future researchers should consider the specific characteristics of the external environment, both the domestic environment and the export market environment and their influence on export performance. This can lead to greater precision in delineating and understanding the impact of different environmental forces on export performance.

This study determined the order of precedence of the factors that should be focused on firm, management and environment to improve export performance of the garment industry. However, a number of limitations to the generalization of these findings exist. The study is made by using data from garment manufacturing firms, thereby limiting the generalization of the findings to other manufacturing firms. Additionally, the larger sample size can increase the reliability of the findings. The operationalization of constructs can be improved by generating more indicators. For example, examining market segmentation, human resources management practices, enterprise resources, etc. could be potential antecedents of export performance. Furthermore, two measures for export performance that is objective are used

in this study. In the further studies, the measures apart from these or addition to these could be used.

This study focused on a single time period. Actually, export performance should be measured in a more dynamic way. This research was conducted in a single country context and not compared with other countries. The performance measures used in the study reflect the unique emphasis that Myanmar Garment Industry places on exporting. Therefore, in further studies, more efforts should be made to validate scales across countries. This study assumed a linear relationship between the export performance and its determinants. Indeed, the nonlinear relationship can be tried in future researches. In short, although the study provides theoretical and practical insights into the determinants of export performance measures, further researches are needed to replicate and extend the proposed model to reinforce the confidence in the generalization of the findings of the study.

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References

- Central Statistical Organization. (2011). *Statistical Yearbook 2006*. Ministry of National Planning and Economic Development, Myanmar: CSO.
- Contractor, F. J., Hsu, C. C., & Kundu, S. K. (2005). Explaining export performance: a comparative study of international new ventures in Indian and Taiwanese software industry. *MIR: Management International Review*, 45(1), 83-110.
- Dollar, D., Hallward-Driemeier, M., & Mengistae, T. (2005). Investment climate and firm performance in developing economies. *Economic Development and Cultural Change*, 54(1), 1-31.
- Dueñas-Caparas, T. S. (2006). *Determinants of export performance in the Philippine manufacturing sector* (No. 18). PIDS Discussion Paper Series.
- Gereffi, G. (1999). International trade and industrial upgrading in the apparel commodity chain. *Journal of International Economics*, 48(1), 37-70.
- Khondoker, M., & Kalirajan, K. (2009). *Determinants of Labor-Intensive Exports by the Developing Countries: A Cross Country Analysis* (No. 23304).
- Kudo, T. (2010). Investment climate in Myanmar: The Case of the Garment Industry. In *Investment Climate of Major Cities in CLMV Countries* (BRC Research Report No.4). Bangkok, Thailand: IDE-JETRO.
- Moschos, D. (1989). Export expansion, growth and the level of economic development: an empirical analysis. *Journal of development Economics*, 30(1), 93-102.
- Ninkovic, J. (2009, February). What determines export success in labor-intensive goods. In *annual meeting of the ISA's 50th Annual Convention on "Exploring the Past, Anticipating the Future" held in New York City*.
- Salvatore, D., & Hatcher, T. (1991). Inward oriented and outward oriented trade strategies. *The Journal of Development Studies*, 27(3), 7-25.
- Tewari, M. (2006). Is price and cost competitiveness enough for apparel firms to gain market share in the world after quotas? *Global Economy Journal*, 6(4), 1-46.
- Zou, S., & Stan, S. (1998). The determinants of export performance: a review of the empirical literature between 1987 and 1997. *International Marketing Review*, 15(5), 333-356.

HEALTH AND DEVELOPMENT OF ASEAN COUNTRIES

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Abstract

In this paper, the effect of health on development of ASEAN Countries is studied by using health indicators and economic indicators. The secondary data published by World Bank Lending for Health Nutrition and Population Statistics are used in this study. Descriptive analysis is used to conduct the comparative analysis of health status of ASEAN countries. It is found that health status of Brunei, Singapore and Philippines are good and health status of Myanmar, Laos and Cambodia are not as good as these countries. Vector Autoregressive Regression (VAR) model is used to analyze the effect of health on development of ASEAN countries. To measure the health of the countries, life expectancy at birth and infant mortality rate are used. Gross domestic product is used as a proxy of development of the countries. According to VAR results, it is found that there is positive effect of life expectancy at birth on gross domestic product at lag one of ASEAN countries and there is negative effect of infant mortality rate on gross domestic product of some ASEAN countries.

Keywords: Life Expectancy at Birth, Infant Mortality Rate, Gross Domestic Product, Vector Autoregressive Model

1. Rationale of the Study

To overcome the poverty of countries, health becomes an objective of development. According to the “basic needs” strategy of development, formally articulated in the ILO World Employment Conference of 1976, much of effort is needed to do to help poor nations meet minimum consumption requirements of families for adequate food, shelter, clothing and essential community services such as safe drinking water, sanitation, public transport, and health and educational facilities. If community health services are included as one of the objectives of development, health services contribute to better health of people and healthy people can produce more and more and, thus, there will be an increase of per capita income. Therefore health of people is one of the determinants of development of countries.

A number of studies showed that improved of health causes the development of the least developed countries. It would seem “obvious” that a

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healthier labor force will suffer less debility and disability and will work more effectively and more steadily resulting in increased productivity and rising per capita income.

The pressures placed on national healthcare systems by the recent demographic and epidemiological transitions are amplified by the growing demand of an increasingly educated and affluent population for high-quality healthcare. Countries in Southeast Asia and their health system reforms can be categorized according to the stages of development of their healthcare systems. Health indicators are commonly used to guide public health policy. Data on life expectancy, infant mortality and the causes of death used to be seen as a sufficient basis for assessing population health status and determining public health priorities. As mortality rates decline and life expectancy increases, however more and more questions arise about the quality of the years lived.

In a critical step for emergency preparedness across the WHO South-East Asia Region, member countries today agreed to establish a dedicated funding stream aimed at building preparedness for health emergencies in the Region, which is one of the most disaster-prone. Health indicators can be used to define public health problems at a particular point in time, to indicate change over time in the level of the health of a population, or individual, to define differences in the health status of populations, and to assess the extent to which the objectives of a program are being reached. Our country, Myanmar is the one of ASEAN member countries and trying to attain the sustainable development goals by collaborating with other ASEAN countries. According to these reasons, this study aims to analyze the effect of health on development of ASEAN countries.

2. Objectives of the Study

The objectives of the study are:

- (1) to make the comparative analysis for the health status of ASEAN countries and
- (2) to analyze the effect of health status on development of ASEAN countries

3. Method of Study

Descriptive Analysis and multivariate time series econometric analysis are used in this study because the time series data are used to study the health status of ASEAN countries and effect of health on development of ASEAN countries. The data used in this study are secondary data published by World Bank Lending for Health, Nutrition and Population Statistics.

4. Limitations of the Study

Although there are many health indicators, namely infant mortality rate, crude death rate and life expectancy at birth from 1987 to 2015 are used to analyze the health status of ASEAN countries. Among the various methods, the descriptive analysis and multivariate time series econometric analysis are carried out to analyze the health status of ASEAN countries.

5. Health and Development

There are a large number of studies that the relationship between health and economic development. David, et al (2004) presented that the last 150 years has witnessed a global transformation in human health that has led people to live longer, healthier, more productive lives. While having profound consequences for population size and structure, better health has also boosted rates of economic growth worldwide. Economic historians and demographers still debate that the increasing point to rising income is the major cause of declines in 19th century mortality rate. This means that there is inverse relationship between mortality rate and income. Mortality rate is one of health indicators and income is the proxy of development.

Bhargava (University of Houston) and colleagues found that better health matters more for wages in low-income countries than in high-income ones. Studies also show that better health matters more for countries with good economic policies, such as openness to trade and good governance. Work undertaken by Bloom, Canning, and Malaney (Harvard University) concluded that the East Asian growth miracle was actually no miracle at all: rather, it represents compelling evidence for a process in which health improvements played a leading role in the context of generally favorable economic policies.

Babatund (2012) studied the relationship between health and economic growth in Nigeria. In this study, the effect of health measured by life expectancy is positive and significant on economic growth even after controlling for initial income levels. There is evidence of a significant negative effect of death rate on the growth of per capita income. Average number years of schooling and school enrollment positively affect on economic growth. The ratio of the working age of the population was a significant determinant of economic growth in Nigeria. In addition, the growth in the share of working age over total population is positive and statistically significant. The effects on health expenditure as a ratio of total government expenditure, infant mortality rate and the growth rate of the ratio of working age to total population is not significant on economic growth.

6. Comparative Analysis for Health of ASEAN Countries

The ASEAN is an organization with most member countries still far from being considered as advanced or first class countries.” Poverty is still a problem in the region, and is reflected in the region’s health situation. The economic, political, and social diversity of ASEAN societies also contribute to health issues. Data compiled from the World Health Organization, the United Nations Population Fund, and the World Bank reveal a great disparity in health conditions. Richer countries like Singapore and Brunei tend to have healthier citizens while the less wealthy ones like Cambodia, Laos, and Vietnam suffer from lower access to health care and are less prepared in handling emergency health issues and threats. In this section comparative analysis of health of ASEAN countries is carried out by using the health indicators of these countries from 1987 to 2015. Among various health indicators, crude death rate, infant mortality rate and life expectancy at birth are analyzed. Crude death rate is a key indicator to measure the health status of people because healthier countries have lower death rate. Crude death rate is the number of deaths per 1,000 people. The observed data of crude death rate of 10 ASEAN countries are presented in the following Figure (1).

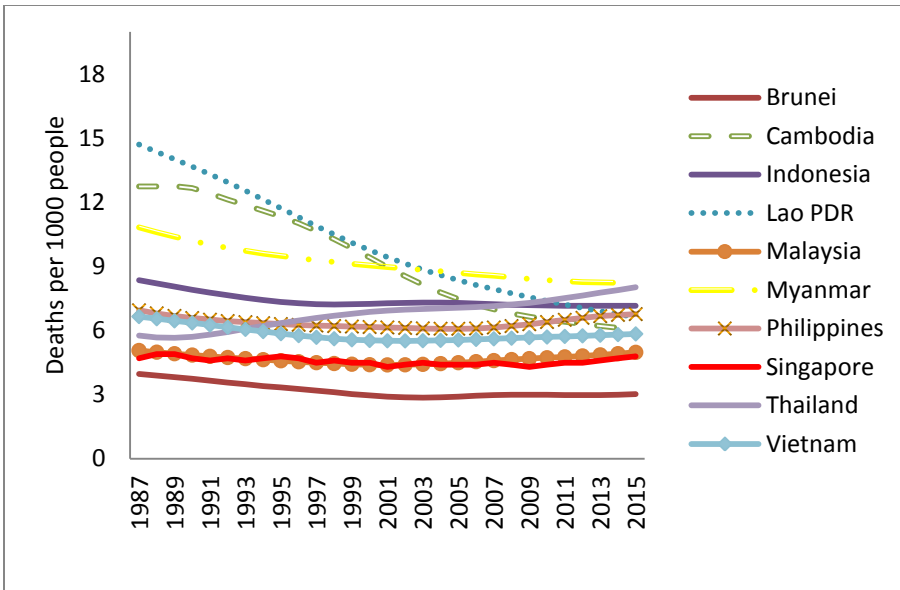


Figure 1: Crude Death Rate of ASEAN Countries

According to this figure, it was found that CDR of Lao PDR was the highest in 1987, that of Cambodia was the second highest and Myanmar attained the third highest CDR. In recent years, the highest CDR is found in Myanmar and the second highest is found in Thailand. Therefore, health status of Myanmar is at the lowest level in ASEAN today.

Infant mortality rate is also the important health indicator. Health policies are set up based on infant mortality rate. Infant mortality rate describes the infant deaths per 1000 live births. To attain the sustainable development, maternal and child health is essential. Child health is determined based on infant mortality rate and under five mortality rate. The infant mortality rates of ASEAN countries are presented in Figure (2).

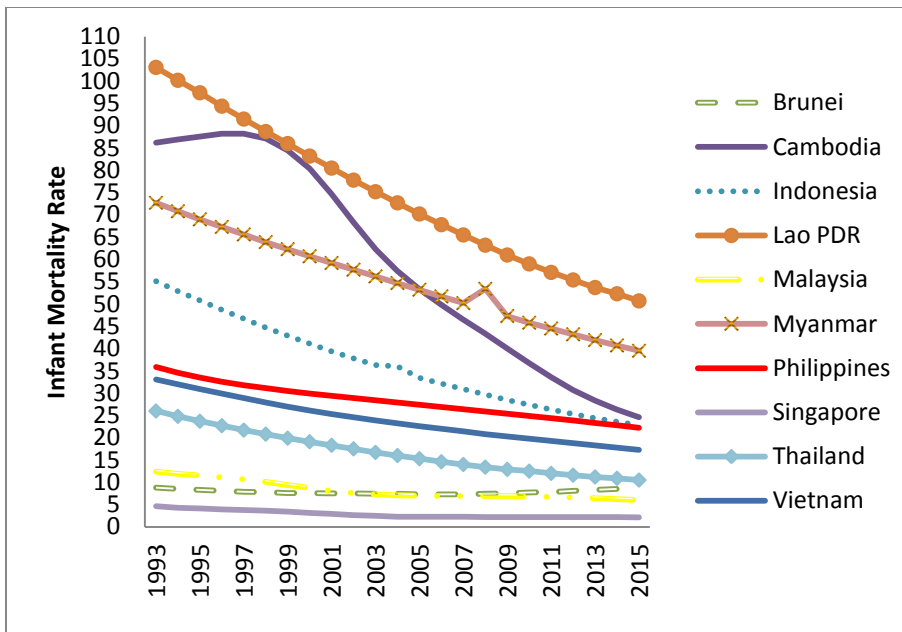


Figure 2: Infant Mortality Rates of ASEAN Countries

According to Figure (2), the highest IMR is found in LaO PDR and the second highest IMR is found in Myanmar. IMR of Singapore is the lowest among ASEAN countries. Life expectancy at birth is an important factor of income of countries. According to empirical analysis, there is causal relationship between life expectancy and economic growth. Findings of a positive effect of life expectancy on income per capita based on cross-country regressions are reported by Bloom and Sachs (1998). The life expectancy at birth of ASEAN countries are presented in Figure (3).

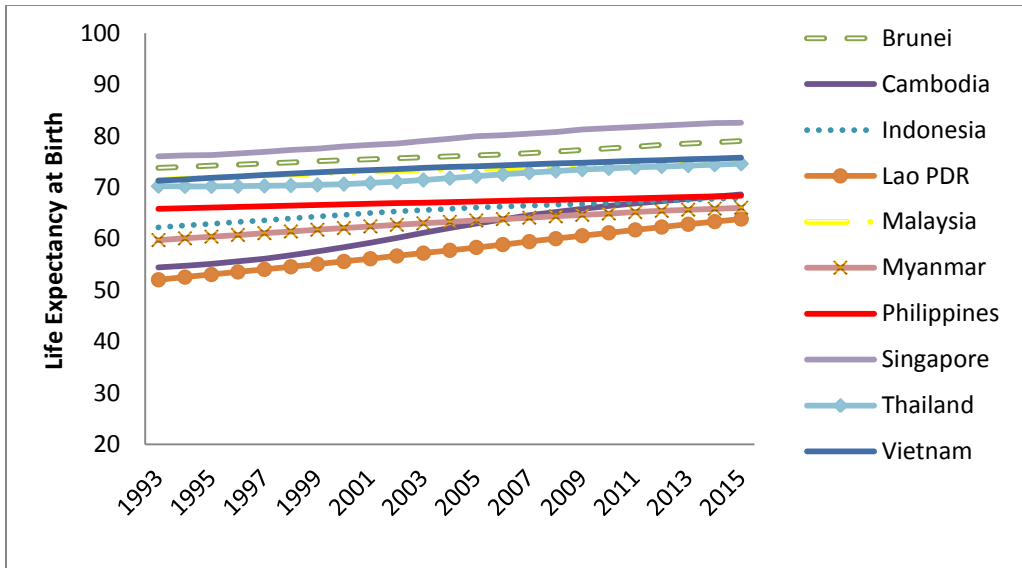


Figure 3: Life Expectancy at Birth of ASEAN Countries

According to Figure (3), life expectancy at birth of Lao people is the shortest and that of Singaporean is the highest in the recent year.

7. The Effect of Health on Development of Countries

According to some empirical studies, it is found that there is causal relationship between development of countries and health of people of these countries. In this study, development of country is measured by log of gross domestic product, GDP (US dollars in 2010 constant price) and health status of people in the nations is measured by life expectancy at birth of people (LEB) and infant mortality rate (IMR) of these countries.

Effect of Health on Development of Brunei

Firstly the effect of health on development of Brunei is analyzed by using Vector Autoregressive Model because Log of GDP and Life expectancy at birth series of Brunei are not stationary. Stationary of these time series data are checked by using Augmented Dickey-Fuller unit root test. The estimated VAR models of Brunei are presented at the following:

Ln GDP_t	$= 7.43 + 0.65 \text{Ln GDP}_{t-1} + 0.01 \text{LEB}_{t-1} - 0.03 \text{IMR}_{t-1}$
S.E	$= (2.486) \quad (0.127) \quad (0.007) \quad (0.008)$
Z	$= 2.99^{***} \quad 5.10^{***} \quad 1.66^* \quad -3.40^{***}$
LEB_t	$= -3.96 + 0.13 \text{Ln GDP}_{t-1} + 1.01 \text{LEB}_{t-1} + 0.04 \text{IMR}_{t-1}$
S.E	$= (5.147) \quad (0.264) \quad (0.015) \quad (0.017)$
Z	$= -0.77 \quad 0.50 \quad 65.39^{***} \quad 2.20^{**}$
IMR_t	$= -9.65 + 0.16 \text{Ln GDP}_{t-1} + 0.08 \text{LEB}_{t-1} + 1.01 \text{IMR}_{t-1}$
S.E	$= (8.99) \quad (0.462) \quad (0.027) \quad (0.030)$
Z	$= -1.07 \quad 0.35 \quad 2.85^{***} \quad 33.9^{***}$

According to the VAR results, there is significantly positive effect of life expectancy at birth at lag 1 and significantly negative effect of infant mortality rate at lag one on GDP of Brunei. There is no causal relationship between GDP and IMR. There is also no causal relationship between GDP and LEB of Brunei.

Effect of Health on Development of Cambodia

The effect of health on development of Cambodia is analyzed by using Vector Autoregressive Model because Log of GDP, Life expectancy at birth and infant mortality rate series of Cambodia are not stationary. Stationary of these time series data are checked by using Augmented Dickey-Fuller unit root test. The estimated VAR models of Cambodia are presented in the following:

Ln GDP_t	$= 8.35 + 0.96 \text{Ln GDP}_{t-1} - 0.53 \text{Ln GDP}_{t-2} + 0.10 \text{LEB}_{t-1} - 0.03 \text{LEB}_{t-2} + 0.01 \text{IMR}_{t-1} + 0.004 \text{IMR}_{t-2}$
S.E	$= (3.08) \quad (0.21) \quad (0.22) \quad (0.06) \quad (0.06) \quad (0.01) \quad (0.01)$
Z	$= 2.71^{***} \quad 4.55^{***} \quad -2.42^{**} \quad 1.69^* \quad -0.45 \quad 1.04 \quad -0.67$
LEB_t	$= -9.61 + 0.52 \text{Ln GDP}_{t-1} - 0.04 \text{Ln GDP}_{t-2} + 1.65 \text{LEB}_{t-1} - 0.67 \text{LEB}_{t-2} - 0.01 \text{IMR}_{t-1} + 0.02 \text{IMR}_{t-2}$
S.E	$= (3.24) \quad (0.22) \quad (0.23) \quad (0.06) \quad (0.06) \quad (0.01) \quad (0.01)$
Z	$= 2.96^{***} \quad 2.34^{**} \quad -0.19 \quad 26.45^{***} \quad -10.36^{***} \quad -1.98^{**} \quad 3.51^{***}$

$$\begin{aligned}
 \text{IMR}_t &= 136.06 - 4.04\text{Ln GDP}_{t-1} + 1.61\text{Ln GDP}_{t-2} + 1.43\text{LEB}_{t-1} - 2.49\text{LEB}_{t-2} + 1.70\text{IMR}_{t-1} - 0.98\text{IMR}_{t-2} \\
 \text{S.E} &= (3.24) \quad (1.88) \quad (1.96) \quad (0.53) \quad (0.55) \quad (0.05) \quad (0.05) \\
 \text{Z} &= 27.44^{***} \quad -2.14^{**} \quad 0.82 \quad 2.71^{***} \quad -4.53^{***} \quad 31.09^{***} \quad -19.45^{***}
 \end{aligned}$$

According to the VAR results, there is significantly positive effect of life expectancy at birth at lag 1 and there is no significantly effect of infant mortality rate at lag one and lag two on GDP of Cambodia. There is significant negative effect of GDP on IMR. There is causal relationship between GDP and LEB. That is increasing in GDP lead to longer live and increase in LEB cause the higher GDP.

Effect of Health on Development of Indonesia

The effect of health on development of Indonesia is analyzed by using Vector Autoregressive Model because Log of GDP is not stationary and life expectancy at birth and infant mortality rate series of Indonesia are stationary. Stationary of these time series data are checked by using Augmented Dickey-Fuller unit root test. The estimated VAR models of Indonesia are presented in the following:

$$\begin{aligned}
 \text{Ln GDP}_t &= 14.89 + 0.96\text{Ln GDP}_{t-1} - 0.25\text{Ln GDP}_{t-2} + 0.89\text{LEB}_{t-1} - 0.98\text{LEB}_{t-2} + 0.01\text{IMR}_{t-1} - 0.30\text{IMR}_{t-2} \\
 \text{S.E} &= (6.65) \quad (0.20) \quad (0.21) \quad (0.45) \quad (0.42) \quad (0.02) \quad (0.02) \\
 \text{Z} &= 2.24^{**} \quad 4.80^{***} \quad -1.17 \quad 1.96^{**} \quad -2.32^{***} \quad 0.29 \quad -1.52 \\
 \text{LEB}_t &= 6.30 + 0.10\text{Ln GDP}_{t-1} - 0.01\text{Ln GDP}_{t-2} + 1.77\text{LEB}_{t-1} - 0.89\text{LEB}_{t-2} - 0.003\text{IMR}_{t-1} - 0.01\text{IMR}_{t-2} \\
 \text{S.E} &= (1.31) \quad (0.04) \quad (0.04) \quad (0.09) \quad (0.08) \quad (0.004) \quad (0.004) \\
 \text{Z} &= 4.80^{***} \quad 2.49^{**} \quad -0.24 \quad 19.85^{***} \quad -10.64^{***} \quad -0.91 \quad -2.56^{***} \\
 \text{IMR}_t &= 55.95 + 1.55\text{Ln GDP}_{t-1} + 1.62\text{Ln GDP}_{t-2} - 6.95\text{LEB}_{t-1} + 4.94\text{LEB}_{t-2} + 0.39\text{IMR}_{t-1} + 0.38\text{IMR}_{t-2} \\
 \text{S.E} &= (54.81) \quad (1.65) \quad (1.76) \quad (3.71) \quad (3.48) \quad (0.18) \quad (0.16) \\
 \text{Z} &= 1.02 \quad 0.94 \quad 0.92 \quad -1.87^* \quad 1.42 \quad 2.22^{**} \quad 2.28^{**}
 \end{aligned}$$

According to the VAR results, there is significantly positive effect of life expectancy at birth at lag 1 and there is no significantly effect of infant mortality rate at lag one and lag two on GDP of Indonesia. There is significant

negative effect of LEB at lag one on IMR. There is causal relationship between GDP and LEB. That is increasing in GDP lead to longer live and increase in LEB cause the higher GDP.

Effect of Health on Development of Lao PDR

The effect of health on development of Lao is analyzed by using Vector Autoregressive Model because Log of GDP and life expectancy at birth are not stationary and infant mortality rate series is stationary. Stationary of these time series data are checked by using Augmented Dickey-Fuller unit root test. The estimated VAR models of Lao are presented in the following:

$$\begin{aligned}
 \text{Ln GDP}_t &= 1.44 + 0.62\text{Ln GDP}_{t-1} + 0.10\text{LEB}_{t-1} + 0.01\text{IMR}_{t-1} \\
 \text{S.E} &= (1.44) \quad (0.13) \quad (0.03) \quad (0.01) \\
 \text{Z} &= 1.00 \quad 4.93^{***} \quad 2.91^{***} \quad 2.39^{**} \\
 \text{LEB}_t &= 15.55 - 0.20\text{Ln GDP}_{t-1} + 0.87\text{LEB}_{t-1} - 0.03\text{IMR}_{t-1} \\
 \text{S.E} &= (0.66) \quad (0.06) \quad (0.02) \quad (0.002) \\
 \text{Z} &= 23.52^{***} \quad -3.48^{***} \quad 54.06^{***} \quad -14.88^{***} \\
 \text{IMR}_t &= -90.65 - 0.40\text{Ln GDP}_{t-1} + 1.29\text{LEB}_{t-1} + 1.25\text{IMR}_{t-1} \\
 \text{S.E} &= (10.31) \quad (0.90) \quad (0.25) \quad (0.03) \\
 \text{Z} &= -8.79^{***} \quad -0.44 \quad 5.17^{***} \quad 36.82^{***}
 \end{aligned}$$

According to the VAR results, there is significantly positive effect of life expectancy at birth and IMR at lag 1 on GDP of Lao. There is significant positive effect of LEB at lag one on IMR. There is causal relationship between GDP and LEB. That is increasing in GDP at lag one lead to decrease in LEB and increase in LEB cause the higher GDP. The contradict result occurs because of limited number of observations.

Effect of Health on Development of Malaysia

The effect of health on development of Malaysia is analyzed by using Vector Autoregressive Model because Log of GDP and infant mortality rate are not stationary and life expectancy at birth is stationary. Stationary of these time series data are checked by using Augmented Dickey-Fuller unit root test. The estimated VAR models of Malaysia are presented in the following:

Ln GDP_t	=	-0.85	+0.70	Ln GDP_{t-1}	+ 0.12	LEB_{t-1}	+0.01	IMR_{t-1}
S.E	=	(1.97)	(0.14)		(0.06)		(0.01)	
Z	=	-0.43	5.06 ^{***}		1.94 [*]		1.13	
LEB_t	=	-1.17	+ 0.07	Ln GDP_{t-1}	+ 0.99	LEB_{t-1}	- 0.02	IMR_{t-1}
S.E	=	(0.94)	(0.07)		(0.03)		(0.01)	
Z	=	-1.25	1.02		34.42 ^{***}		3.56 ^{***}	
IMR_t	=	-0.35	+ 1.04	Ln GDP_{t-1}	- 0.36	LEB_{t-1}	+0.92	IMR_{t-1}
S.E	=	(8.28)	(0.58)		(0.25)		(0.05)	
Z	=	-0.04	1.78 [*]		-1.41		18.99 ^{***}	

According to the VAR results, there is significantly positive effect of life expectancy at birth at lag 1 on GDP of Malaysia. There is no causal relationship among GDP,IMR and LEB.

Effect of Health on Development of Myanmar

The effect of health on development of Myanmar is analyzed by using Vector Autoregressive Model because Log of GDP and infant mortality rate are not stationary and life expectancy at birth is stationary. Stationary of these time series data are checked by using Augmented Dickey-Fuller unit root test. The estimated VAR models of Malaysia are presented in the following:

Ln GDP_t	=	-2.32	+0.79	Ln GDP_{t-1}	+ 0.11	LEB_{t-1}	+0.01	IMR_{t-1}
S.E	=	(2.08)	(0.03)		(0.03)		(0.01)	
Z	=	-1.12	26.01 ^{***}		3.73 ^{***}		1.44	
LEB_t	=	-0.20	- 0.06	Ln GDP_{t-1}	+ 1.02	LEB_{t-1}	- 0.01	IMR_{t-1}
S.E	=	(1.05)	(0.02)		(0.02)		(0.003)	
Z	=	-0.19	-3.71 ^{***}		66.84 ^{***}		1.86 [*]	
IMR_t	=	384.65	+ 0.49	Ln GDP_{t-1}	- 5.39	LEB_{t-1}	- 0.04	IMR_{t-1}
S.E	=	(71.68)	(1.04)		(1.04)		(0.19)	
Z	=	5.37 ^{***}	0.47		-5.17 ^{***}		-0.21	

According to the VAR results, there is significantly positive effect of life expectancy at birth lag 1 on GDP of Myanmar. There is significantly

negative effect of GDP at lag 1 on life expectancy at birth of Myanmar. There is causal relationship between GDP and LEB.

Effect of Health on Development of the Philippines

The effect of health on development of the Philippines is analyzed by using Vector Autoregressive Model because Log of GDP is not stationary and life expectancy at birth and infant mortality rate are stationary. Stationary of these time series data are checked by using Augmented Dickey-Fuller unit root test. The estimated VAR models of the Philippines are presented in the following:

$$\text{Ln GDP}_t = -0.54 + 0.89\text{Ln GDP}_{t-1} - 0.25\text{Ln GDP}_{t-2} + 0.94\text{LEB}_{t-1} - 0.80\text{LEB}_{t-2} - 0.02\text{IMR}_{t-1} + 0.02\text{IMR}_{t-2}$$

$$\text{S.E} = (0.49) \quad (0.20) \quad (0.20) \quad (0.45) \quad (0.45) \quad (0.04) \quad (0.03)$$

$$\text{Z} = -0.12 \quad 4.43^{***} \quad -1.26 \quad 2.27^{**} \quad -1.76^* \quad -0.49 \quad 0.55$$

$$\text{LEB}_t = 3.99 - 0.002 \text{Ln GDP}_{t-1} + 0.02 \text{Ln GDP}_{t-2} + 2.11\text{LEB}_{t-1} - 1.18\text{LEB}_{t-2} - 0.02\text{IMR}_{t-1} + 0.01 \text{IMR}_{t-2}$$

$$\text{S.E} = (0.7) \quad (0.03) \quad (0.03) \quad (0.7) \quad (0.7) \quad (0.01) \quad (0.01)$$

$$\text{Z} = 5.70^{***} \quad -0.07 \quad 0.54 \quad 29.86^{***} \quad -16.60^{***} \quad -3.69^{***} \quad 2.14^{**}$$

$$\text{IMR}_t = 33.72 - 0.07\text{Ln GDP}_{t-1} - 0.16\text{Ln GDP}_{t-2} - 0.67\text{LEB}_{t-1} + 0.29\text{LEB}_{t-2} + 1.46\text{IMR}_{t-1} - 0.56 \text{IMR}_{t-2}$$

$$\text{S.E} = (10.90) \quad (0.49) \quad (0.48) \quad (1.10) \quad (1.10) \quad (0.10) \quad (0.08)$$

$$\text{Z} = 3.09^{***} \quad -0.14 \quad -0.33 \quad -0.61 \quad 0.26 \quad 14.75^{***} \quad -7.40^{***}$$

According to the VAR results, there is significantly positive effect of life expectancy at birth lag 1 on GDP of the Philippines. There is significantly negative effect of IMR at lag 1 on life expectancy at birth of the Philippines. There is no causal relationship among GDP, IMR and LEB.

Effect of Health on Development of Singapore

The effect of health on development of Singapore is analyzed by using Vector Autoregressive Model because Log of GDP and life expectancy are not stationary and infant mortality rate is stationary. Stationary of these time series data are checked by using Augmented Dickey-Fuller unit root test. The estimated VAR models of Singapore are presented in the following:

$$\begin{aligned}
 \text{Ln GDP}_t &= 4.99 + 0.67\text{Ln GDP}_{t-1} + 0.05 \text{LEB}_{t-1} - 0.02\text{IMR}_{t-1} \\
 \text{S.E} &= (1.46) \quad (0.09) \quad (0.01) \quad (0.01) \\
 \text{Z} &= 3.41^{***} \quad 7.04^{***} \quad 3.35^{***} \quad -1.92^* \\
 \\
 \text{LEB}_t &= 7.08 - 0.29\text{Ln GDP}_{t-1} + 1.09 \text{LEB}_{t-1} - 0.08\text{MR}_{t-1} \\
 \text{S.E} &= (5.15) \quad (0.33) \quad (0.05) \quad (0.04) \\
 \text{Z} &= 1.38 \quad -0.88 \quad 20.40^{***} \quad -2.03^{**} \\
 \\
 \text{IMR}_t &= -4.67 + 0.25 \text{Ln GDP}_{t-1} - 0.02 \text{LEB}_{t-1} + 0.93 \text{IMR}_{t-1} \\
 \text{S.E} &= (4.22) \quad (0.27) \quad (0.04) \quad (0.03) \\
 \text{Z} &= -1.11 \quad 0.93 \quad -0.56 \quad 29.14^{***}
 \end{aligned}$$

According to the VAR results, there is significantly positive effect of life expectancy at birth lag 1 on GDP of Singapore. There is significantly negative effect of IMR at lag 1 on GDP of Singapore. There is no causal relationship among GDP, IMR and LEB.

Effect of Health on Development of Thailand

The effect of health on development of Thailand is analyzed by using Vector Autoregressive Model because Log of GDP and infant mortality rate are stationary and life expectancy at birth is not stationary. Stationary of these time series data are checked by using Augmented Dickey-Fuller unit root test. The estimated VAR models of Thailand are presented in the following:

$$\begin{aligned}
 \text{Ln GDP}_t &= 4.99 + 0.67\text{Ln GDP}_{t-1} + 0.05 \text{LEB}_{t-1} - 0.02\text{IMR}_{t-1} \\
 \text{S.E} &= (1.46) \quad (0.09) \quad (0.01) \quad (0.01) \\
 \text{Z} &= 3.41^{***} \quad 7.04^{***} \quad 3.35^{***} \quad -1.92^*
 \end{aligned}$$

$$\begin{aligned} \text{LEB}_t &= 7.08 - 0.29\text{Ln GDP}_{t-1} + 1.09 \text{LEB}_{t-1} - 0.08\text{MR}_{t-1} \\ \text{S.E} &= (5.15) \quad (0.33) \quad (0.05) \quad (0.04) \\ \text{Z} &= 1.38 \quad -0.88 \quad 20.40^{***} \quad -2.03^{**} \end{aligned}$$

$$\begin{aligned} \text{IMR}_t &= -4.67 + 0.25 \text{Ln GDP}_{t-1} - 0.02 \text{LEB}_{t-1} + 0.93 \text{IMR}_{t-1} \\ \text{S.E} &= (4.22) \quad (0.27) \quad (0.04) \quad (0.03) \\ \text{Z} &= -1.11 \quad 0.93 \quad -0.56 \quad 29.14^{***} \end{aligned}$$

According to the VAR results, there is significantly positive effect of life expectancy at birth lag 1 on GDP of Thailand. There is significantly negative effect of IMR at lag 1 on GDP of Thailand. There is no causal relationship among GDP, IMR and LEB.

Effect of Health on Development of Vietnam

The effect of health on development of Vietnam is analyzed by using Vector Autoregressive Model because Log of GDP is not stationary and life expectancy at birth and infant mortality rate are stationary. Stationary of these time series data are checked by using Augmented Dickey-Fuller unit root test. The estimated VAR models of Vietnam are presented in the following:

$$\text{LnGDP}_t = 8.66 + 0.40\text{Ln GDP}_{t-1} + 0.04\text{Ln GDP}_{t-2} - 0.03\text{LEB}_{t-1} + 0.11\text{LEB}_{t-2} + 0.12\text{IMR}_{t-1} - 0.15 \text{IMR}_{t-2}$$

$$\begin{aligned} \text{S.E} &= (1.75) \quad (0.18) \quad (0.15) \quad (0.05) \quad (0.06) \quad (0.06) \quad (0.06) \\ \text{Z} &= 4.94^{***} \quad 2.19^{**} \quad 0.27 \quad -0.68 \quad 1.89^* \quad 1.85^* \quad -2.41^{**} \end{aligned}$$

$$\text{LEB}_t = 0.68 + 0.004 \text{Ln GDP}_{t-1} + 0.08 \text{Ln GDP}_{t-2} + 1.27\text{LEB}_{t-1} - 0.30\text{LEB}_{t-2} - 0.18\text{IMR}_{t-1} + 0.14 \text{IMR}_{t-2}$$

$$\begin{aligned} \text{S.E} &= (6.88) \quad (0.72) \quad (0.57) \quad (0.21) \quad (0.23) \quad (0.25) \quad (0.24) \\ \text{Z} &= 0.10 \quad 0.01 \quad 0.13 \quad 6.02^{***} \quad -1.29 \quad -0.74 \quad 0.60 \end{aligned}$$

$$\text{IMR}_t = -2.64 + 0.70\text{Ln GDP}_{t-1} - 0.49\text{Ln GDP}_{t-2} - 0.13\text{LEB}_{t-1} + 0.10\text{LEB}_{t-2} + 0.92\text{IMR}_{t-1} - 0.04 \text{IMR}_{t-2}$$

$$\begin{aligned} \text{S.E} &= (4.92) \quad (0.52) \quad (0.41) \quad (0.15) \quad (0.16) \quad (0.18) \quad (0.17) \\ \text{Z} &= -0.54 \quad 1.35 \quad -1.20 \quad -0.86 \quad 0.60 \quad 5.22^{***} \quad -0.22 \end{aligned}$$

According to the VAR results, there is significantly positive effect of life expectancy at birth at lag 2 on GDP of Vietnam. There is significantly negative effect of IMR at lag 2 on GDP of Vietnam. There is no causal relationship among GDP, IMR and LEB.

Conclusion

Life longevity in Southeast Asia is expected to exceed other areas in Asia in the long term, challenging healthcare providers to equip themselves with skills and resources in caring for elderly people. As communicable diseases have successfully been placed under control and infant mortality ratio improves, focus in many ASEAN countries has shifted to treating chronic disease and injuries which are top death causes. Nowadays, efficient health policies are needed for development of countries. Health indicators play important roles, to develop the efficient health policies, it is essential to analyze the importance of health indicators for development of ASEAN countries. Therefore effect of health on development of ASEAN countries is studied. To measure the health of people, life expectancy at birth is used for to measure the health of all people and infant mortality rate is used to measure the health of children. Since the observed data are time series data, Augmented Dickey-Fuller unit test is applied to check stationary condition and it is found that all series are not stationary. Therefore, Vector Autoregressive Regression model is applied. According to VAR results, Life expectancy at birth at lag one and at lag two significantly and positively affect on GDP of all countries and infant mortality rate has negative effect on GDP of Brunei, Singapore, Thailand and Vietnam. Therefore health conditions play crucial role in development of ASEAN countries.

References

- Babatunde. M.A.,(2012), The Relationship between Health and Economic Growth in Nigeria, Retrieved from https://www.africaportal.org/documents/10042/GPB_03-Nigeria.pdf
- Bhargava, A , Dean T. J, Lawrence J. L., and Christopher, J. L. M., (2001). Modeling the Effects of Health on Economic Growth! *Journal of Health Economics*,20,423-440.
- Bloom, D.E., David. C, & Dean T.J., (2004), Health, Wealth, and Welfare, *articles from health and development, IMF*, Washington DC.
- Bloom, D.E.,& D. Sachs (1998), **Geography, Demography, and Economic Growth in Africa**, *Brooking Paper on Economic Activity*, 2, 207-273.
- National Health Profile(2010). *Health Indicators of South-East Asia*.
- World Health Organization (2017), *World Health Report: Health Nutrition and Population Statistics*. WHO Website.

Appendix

Augmented Dickey Fuller Unit Root Test

Nations	Series Name	Z(t)	1% Critical Value	5% Critical Value	Stationary
Brunei	LnGDP	-1.728	-3.730	-2.990	No
	LEB	2.089			No
	IMR	-4.149			Yes
Cambodia	LnGDP	-0.525	-3.750	-3.00	No
	LEB	-0.571			No
	IMR	0.961			No
Indonesia	LnGDP	-0.476	-3.730	-2.990	No
	LEB	-11.244			Yes
	IMR	-8.047			Yes
Lao	LnGDP	1.522	-3.730	-2.990	No
	LEB	-2.245			No
	IMR	-5.213			Yes
Malaysia	LnGDP	-2.506	-3.730	-2.990	No
	LEB	-10.881			Yes
	IMR	-7.993			Yes
Myanmar	LnGDP	2.132	-3.730	-2.990	No
	LEB	-14.44			Yes
	IMR	-0.980			No
Philippine	LnGDP	2.066	-3.730	-2.990	No
	LEB	-6.046			Yes
	IMR	-13.802			Yes
Singapore	LnGDP	-2.352	-3.730	-2.990	No
	LEB	0.278			No
	IMR	-11.220			Yes
Thailand	LnGDP	-3.571	-3.730	-2.990	Yes
	LEB	1.273			No
	IMR	-38.814			Yes
Vietnam	LnGDP	-1.689	-3.730	-2.990	No
	LEB	-22.853			Yes
	IMR	-17.954			Yes

Test for Stability of VAR Result

Nations	Modulus of Eigen Value	Stability
Brunei	1.05485 0.956941 0.656792	Not Satisfy
Cambodia	0.912 0.898 0.756	Satisfy
Indonesia	1.041 0.958 0.393	Not Satisfy
Lao	1.019 1.019 0.6998	Not Satisfy
Malaysia	1.023 0.938 0.652	Not Satisfy
Myanmar	0.977 0.808 0.014	Satisfy
Philippine	1.117 0.929 0.816	Not Satisfy
Singapoore	0.941 0.941 0.723	Satisfy
Thailand	0.947 0.879 0.879	Satisfy
Vietnam	1.005 0.943 0.943	Not Satisfy

Test of Normality and Autocorrelation

Nations	Largrange Multiplier Test (H ₀ :No auto correlation)		Jarque- Bera Test (H ₀ :Normally Distributed)	
	Chi-square Value	P-value	Chi-square Value	P-value
Brunei	62.25	0.000	1.304	0.971
Cambodia	15.35	0.082	10.804	0.092
Indonesia	Nil		316.591	0.000
Lao	18.306	0.03	42.862	0.000
Malaysia	Nil		23.962	0.005
Myanmar	12.185	0.203	357.513	0.000
Philippine	Nil		1.874	0.930
Singapoore	15.640	0.074	2.598	0.857
Thailand	Nil		20.150	0.003
Vietnam	Nil		2.349	0.885

GENDER INEQUALITIES AND ECONOMIC GROWTH OF SELECTED COUNTRIES

Khin Thida Nyein¹

Abstract

This study analyzes the relationship between gender inequalities and economic growth of selected countries including the ones with both high and medium human development. Employing longitudinal data on gender inequality index, gross domestic product per capita of 43 countries during the period of 2005 and 2015, and this study examines whether economic growth has an effect on gender inequalities. In order to satisfy this objective, descriptive analysis is firstly employed to portray the trend of gender inequalities and economic growth of countries. Gross domestic product per capita is also employed to measure economic growth of countries. In addition, regression analysis is used for deeper exploring of how economic growth influences gender inequalities. Gender inequality index is used as dependent variable, and natural logarithm of gross domestic product per capita is used as independent variable in this study. According to the findings of this study, it can be said that countries with high economic growth have low gender inequality index on average. Based on the regression result, it is found that the coefficient of natural logarithm of gross domestic product per capita is at one percent level of significance. The economic growth is higher, the gender equality is better. Having employed regression analysis, there is no doubt that this study gives the considerable information to policy makers regarding the gender equality.

Keywords: gender inequality index, gender development index, human development index, gross domestic product per capita

Introduction

1.1 Rationale of the Study

In the recent world, gender equality is one of the Millennium Development Goals (MDGs) of the United Nations. A number of scholars have analyzed a lot of studies about the relationship between gender inequality and economic growth. Some scholars have observed that existence of gender inequality has an effect on economic growth through many channels. According to the studies, gender inequality lowers fertility rate and

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infant mortality rate, which in turn population growth. It may increase saving and investment, and tends to increase economic growth of an economy. On the other hand, gender inequality on wages and employment may reduce the ability of women labor force to work, which in turn reduce economic growth. Another aspect of gender inequality on wages says that lower wages for female workers increase competitiveness for export industries, and this situation tends to reduce production costs, facilitate export promotion, and stimulates investment. These factors lead to increase in economic growth. Then, whether economic growth has an effect on gender equality becomes an interesting thing. This research, therefore, intends to investigate whether economic growth of countries has an effect on gender inequality.

1.2 Objective of the Study

The objective of the study is to analyze how economic growths of selected countries including the ones with both high and medium human development have an effect on gender inequalities.

Literature Reviews

N. Forsythe, R.P. Korzeniewicz, and V. Durrant (2000) analyzed the relationship between gender inequalities and economic growth between 1970 and 1992. To estimate cross-national relationship, gender inequality (GI) is used as a dependent variable and gross domestic product per capita (GDPPC) is employed as an independent variable. Based on the study, gross domestic product per capita (GDPPC) which is measured as economic growth is significant at 5 % level although the sign is not as expected. It means that an increase in economic growth cause an increase in gender inequality. In order to investigate whether the data follow the curvilinear pattern, gender inequality (GI) is used as a dependent variable and gross domestic product per capita (GDPPC) and square of gross domestic product per capita (GDPPC) are used as independent variables. Based on the study, gross domestic product per capita (GDPPC) which is measured as economic growth is significant at 5 % level although the sign is not as expected. However, square of gross domestic product per capita (GDPPC) is significant at 1% level. In addition, the sign is also expected. It means that high economic growth reduce gender inequality.

S. Seguino, (2000) examines how gender inequality is related economic growth in the field of semi-industrialized export oriented economies during the period of 1975 and 1995. She used GDP growth (is employed) as a dependent variable, and gender wage inequality is employed as an independent variable. According to the study, it is found that GDP growth is positively related to gender wage inequality. It means that increases in gender wage inequality promote economic growth.

Z. Pervaiz, M. I. Chani, S. A. Jan, and A. R. Chaudhary (2011) investigated the relationship between gender inequality and economic growth in Pakistan during the period of 1972 and 2009. They used growth rate of real gross domestic product (GDP) per capita as a dependent variable, and gender inequality, labour force growth, gross total investment, and trade openness are used as independent variables. According to the study, it is found that labour force growth, gross total investment and trade openness are positively related to economic growth, and also significant. Gender inequality and economic growth are negatively related and also significant. Based on these findings, it can be said that reducing gender inequality promotes economic growth of Pakistan.

J. Kim, J. W. Lee, and K. Shin (2016) analyzed a model of gender inequality and economic growth in Asian economies by employing numerous variables such as women's time allocation, market production, home production, child rearing, and child education. According to their study, it is found that high gender equality considerably improve economic growth through changes in women's time allocation and promotion in human capital accumulation. In addition, it is affirmed that entirely removing gender inequality increases aggregate income after one and two generations.

T. M. M. Goodwin, J. Hall, and C. Raymond (2017) analyzed the relationship between gender inequality and the growth rate of per capita Gross Domestic Product by employing cross-sectional data during the period of 1985 and 2015. They used growth rate of per capita Gross Domestic Product as a dependent variable, and initial human capital, initial gross domestic product, investment rate, and population growth rate variables are employed as independent variables. Based on the findings, it is said that low gender inequality increases economic growth. In addition, it is found that initial human capital, initial gross domestic product,

investment rate, and population growth rate variables certainly promote economic growth.

Trend of Gender Inequalities and Economic Growth of Countries

This study investigates how economic growth of selected countries including the ones with both high and medium human development has an effect on gender inequalities of those countries. In order to meet the objective of this study, the trend of gender inequalities and economic growth of countries is firstly portrayed. This study uses gross domestic product per capita for measuring economic growth of countries.

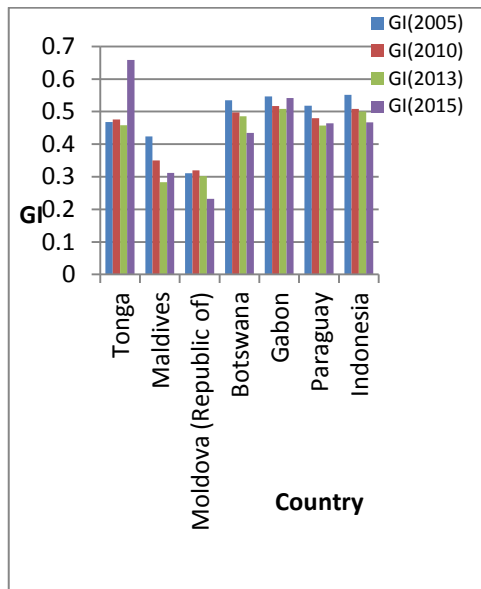
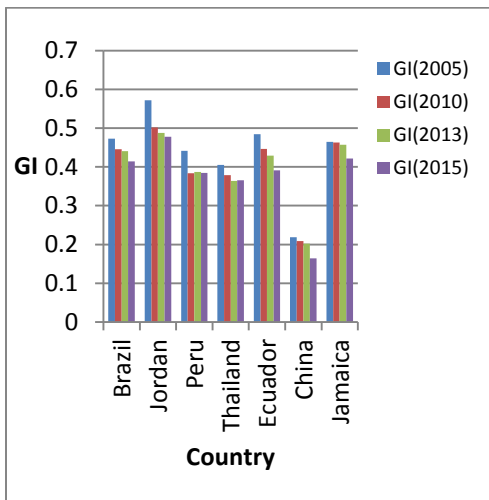
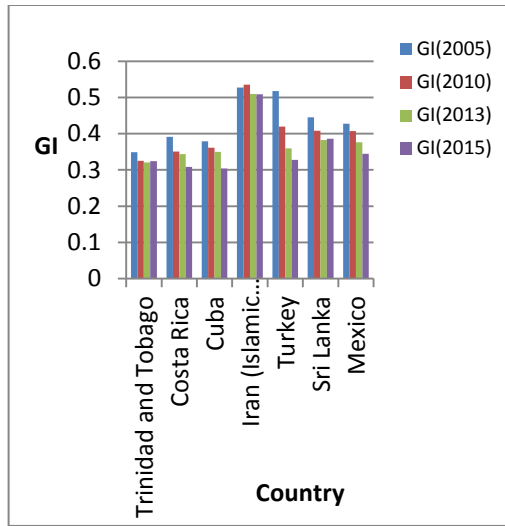
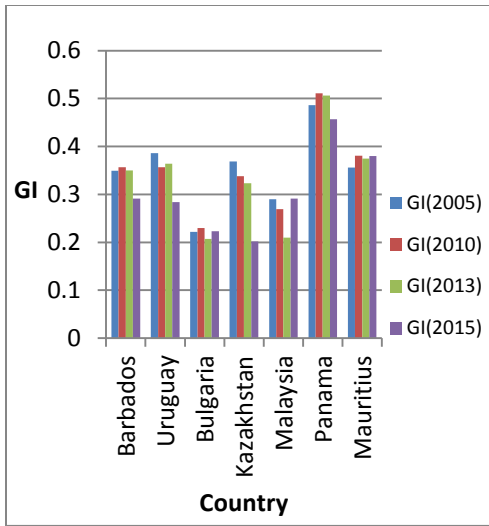
Table (1) Trend of Gender Inequality Index of Selected Countries

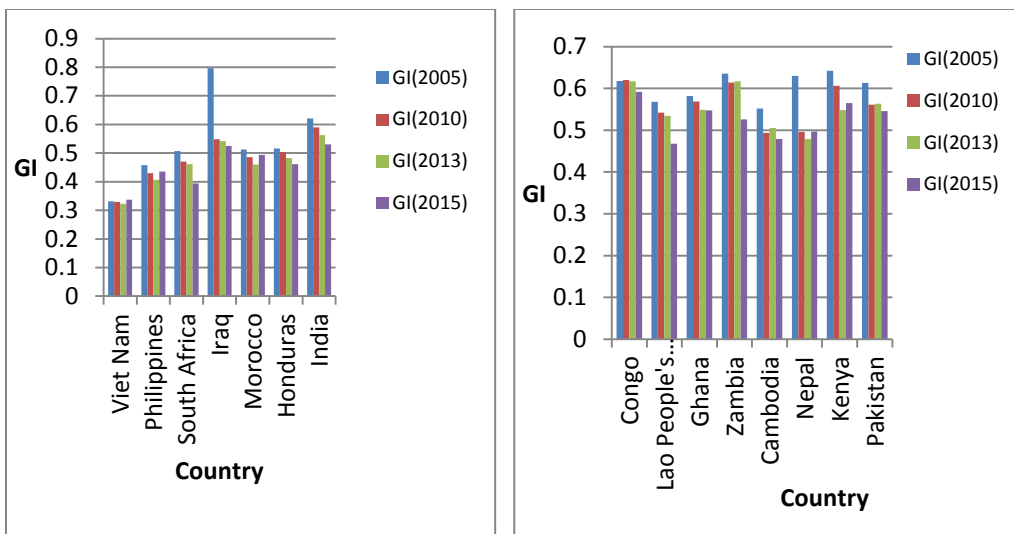
S.N	Country	GI(2005)	GI(2010)	GI(2013)	GI(2015)
1	Barbados	0.349	0.357	0.35	0.291
2	Uruguay	0.386	0.357	0.364	0.284
3	Bulgaria	0.222	0.23	0.207	0.223
4	Kazakhstan	0.369	0.338	0.323	0.202
5	Malaysia	0.29	0.269	0.21	0.291
6	Panama	0.486	0.511	0.506	0.457
7	Mauritius	0.356	0.381	0.375	0.38
8	Trinidad and Tobago	0.349	0.325	0.321	0.324
9	Costa Rica	0.391	0.351	0.344	0.308
10	Cuba	0.379	0.361	0.35	0.304
11	Iran (Islamic Republic of)	0.527	0.535	0.51	0.509
12	Turkey	0.518	0.42	0.36	0.328
13	Sri Lanka	0.445	0.408	0.383	0.386
14	Mexico	0.428	0.407	0.376	0.345
15	Brazil	0.473	0.446	0.441	0.414
16	Jordan	0.572	0.502	0.488	0.478
17	Peru	0.442	0.384	0.387	0.385
18	Thailand	0.405	0.379	0.364	0.366
19	Ecuador	0.485	0.447	0.429	0.391
20	China	0.219	0.209	0.202	0.164

S.N	Country	GI(2005)	GI(2010)	GI(2013)	GI(2015)
21	Jamaica	0.465	0.463	0.457	0.422
22	Tonga	0.468	0.476	0.458	0.659
23	Maldives	0.424	0.35	0.283	0.312
24	Moldova (Republic of)	0.311	0.32	0.302	0.232
25	Botswana	0.535	0.497	0.486	0.435
26	Gabon	0.547	0.517	0.508	0.542
27	Paraguay	0.518	0.48	0.457	0.464
28	Indonesia	0.551	0.508	0.5	0.467
29	Viet Nam	0.332	0.329	0.322	0.337
30	Philippines	0.458	0.43	0.406	0.436
31	South Africa	0.507	0.47	0.461	0.394
32	Iraq	0.797	0.548	0.542	0.525
33	Morocco	0.513	0.486	0.46	0.494
34	Honduras	0.516	0.504	0.482	0.461
35	India	0.621	0.59	0.563	0.53
36	Congo	0.618	0.62	0.617	0.592
37	Lao People's Democratic Republic	0.568	0.542	0.534	0.468
38	Ghana	0.582	0.569	0.549	0.547
39	Zambia	0.635	0.614	0.617	0.526
40	Cambodia	0.552	0.494	0.505	0.479
41	Nepal	0.63	0.496	0.479	0.497
42	Kenya	0.642	0.606	0.548	0.565
43	Pakistan	0.613	0.561	0.563	0.546

Source: World Development Indicators

Figure 1: Trend of Gender Inequalities during the period of 2005 and 2015





Source: Table (1)

The gender inequality index of each country is shown in above figure. Generally, it can be said that the index of gender inequality becomes lower year by year based on data. Reducing gender inequality is a signal of good condition for gender equality. However, it is seen that the gender inequality index of some countries such as Malaysia, and Tonga increases slightly.

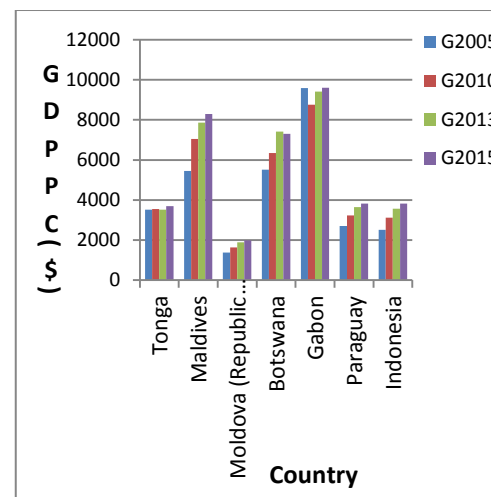
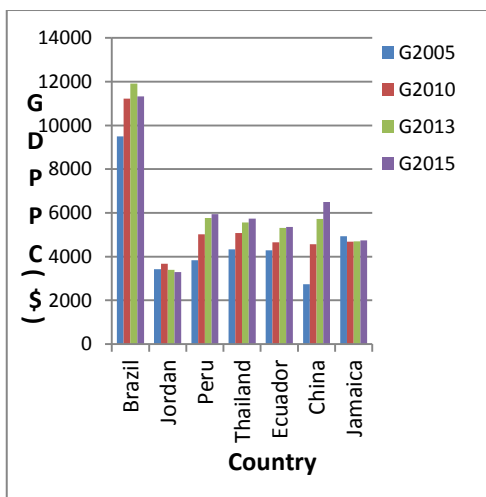
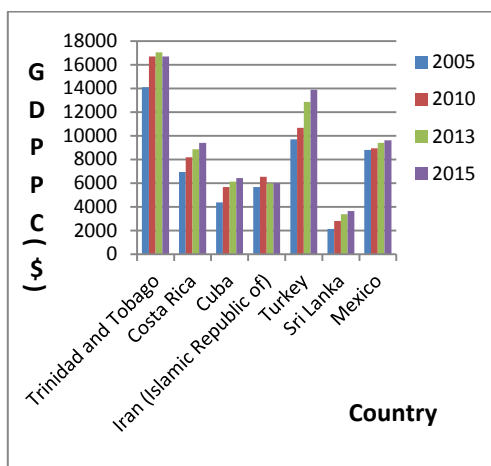
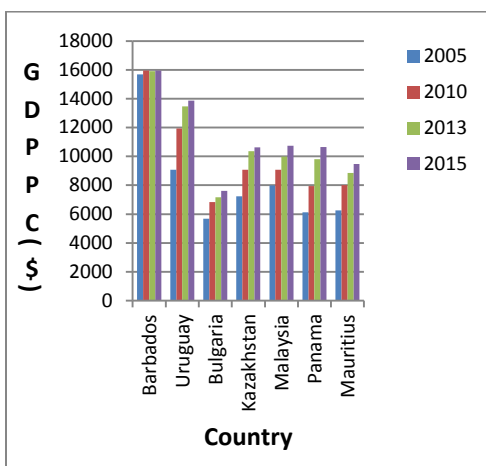
Table 2: Trend of Gross Domestic Product per Capita of Selected Countries US \$

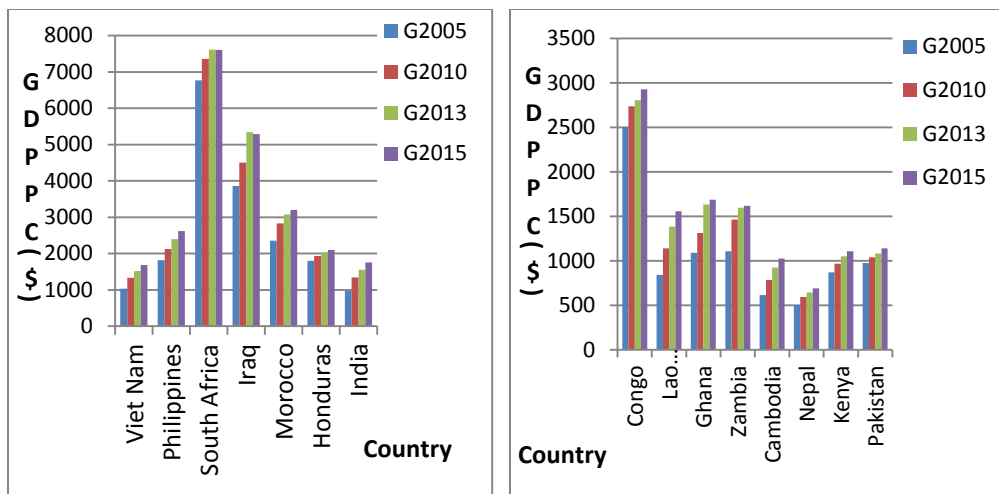
S.N	Country	2005	2010	2013	2015
1	Barbados	15676.1092	15959.0298	15910.9349	15,961.20
2	Uruguay	9068.23921	11938.212	13467.4378	13,859.41
3	Bulgaria	5678.04794	6843.26329	7162.99482	7,612.02
4	Kazakhstan	7227.98295	9070.64997	10368.6667	10,616.68
5	Malaysia	7983.89149	9071.35699	9981.15458	10,745.05
6	Panama	6114.22121	7937.25993	9810.01095	10,642.30
7	Mauritius	6245.19696	8000.37643	8848.88703	9,468.94
8	Trinidad and Tobago	14105.3413	16683.9458	17038.787	16,695.98
9	Costa Rica	6954.03921	8199.41462	8852.40112	9,406.76
10	Cuba	4385.00248	5676.1414	6133.47373	6,444.98

S.N	Country	2005	2010	2013	2015
11	Iran (Islamic Republic of)	5684.9575	6531.92743	5964.17905	6,007.00
12	Turkey	9691.81595	10672.0548	12865.679	13,898.30
13	Sri Lanka	2149.03908	2819.51116	3371.18272	3,642.21
14	Mexico	8808.56356	8959.58142	9409.96537	9,615.31
15	Brazil	9495.10494	11224.1541	11912.1468	11,322.15
16	Jordan	3417.73014	3679.19027	3401.07604	3,297.89
17	Peru	3831.36485	5022.49319	5765.88714	5,936.02
18	Thailand	4337.26336	5075.30218	5561.29153	5,733.92
19	Ecuador	4286.51525	4657.30236	5311.21212	5,352.88
20	China	2738.20546	4560.51259	5721.69382	6,496.62
21	Jamaica	4925.27739	4682.52125	4699.76846	4,740.64
22	Tonga	3521.5071	3548.0684	3524.23207	3,694.46
23	Maldives	5447.97384	7052.25084	7863.55021	8,288.59
24	Moldova (Republic of)	1379.87562	1631.53583	1894.78011	1,980.27
25	Botswana	5512.81123	6346.1562	7409.42116	7,308.61
26	Gabon	9579.35612	8754.11392	9408.0062	9,598.30
27	Paraguay	2707.97467	3225.59175	3640.52202	3,822.86
28	Indonesia	2519.50984	3113.48063	3560.10658	3,827.55
29	Viet Nam	1035.92217	1333.58352	1522.48588	1,684.69
30	Philippines	1818.31543	2129.49925	2399.60719	2,615.66
31	South Africa	6767.63258	7361.75585	7616.77912	7,604.36
32	Iraq	3857.61039	4502.74905	5338.52198	5,285.67
33	Morocco	2358.44358	2834.20472	3077.31501	3,204.75
34	Honduras	1799.49033	1932.85829	2033.31619	2,098.34
35	India	971.229761	1345.77015	1550.14223	1,758.04
36	Congo	2503.31205	2737.34233	2806.34743	2,925.53
37	Lao People's Democratic Republic	842.56763	1141.12712	1383.70298	1,556.67
38	Ghana	1089.46832	1312.60756	1633.49404	1,685.99
39	Zambia	1107.72817	1463.21357	1595.91504	1,618.46

S.N	Country	2005	2010	2013	2015
40	Cambodia	613.27901	785.692884	923.726341	1,024.87
41	Nepal	502.239428	592.183522	645.25101	690.075033
42	Kenya	868.92282	967.340077	1048.26921	1,107.92
43	Pakistan	974.537298	1040.14227	1083.96701	1,140.21

Source: World Development Indicator





Source: Table (2)

Figure 2: Trend of GDP during the period of 2005 and 2015

The per capita gross domestic product of each country is shown in above figure. Generally, it can be said that the dollar value of gross domestic product per capita increase year by year based on data. Increasing the dollar value of gross domestic product per capita is a sign of improvement in economic condition of countries. However, it can be said that there is no improvement in dollar value of gross domestic product per capita of some countries such as Jamaica, based on data.

Regression Analysis

Based on numerous literatures, the following model is used for analyzing the objective of this study:

$$GI = \beta_0 + \beta_1 \lgdppc + \varepsilon$$

Where GI = gender inequality

lgdppc = log (gross domestic product per capita)

ε = error term

$$GI = 0.991^{***} - 0.153^{***} \lgdppc$$

(0.000) (0.000)

Note: Values in parenthesis are p-value.

*** significant at 1 % level.

In this study, gender inequality index is used as dependent variable, and natural logarithm of gross domestic product per capita is used as independent variable. According to the regression result, it is found that gender inequality is negatively related to gross domestic product per capita. Accordingly, it can be said that countries with high economic growth have low gender inequality index on average. Based on the regression result, it is found that the coefficient of natural logarithm of gross domestic product per capita is at one percent level of significance. The economic growth is higher, the gender equality is better. Having employed regression analysis, there is no doubt that this study gives the considerable information to policy makers regarding the gender equality.

Concluding Remark

This study analyzes the relationship between gender inequalities and economic growth of selected countries including the ones with both high and medium human development. Employing longitudinal data on gender inequality index, gross domestic product per capita of 43 countries during the period of 2005 and 2015, and this study examines whether economic growth has an effect on gender inequalities. Based on the study, it can be said that there is an improvement in the condition of gender inequality index and gross domestic product per capita of selected countries. According to the findings of this study, it can be said that economic growth is negatively related to gender inequality on average.

Based on the regression result, it is found that the coefficient of natural logarithm of gross domestic product per capita is significant at one percent level. The economic growth is higher, the gender equality is better. Having employed regression analysis, it is believed that this study gives the significant information to policy makers regarding the gender equality.

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References

Human Development Report Office (2016), Gender Inequality Index

N. Forsythe, R.P. Korzeniewicz, and V. Durrant (2000), Gender Inequalities and Economic Growth: A Longitudinal Evaluation, *Economic Development and Cultural Change*, The University of Chicago, pp. 573-617

S. Seguino, (2000), Gender Inequality and Economic Growth: A Cross-Country Analysis, *World Development* Vol. 28, No. 7, pp. 1211±1230

T. M. M. Goodwin, J. Hall, and C. Raymond (2017), Gender Inequality and Economic Growth, University of Memphis, Memphis, TN Memphis, Tennessee, pp. 1160-1161

WDI (2018), World Development Indicators

J. Kim, J. W. Lee, and K. Shin (2016), A Model of Gender Inequality and Economic Growth, ADB economics working paper series, NO. 475

Z. Pervaiz, M. I. Chani, S. A. Jan, and A. R. Chaudhary (2011), Gender inequality and economic growth: a time series analysis for Pakistan, National College of Business Administration and Economics (NCBA&E), Lahore, MPRA Paper No. 37176

SERVICE QUALITY OF PRIVATE HOTELS IN MANDALAY*

Aye Thu Htun¹

Abstract

This study attempts to identify the service quality of private hotels in Mandalay. Descriptive method and analytical method are used in this study. Two stage sampling method is also employed. As a first stage, 20 percents of private hotels are selected and then, as a second stage, 30 guests who were over 18 years old and stayed at least two night from each sample hotel are selected by using one in three systematic sampling method to get the primary data. Secondary data are obtained from relevant text books, articles, journals, and internet websites. This survey was conducted in October, 2017. SURVQUAL model that includes reliability, empathy, assurance, responsiveness and tangibility dimensions is used to assess the guest perceptions and their expectations of service provided by selected private hotels. The study observed that the average ratings for expectation were higher than the average perception ratings in all five dimensions of service quality except empathy and reliability dimensions. Therefore, guests of the selected private hotels in Mandalay are satisfied in empathy and reliability dimensions. In addition, the findings revealed that tangibility dimension has the largest gap score when compared with the other gap scores. This implied that guests attached high expectations to the tangible elements of the hotels in Mandalay.

Keywords: Service quality, expectation, perception, gap scores, hotels

Introduction

In today's competitive environment, service quality is a growing concern for many service firms to achieve the competitive advantage. Therefore, today service firms are paying more attention than ever to the needs and expectations of the guests by consistently improving the quality of service provided to their guests. The hospitality industry and hotels in particular too have witnessed increasing competition for high service quality and customer satisfaction (Parayani *et al.*, 2010). With this knowledge the hospitality sector must make sure that they are always ahead of the competitors.

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Service quality is defined as the discrepancy between expected service and perceived service (Parasuraman, Zeithaml, and Leonard, 1985). In additions, service quality is identified as an important indicator for customer satisfaction and business performance measurement (Mitchell, 1990). Nowadays, the service sector becomes greater economic importance for every country. In Myanmar, Mandalay was a former capital and is known for its Myanmar architecture and art. The last two kings of Myanmar resided in Mandalay and the city was an important center for religious studies. It is well known for its traditional arts, crafts, Myanmar culture, marble and stone crafts, traditions of dance and music and drama live on. In additions, it is also the commercial center with air, rail, and river linkages to all parts of Myanmar. Therefore, many business men, tourists, and visitors visit Mandalay. Hence, the number of private hotels are increasing day by day and private hotels in Mandalay face with intense competition.

Therefore, to achieve the competitive advantage, guest satisfaction with service quality and meeting guest expectations are the major challenges facing managers in the hotel industry, Mandalay. Service quality is vital for hotel industry to improve guest satisfaction. Naumann (1995) stated that satisfaction of customers is the cheapest mean of promotion. In additions, Berkman and Gilson (1986) concluded that it impacts on the purchase repetition and word of mouth recommendations. Therefore, at present, in hotel industry, service quality and guest satisfaction play exceptional roles to increase revenue and market share.

1.1 Objectives of the Study

The objectives of the study are:

- (1) to analyze the expectations and perceptions of service quality dimensions delivered by hotels in Mandalay from the hotel guest perspective and
- (2) to investigate the guest satisfaction on services of private hotels in Mandalay.

1.2 Methodology and Sources of Data

This study focuses on service quality of private hotels in Mandalay. Descriptive research and analytical method are employed in this study. In this

study, two stage random sampling method is used. According to the data from Ministry of Hotel and Tourism (2016), it can be known that there are (78) star rating hotels in Mandalay. Among them, as a first stage, 20 percent of private hotels are selected and then, as a second stage, 30 guests who were over 18 years old and stayed at least two nights from each of sample hotels are selected by using one in three systematic sampling method. Therefore, 480 guests are selected and interviewed by structured questionnaires to get the primary data. Secondary data are obtained from relevant text books, articles, journals, and internet websites. This survey was conducted in October, 2017. A five-point Likert-type scale (1 = disagree” to 5 = “strongly agree”) is used to indicate the agreement degree of guests with certain statements. In this study, SERVQUAL model developed by Parasuraman *et al.*, (1988) is employed to measure the service quality.

Literature Review

2.1 Service Quality

Parasuraman *et al.* (1988) have stated that service quality is the ability of the organization to meet or exceed customer expectations. Zeithaml *et al.*, (1990) also defined service quality as the difference between customer expectations of service and perceived service. Perceived service quality results from comparisons by customers of expectations with their perceptions of service delivered by the suppliers.

Yoo & Park (2007) stated that high quality contributes to increased profitability and competitiveness. Moreover, successful service quality enhances business growth and prosperity. Kaynama, S., & Black, C.(2000) mentioned that the competitive pressures faced by many service industries today are compelling them to seek competitive advantage, efficiency and profitable ways to differentiate themselves from others. Parayani *et al.*, (2010) present that the hospitality industry and hotels in particular too have witnessed increasing competition for high service quality and customer satisfaction. With this knowledge the hospitality sector must make sure that they are always ahead of the competitors.

SERVQUAL model is the most popular model to measure the service quality in almost service industries. Parasuraman *et al.*, (1988) developed the

SERVQUAL dimensions to identify and measure the gaps between customers' expectations and perceptions of service quality. This is supported by Cant *et al.*, (2006) who maintain that the SERVQUAL scale was developed to measure the gaps between customers' expectations of service performance and their assessment of actual performance.

Initially, 22 service attributes were identified. Carman (1990) stated that these were categorized into five service quality dimensions that are applicable in most service delivery situations. Lewis and Chambers (2000) listed these dimensions as follows:

Tangibility: Appearance of physical facilities, equipment, personnel and written materials

Reliability: Ability to perform the promised service dependably and accurately

Responsiveness: Willingness to help customers and provide prompt service

Assurance: Employees' knowledge and courtesy and their ability to inspire trust and confidence

Empathy: Caring, individualized attention given to customers

For each item, a "gap score" (G) is then calculated as the difference between the raw "perception-of-performance" score (P) and the raw "expectations score" (E). The "gap score" is calculated as $G = P - E$. The largest negative gaps, combined with assessment of where expectations are highest, facilitate prioritization of performance.

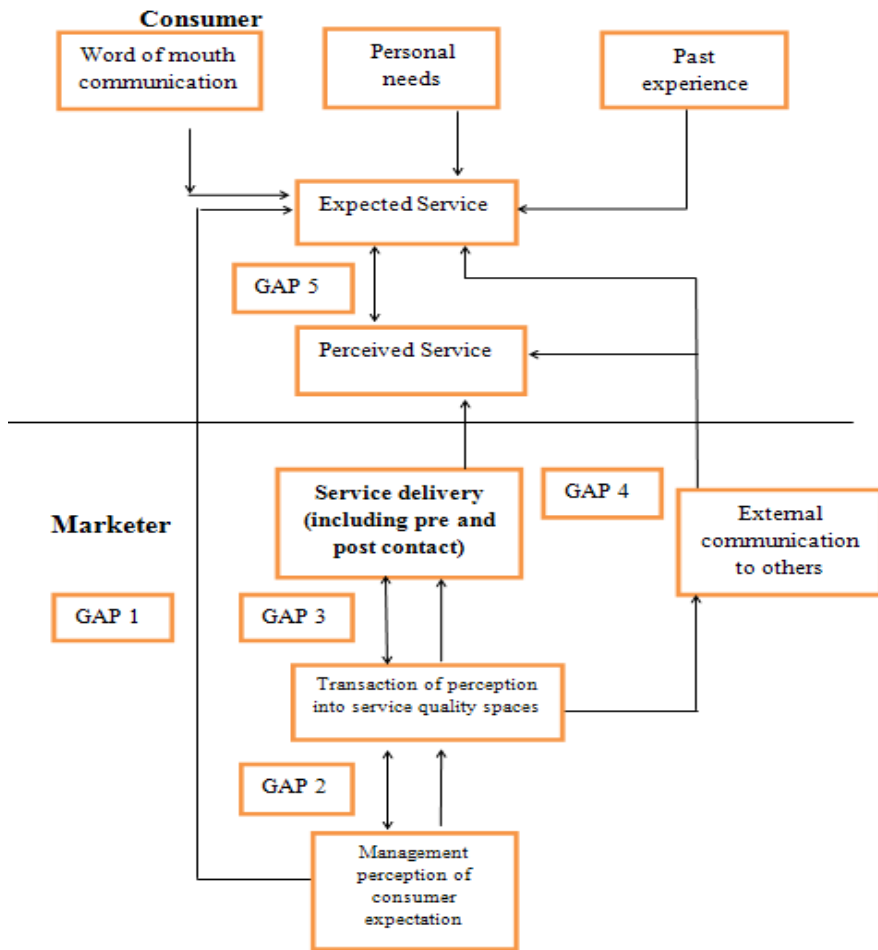


Figure 1.1: Service Quality Gap Model

Source: Parasuraman *et al.*, (1988)

2.2 Customer Satisfaction

Parasuraman *et al.*, (1985), Lewis and Mitchell, (1990) stated that if expectations are greater than performance, then perceived quality is less than satisfactory and hence customer dissatisfaction occurs. According to Oliver (1980), customer satisfaction definition is based on the expectation disconfirmation point of view. Before purchasing or using the product or service, customers always have their personal expectation about its

performance. After buying or using product or service, if the result is equal or better than expectation, it means the expectation has positive confirmation. In the opposite case, if the result is lower than expectation, customers have negative confirmation. Customers are said to be satisfied only if there are positive confirmations of expectation. However, in any case, the level of customer satisfaction is different between different customers because each of them owns their personal needs, demands as well as experiences.

Results and Findings

3.1 Demographic Profile of the Hotel Guests

In this study, 58% of the respondents are males and the remaining 42% of the respondents represents females. 9% of the respondents are age under 25 years, 30% of them are the age between 26 and 35 years, 23% of the respondents are at the age between 36 and 45 years, 25% are at the age between 46 and 55 years and the remaining are over 55 years old. The majority of respondents (49%) are business owners and minority (8%) are dependent. It was revealed that 63% of the respondents had travelled to Mandalay on business, 11% of the respondents are visiting Mandalay for family matter and the remaining percent are visiting on vacation. Concerning the frequency of the Stay, the 81% of guests had stayed for once or twice, 14% had stayed for 3 or 4 times and remaining 5% of the guests had stayed for more than 4 times. Demographic profile of the hotel guests are shown in Appendix (A).

3.2 Guest Expectations and Perceptions of Service in Private Hotels

Table (1) presents the guest expectations of services provided by private hotels in Mandalay. In this table, service quality is measured by five dimensions that include tangibility, reliability, responsiveness, assurance and empathy.

Table 1: The Guest Expectations and Perceptions of Services Provided by Private Hotels in Mandalay

Particular	Expectation (Mean)	Perception (Mean)	Gap
			(Mean)
Tangibility	4.42	4.04	-0.38
Having modern looking equipment	4.47	4.12	-0.35
Having physical facilities that are visually appealing	4.43	4.01	-0.42
Having personnel who are neat in appearance	4.36	4.02	-0.34
Having neat appearance materials associated with service	4.42	4.01	-0.41
Reliability	4.32	4.33	0.01
Keeping the promises to do something at a certain time they do it	4.25	4.26	0.01
Showing a sincere interest to solve the problem of guests	4.28	4.3	0.02
Providing the right services at the right time	4.32	4.33	0.01
Provides the services at the time it promises to	4.33	4.34	0.01
Insisting on error free records	4.43	4.44	0.01
Responsiveness	4.41	4.08	-0.33
Telling guests exactly when services will be performed by personnel	4.29	4.09	-0.2
Providing prompt services to guests by personnel	4.54	4.07	-0.47
Having willingness to help guests by personnel	4.53	4.11	-0.42
Having personnel who are never too busy to respond to guests requests	4.27	4.03	-0.24
Assurance	4.43	4.2	-0.23
Having the behavior of personnel who instils confidence in guests	4.41	4.1	-0.31
Providing safe feeling to the guests in their dealings with the hotel	4.49	4.13	-0.36
Being consistently courteous of personnel with guests	4.44	4.24	-0.2
having personnel who have knowledge to answer guests questions	4.36	4.31	-0.05

Particular	Expectation (Mean)	Perception (Mean)	Gap
			(Mean)
Empathy	4.24	4.26	0.02
Giving individual attention to guests by hotels	4.29	4.32	0.03
Having operating hours that are convenient to all guests	4.09	4.12	0.03
Having staff who give guests personal attention	4.27	4.28	0.01
Having guests' interest at heart	4.48	4.51	0.03
Understanding the specific needs of the guests	4.05	4.05	0

Source: Survey Data (2017)

Concerning the expectation of tangibility dimension, the statement in the five-point likert scale “the hotel will have modern looking equipment” had the highest value with 4.47 mean scores, followed by the statement “the physical facilities at the hotel will be visually appealing” then “materials associated with service in the hotel will be neat in appearance” and lastly “personnel at the hotel will be neat in appearance”.

With respect to the expectation of reliability dimension, the statement “the hotel will insist on error free records” had the highest mean score followed by the statement “the hotel will provide its services at the time they promise to”, “the hotel provide the right service at the right time, when a client has a problem” and then “the hotel will show a sincere interest to solve it” and lastly “the hotel will keep the promises to do something at a certain time they do it”.

With respect to expectation on responsiveness dimension, “personnel at the hotel will provide prompt services to guests” had the highest mean score, followed by the statement “personnel in the hotel will always be willing to help guests”, then “personnel at the hotel will tell guests exactly when services will be performed” and lastly “personnel in the hotel will never be too busy to respond to guests”.

Regarding the expectation on assurance dimension, “guests of the hotel will feel safe in their dealings with the hotel” had the highest mean score, followed by the statement “personnel in the hotel will be consistently courteous with guests”, “then the behavior of personnel in the hotel will instil

confidence in guests” and lastly “personnel in the hotel will have the knowledge to answer guests”.

The statement in the five-point likert scale “the hotel will have guest interests at heart” had the highest mean score under expectation on “empathy” dimension, followed by the statement “the hotel will give guest individual attention”, “the hotel will have staff who give guest personal attention”, then “the hotel will have operating hours convenient to all guests” and lastly “the hotel will understand the specific needs of their guests”.

Items with the highest mean scores focused on “the hotel will have modern looking equipment”, “the hotel will insist on error free records”, “the personnel will provide prompt services to guests”, “guests of the hotel will feel safe in their dealings with the hotel”, and “the hotel will have guests’ interest at heart”, all indicating that guests expected these items more than the other items. However, “the hotel will have personnel who are neat in appearance”, “the hotel will keep the promises to do something at a certain time they do it”, “the hotel will have personnel who are never too busy to respond to guest requests”, “the hotel will have personnel who have knowledge to answer guests’ questions” and “the staff will understand the specific needs of the guests” had the lowest mean scores indicating that guests expected these items less than the other items.

Concerning the perception of tangibility dimension, the statement “the hotel has modern looking equipment” had the highest value with 4.12 mean scores, followed by the statement “personnel at this hotel are neat in appearance” and lastly “the hotel has physical facilities that are visually appealing”, and “materials associated with service in the hotel are neat”.

With respect to the perception of reliability dimension, the statement “the hotel insists on error free records” had the highest mean score followed by the statement “the hotel provides the services at the time it promises to”, “when a guest has a problem the hotel showed a sincere interest to solve it” and then “the hotel keeps the promises to do something at a certain time they do it” and lastly “the hotel gets things right the first time”.

With respect to perception on responsiveness dimension, “personnel in this hotel are always willing to help guests” had the highest mean score, followed by the statement “personnel in this hotel tell guests exactly when

services will be performed”, then “personnel at this hotel provide prompt services to guests” “and lastly “personnel in this hotel are never too busy to respond to guests requests”.

Regarding the perception on assurance dimension, “personnel in this hotel have the knowledge to answer guests questions” had the highest mean score, followed by the statement “personnel in this hotel are consistently courteous with guests”, “then guests in the hotel feel safe in their dealings with the hotel” and lastly “the behaviour of personnel in this hotel instills confidence in guests”.

The statement in the five-point likert scale “the hotel has guests’ interest at heart” had the highest mean score under perception on empathy dimension, followed by the statement “the hotel will give guest individual attention”, and then “the hotel has operating hours that are convenient to all guests”, and lastly “the hotel understands the specific needs of their guests”.

The items with the highest mean scores focused on “the hotel has modern looking equipment”, “the hotel insists on error free records”, “personnel in this hotel are always willing to help guests”, “personnel in this hotel have the knowledge to answer guests questions”, and “the hotel has guests’ interest at heart” indicating that guests perceived these items more than the other items. However the statements on “the hotel has physical facilities that are visually appealing”, “the hotel has neat appearance materials associated with service”, “the hotel keeps the promises to do something at a certain time”, “personnel in this hotel are never too busy to respond to guests requests”, “the behaviour of personnel in this hotel instills confidence in guests”, and “the hotel understands the specific needs of their guests” from respective dimension had the lowest mean scores indicating that guests perceived these items less than the other items.

3.3 Guest Satisfaction on Services

Gap Scores (Mean) between Expectations and Perceptions on SERVQUAL dimensions are presented in Table (2). If the expectation is higher than perception, the guests will be dissatisfied on services delivered by hotels. In contrast, if the perception is higher than expectation, the guests will be satisfied.

Table 2: Gap Scores (Mean) between Expectation and Perception

Dimension	Expectation (Mean)	Perception (Mean)	Gap (Mean)
Tangibility	4.42	4.04	-0.38
Reliability	4.32	4.33	0.01
Responsiveness	4.41	4.08	-0.33
Assurance	4.43	4.20	-0.23
Empathy	4.24	4.26	0.02

Source: Survey Data (2017)

As shown in Table (2), the expectation mean scores ranged from 4.24 to 4.43 and the perception mean scores ranged from 4.04 to 4.33. The highest expectation mean score (4.43) was for assurance dimension while the lowest expectation mean score (4.24) was for empathy dimension. This result indicates that guests have the highest expectations regarding assurance. The mean score (4.33) for reliability dimension for the level of perception of guests was higher than the other perceptions' mean scores. Therefore, the level of perception (reliability) of guests was higher than on other levels of perception of guests (assurance, empathy, responsiveness and tangibility). These findings indicate that the lowest rating for the level of perception was for tangibility. In contrast, the mean score (4.04) for tangibility dimension of the level of the perception of the guests was lower than the other perceptions' mean scores. Therefore, the level of perception (tangibility) of guests was lower than on any other levels of perception of guests such as reliability, empathy, responsiveness, and assurance dimensions.

Table (2) also shows that the average ratings for expectations are higher than the average perception ratings in all dimensions of service quality except reliability and empathy. These results in a negative total SERVQUAL gap. Tangibility dimension has the largest gap (-0.46) compared with the other gap scores. This means that guests attach a high expectation to the tangible elements of the hotel, while the actual perceptions fall far below their expectations.

After using service of hotels in Mandalay, guests have negative confirmation in tangibility, responsiveness, and assurance dimensions because the results are lower than expectations. It can be seen that guests are not satisfied because of negative confirmations of expectation. But reliability and

empathy dimensions have positive confirmations of expectation. Therefore, guests of the selected private hotels in Mandalay are satisfied in reliability and empathy dimensions. However, the level of customer satisfaction is different between different guests because each of them has their personal needs, demands as well as experiences.

3.4 Significant Relationships from Paired *t* tests

Paired samples *t*-test was conducted to evaluate the difference between guest expectations and perceptions on all SERVQUAL dimensions. Appendix (B) indicates that *p*-values are below 0.05 for all dimensions. These values indicate that there are significant differences between perceived and expected values on SERVQUAL dimensions. Statistical result shows that guests' high expectations are not fully met and the fact is an indication of shortcomings in the quality of services provided to guests on tangibility, responsiveness and assurance dimensions and the guest expectation is fully met in empathy and reliability dimensions.

Discussion

The tangibility dimension exhibited the largest average gap when compared to the other four dimensions of the SERVQUAL model. It is also the dimension with the highest number of attributes (questions) which means that it is a very important indicator of service quality. The dimension of tangibility includes a wide variety of items ranging from carpeting, desks, lighting, wall colours, brochures, daily correspondence and the appearance of staff. The high negative gap in the tangibles dimension should be a concern for the hotel management as this is the dimension in which guests attach a high expectation, but their actual perceptions are much lower than their expectations. Hotel managers should be careful of the tangible items of services because guests are always aware of these aspects and make judgments. Hotel staff should inform meaningfully the existence of certain facilities and disposal services to their guests. In additions, hotel managers should be aware of those tangible items that are perceived to be associated with the accommodation. Moreover, hotel managers should provide the priority on the tangible items that have high expectation value such as up-to-date equipments and physical facilities.

Responsiveness is also another important aspect that hotel managers should pay attention because it revealed the second largest gap. This indicates

that hotels in Mandalay are still found wanting when it comes to responding to customer requests. This dimension is mainly represented by three attributes which focus on the promptness of service delivered, how ready hotel staff are to respond to customer requests and their willingness to help guests. Therefore, hotel managers should conduct regular employee-workload inspections to ensure that employees are not tired and under stress, and that they have sufficient time to interact with guests. Moreover, hotel managers need to develop service standards which address issues such as waiting time before receiving service, problem-solving procedures and mechanisms to deal with queries promptly and efficiently.

Assurance has the third largest gap. To achieve the guest satisfaction concerning the assurance dimension, hotels should develop and maintain open and effective communication with guests on their accounts and any other aspects which constitute transparency. Management should ensure that employees who deal with guests are trained to treat guests with respect and are able to make guests feel that they can trust the hotel management. Moreover, training should be provided to ensure that employees are in possession of correct and relevant information to answer guest queries and to be confident to interact with guests.

Although empathy is revealed the positive gap hotel management should emphasize more on the efficient service recovery plan that includes promptness, facilitation, explanation, attentiveness, effort, satisfaction and loyalty and apology to their guests.

Concerning the smallest gap, reliability dimension, there is a significant difference between expectation and perception of hotel guests. Although guests are satisfied in this dimension, the hotel managers should pay more attention to this aspect because satisfaction of guests guarantees repeat business and positive word-of-mouth feedback on the hotel. Therefore, hotel managers should more upgrade their services to meet the guest expectations.

Conclusions

The study provides information on the expectations and perceptions of service quality delivered by private hotels in Mandalay from the hotel guest perspective and the guest satisfaction on services of hotels in Mandalay. The empirical findings of this study reveal that guest perceptions are lower than their expectations in 12 of the 22 statements. This means that hotel guests

have higher service expectation in these 12 statements. Regarding the SERVQUAL dimensions, there are significantly different between expectation and perception in all five dimensions. Therefore, the majority of the guests from private hotels in Mandalay have negative confirmation that can be addressed. The negative guest satisfaction in tangibility, responsiveness, and assurance dimensions and positive confirmation that can be addressed for satisfaction in reliability and empathy dimensions.

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Bibliography

- Berkman, Berkman, H. W., & Gilson, R. (1986). Customer Satisfaction and Its Measurement in Hospitality Enterprises. *International Journal of Contemporary Hospitality Management*, 11 (7).
- Carman, J. M. (1990). Consumer Perceptions of Service Quality: an Assessment of the SERVQUAL Dimensions. *Retailing*, 66 (1).
- Kaynama, S., & Black, C. (2000). A Proposal to Assess the Service Quality of Online Travel Agencies: An Exploratory Study. *Professional Services Marketing*, 21 (1).
- Kotler, P. (2001). *The Principles of Marketing*. New Jersey: Prentice Hall.
- Lewis, R., & Chambers, R. (2000). *Marketing Leadership in Hospitality: Foundation and Practice*. Canada: John Wiley & Son.
- Mitchell, V. W. (1990). Defining and Measuring the Quality of Customer Service. *Marketing Intelligence and Planning*, 8 (6)
- Naumann, E. (1995). Service Quality, Customer Satisfaction, and Customer Value: A Holistic Perspective. *International Journal of Hospitality Management*, 18.
- Oliver, R. (1980). A cognitive Model of the Antecedents and Consequences of Satisfaction Decisions. *Journal of Marketing Research*, 17 (4).
- Parasuraman, A., Valarie, A., & Berry, L. (1998). Servqual: A Multiple-Item Scale for Measuring Consumer Perceptions of Service Quality. *Marketing*, 64 (1).
- Parasuraman, A., Zeithaml, Valerie, A., Berry, & Leonard, L. (1985). A Conceptual Model of Service Quality and Its Implications for Future Research. *Marketing*, 49 (2).
- Parayani, K., Masoudi, A., & Cudney, E. (2010). QFD Application in Hospitality Industry: a hotel case study. *Quality Management*, 17 (1).
- WO, M. A., Dean, A., & White, C. Analyzing Service Quality in the Hospitality Industry. *Quality Management*, 9 (2).
- Yoo, D., & Park, J. (2007). Analyzing Relationships among Employees, Customers, and Financial Performance. *Quality & Reliability Management*, 24 (9).
- Zeithaml, V., & Bitner, M. (2003). *Services Marketing*. New York: McGraw-Hill.

Appendix (A)**Demographic Profile of Hotel Guests**

Gender	Frequency	Percentage
Male	278	58
Female	202	42
Total	480	100
Occupation		
Company Staff	139	29
Government Staff	67	14
Business Owner	235	49
Dependent	39	8
Total	480	100
Income Level (Kyats)		
below 300,000	49	11
300,001-500,000	106	24
500,001-700,000	132	30
700,001and above	154	35
Total	441	100
Hotel Guests by Age (Years)		
Under 25 years	43	9
26-35 years	144	30
36-45 years	110	23
46-55 years	120	25
over 55 years	63	13
Total	480	100
Hotel Staying Purpose		
Business Trip	302	63
Vacation	126	26
Family matter	52	11
Total	480	100
Frequency of the Stay		
Once/Twice	389	81
Three/Four	67	14
More than Four	24	5
Total	480	100

Source: Survey Data (2017)

Appendix (B)**Paired Samples Test**

	Paired Differences					t	df	Sig. (2-tailed)
	Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference				
				Lower	Upper			
Pair 1 TanP - TanE	-.38001	.54045	.04568	-.39031	-.00969	-2.189	479	.030
Pair 2 RelP - RelE	.01014	.98331	.08311	.00569	.06431	2.403	479	.017
Pair 3 ResP - ResE	-.33102	.81755	.09445	-.41325	-.23675	-6.353	479	.000
Pair 4 EmpP - EmpE	-.23183	.40394	.03414	-.32536	-.21036	-2.241	479	.000
Pair 5 AssP - AssE	.02128	.54679	.08002	.01176	.12582	5.647	479	.000

Source: Survey Data (2017)

A STUDY ON THE RELATIONSHIP BETWEEN SPECIFIC JOB FACTOR SATISFACTION AND CUSTOMER PERCEPTIONS OF SERVICE QUALITY: A CASE STUDY OF MYANMAR PRIVATE BANKING INDUSTRY

San San Myint*

Abstract

Employee job satisfaction is a relevant factor in service quality improvement. Employees who feel satisfied with their jobs provide higher level of customer satisfaction. This study contributes to the current body of work in this area by investigating the responses from 351 employees and their 351 customers from private banking industry of Myanmar to determine the relationship between employee job satisfaction factors and customer service quality perceptions. The uniqueness of this study is in its design. Most other studies of this type have analyzed organization-level data, while this study employs employee-level data. This study also includes a limited analysis of the specific effects of job satisfaction factors on customer perceptions of service quality. To this end, correlation and simple regression analysis was used to analyze data. Results suggest that employee “Job contents” satisfaction was correlated with “Responsiveness” dimension of service quality, employee “Supervisor” satisfaction was associated with “Empathy” dimension of service quality, employee “Compensation” satisfaction was linked with “Tangibles” dimension of service quality and employee “Co-workers” satisfaction was correlated with “Empathy” and negatively correlated to “Attractiveness of bank” dimension of service quality. Implications of the findings are discussed in detail.

Keywords: job contents, supervisor, compensation, co-workers, customer perceived service quality

Introduction

The dramatic increase in the number of commercial private banks in Myanmar, have caused an increased interest in the antecedents and consequences of customer satisfaction (Swe, T. 2011). To achieve this, banks of all sizes focus on improving service quality.

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Service quality as perceived by customers, is one of the most important nonfinancial performance measures to examine in a service organization. A service is often produced through interaction between two human beings during the so-called service encounter. Thus, when consuming of a service, the personal interaction between customers and service providers is the heart of service experiences. Every interaction between these service employees and their customers has a direct impact on the customers' opinion of the quality of service (Bowen & Schneider, 1985; Wooside et al., 1989). Thus, employees play an important role (Boshoff & Tait, 1996), and a major antecedent of their job performance, according to the internal marketing research stream (Gounaris, 2006; Lings and Greenley, 2009), is their job satisfaction because unless employees are happy with their job they will not be willing to take extra effort, when and if necessary, to serve the customer with the customer's best interests in their heart and mind. Most managers today recognized that good service is a direct result of having effective, productive people in customer contact positions. To make a substantial impact on organizational service quality, frontline workers and customers' need to be the center of management concern.

Objective of the study

This study considers the role of employee job satisfaction and aims to explore its link to customer perceived service quality in a service industry.

Contributions of the study

This study contributes to previous work in the areas of employee job satisfaction and service quality in three ways. The primary contribution of this study is that previous studies have analyzed the link between job satisfaction and service quality by using global scale and found a significant and positive relationship (Hartline and Ferrell, 1996; Schneider and Bowen, 1985). However, in this study, individual job factor satisfaction scale was proposed because a study of individual job satisfaction factors could provide researchers and managers with more in-depth information on true relations of the job satisfaction-service quality linkage (Ironson et al., 1989; Smith, 1976). A knowledge of which specific job satisfaction contributes to

what dimension of service quality has both conceptual and managerial implications.

A second contribution of this study is in the way that data was aggregated. Most of the prior research linking job satisfaction to service quality has used organization-level data. However, this study examine the link at the individual employee-level of analysis.

A third contribution of the present study is that previous work on the employee-customer link has mainly considered either the views of the customers or the views of the employees. The present study accommodates, in a single research design, data from both employees and customers, which allows for a more accurate assessment of variable effects and relationships.

A fourth contribution is that such studies have been conducted in developed countries, neglecting the under-developed world. This study fill this gap exploring the role of employee satisfaction in the Myanmar private banking Industry.

Theoretical background and research hypotheses

The ground for this relationship rests on equity theory (Adams, 1965) and the service- profit chain theory (Heskett et al., 1994) and Bagozzi's 1992 model of attitudes, intentions and behaviors.

Equity theory

Employees evaluate the equity of their job by comparing their inputs, such as time and effort, with job-related outputs, such as benefits and rewards (Adams, 1963; Huseman and Hatfield, 1990). Employees will respond reciprocally to their company and perform better when they find the level of outputs exceeds their inputs. Hence, employees who are satisfied with their company, as a means of reciprocity will become more committed to deliver superior performance when interacting with the company's customers (Flynn, 2005).

The Service-Profit chain theory

Heskett et al. (1994) proposed a theory called the service-profit chain. In their proposed theory, the authors suggest that profit and growth

are derived from customer loyalty, which is derived from customer satisfaction, which is a result of service value. The authors also suggest that delivering service value is achieved by satisfied, loyal, and productive employees. This perspective stresses the need to drive a positive internal climate for the employees before customers can derive value from the interaction with the service providing organization. Actually, Heskett et al.(1997) report that employees who are satisfied with their company's working condition and climate, become more productive and provide higher level of service quality.

Bagozzi's 1992 model

Bagozzi (1992) model of attitudes, intentions, and behaviors suggests that individuals typically engage in activities because of a desire to achieve certain outcomes. Accordingly, if an individual's appraisal of an activity indicates that the person has achieved the planned outcome, then "desire-outcome fulfillment" exists and an affect response follows, leading to a satisfaction (Gotlieb et al., 1994). In turn, positive emotional responses are followed by the coping intent to share the outcome. Finally, behavior follows from intent. When applied to service encounters, this model suggests that employees who have positive appraisals of their work environment have higher levels of job satisfaction. Employees who have high levels of job satisfaction are more likely to engage in prosocial and helping behavior.

Definitions of Key terms

Employee satisfaction

Employee job satisfaction describes whether employees are happy contented fulfilling their desires and needs at work. Locke (1976) defined employee satisfaction as a pleasurable or positive emotional state resulting from the appraisal of one's job or job experiences as achieving or facilitating the achievement of one's job values. Spector (1997) defined employee satisfaction as an individual's total feeling about their job and attitudes they have towards various aspects of the job.

The measurement of job satisfaction varies in terms of specificity and can be classified into at least two approaches: aspect/factor satisfaction and

overall satisfaction or global approach. Global scale can be described as a summary indicator of a person's attitude towards his or her job. Conversely, aspect scales are intended to cover separately each of the principal areas within the general satisfaction domain. A factor or an aspect of job satisfaction can be described as any part of a job that produces feelings of satisfaction or dissatisfaction (Spector, 1997).

Previous research suggests that specific job satisfaction measures should be used to measure specific behavior (Fisher, 1980; Ironson et al., 1989). Accordingly, this study employs the specific aspect scales to measure employee satisfaction. In the literature, despite many different factors have been proposed as precursors of job satisfaction, scholarly research has largely converged on particular job features that are of greatest importance (Smith et al., 1969). Those features include the degree to which individuals are satisfied with **pay, benefits, promotion, supervisor, co-workers, and the contents of their work**. Consistently, the author considers these four dimensions of job such as job contents, supervisor, co-worker, compensation (pay, benefits, promotion) as salient factor for the satisfaction of employees working in Myanmar private banking and these job factors were employed in this study.

Service quality

Oliver (1993) defined perceived service quality as the consumer's appraisal of a firm's overall quality of service delivery, which is the aggregate of each experience of a customer at various encounters. However, the fact that the overall service quality does involve some distinct dimensions (Dabholkar et al., 1996; Parasuraman et al., 1988, 2005), the aggregate approach may not always be desirable. Dimension-specific analysis may provide more diagnostic value for the improvement of service quality (Bloemer et al., 1999; Zhou, 2004). In other words, customers not only judge the accuracy and dependability (i.e. reliability) of the delivered service, but they also judge the other dimensions as the service is being delivered (Parasuraman et al., 1991; Levesque & McDougall, 1996). Therefore, the role that service quality dimensions play in customer evaluations of the service delivery cannot be underestimated. With this in mind and following Bloemer et al., (1999) the present study filled this gap, seeking whether each of employee job aspect satisfaction has a significant impact on service quality dimensions.

When measuring service quality, among the most popular is Parasuraman et al.'s (1988), SERVQUAL, an instrument of items representing five service quality dimensions: reliability, responsiveness, tangibles, assurance and empathy. There are some critics on short comings of SERVQUAL. Previous research suggested that the dimensionality might depend on the type of services under study. Based on this background, studies have investigated various attributes, which determine consumers' perception of service quality of banking industry (Avkiran, 1994; Stafford, 1996; Bahia & Nantel, 2000; Aldlaigan & Buttle, 2002).

Avkiran (1994) developed the BANKSERV model to measure the service quality as perceived by customers in retail banking of Australia. Four dimensions make up BANKSERV: staff conduct, credibility, communications, and access to teller services. Stafford (1996) conducted an exploratory study and reported seven attributes of bank service quality as perceived by customers: bank atmosphere; relationship; rates and charges; available and convenient services; ATMs; reliability/honesty; and tellers. Bahia & Nantel (2000) developed a scale called as bank service quality (BSQ) for the measurement of the perceived service quality of retail banking in Canada. The BSQ comprises 31 items, which span six dimensions: effectiveness and assurance, access, price, tangibles, service portfolio, and reliability. Aldlaigan & Buttle (2002) developed SYSTRA_SQ in UK. It consists of four dimensions: service system quality; behavioral service quality; machine service quality; and service transactional accuracy.

To better capture the quality of characteristics perceived by Myanmar bank customers, the author developed an instrument that make up 25 items. These items are developed by integrating appropriate items from SERVQUAL, BANKSERF, BSQ, SYSTRA_SQ and the work of other scholars such as Akhtar (2011) and Choudhury (2013). "Access" and "communication" dimensions were added to five dimensions of SERVQUAL for that Myanmar bank customers give significant consideration to these two dimensions when choosing a bank. Thus, this study consider seven dimensions: tangibles, reliability, responsiveness, assurance, empathy, access, and communication for the measurement of service quality.

Research on relationship between job satisfaction and service quality

A substantial body of empirical work has shown that employees' attitudinal and behavioral responses can positively and negatively affect customers' perceptions of the service encounter and their judgments of service quality (Bitner, 1990).

On the negative side, early studies by Schneider (1980) reveal that employees' role stress (conflict and ambiguity) and dissatisfaction are major contributors to their inability to deliver good service. Boshoff and Tait (1996) argue that job satisfaction is an important factor in determining service quality. Schlesinger and Heskett (1991a) have also supported this notion through their concept of "cycle of failure". The concept claims that dissatisfaction amongst staff Associate results in high staff turnover, which in turn lead to poor training and rewards by the organization, in turn resulting in poor customer service. It is very difficult for unhappy and dissatisfied customer-contact employees to deliver exceptional service that satisfies the customer (Rogers et al., 1994).

On positive side, many researchers reported that satisfied employees are more likely to engage in behaviors that assist customers (Locke and Latham 1990; Weatherly and Tansik 1993). Researchers reported that people who are in a positive frame of mind are more likely to be altruistic, helpful and considerate (Motowidlo, 1984) and job satisfaction has been found to be antecedents of customer-oriented behavior (Hoffman and Ingram, 1992). Yoon and Suh (2003) also argued that satisfied employees are more likely to work harder and provide better services. Randy (2000), at his study of the Royal bank of Canada, found that 40% of the difference in how customers view its services directly link to their relationship with bank staff. Schneider and his colleagues (Schneider & Bowen, 1985, 1993; Schneider, et al., 1980), via their research of retail banks, suggested that what employees perceive about their experience as employees is positively related to what customer report about their experience as service consumers. Additional studies have also found a positive relationship between job satisfaction and customers' perception of service quality in several service industries such as banking (Boukis et al.,2011; Gounaris & Boukis 2013), hotel (Hartline & Ferrell, 1996), insurance organization (Schlesinger & Zornitsky, 1991), a meta-analysis (Brown & Lam, 2008), education (Snipes, et al.,2005), restaurant

(Gazzoli et al.,2010) and transportation (Kim & Han, 2013). The uniqueness of Snipes, et al.,(2005) and Kim & Han (2013) studies were that these studies investigated the specific effect of different satisfaction facets on customers' perception of service quality, whereas the others used global job satisfaction measures. Accordingly, the following hypothesis is hypothesized;

Hypothesis: Employees' satisfaction with job contents, supervisor, compensation and co-workers has a link to customer perceived service quality.

Hypothesized model

Based on the proposed hypothesis, Figure 1 depicts the conceptual model to be tested in this study. Each job satisfaction facet is hypothesized to exert a positive link to customer perceived service quality.

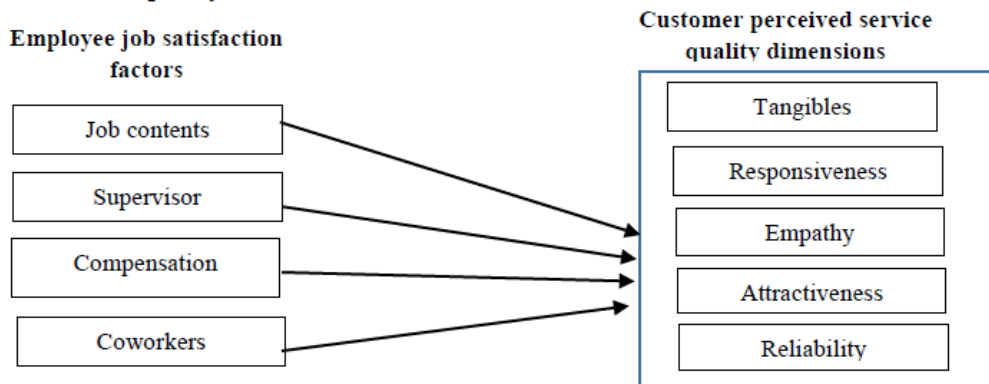


Figure1: Conceptual Model of the relationships between employee satisfaction factors & Customer perceived service quality

Empirical study context and Method

To test the hypothesized model, it is necessary to use a high-contact service system where the degree of interaction between customer-contact employees and customers represent an essential element of the customer's overall experience with the service providing organization. Thus, the one industry chosen for this study was Myanmar private banking industry for the following several reasons: 1) Banking is a high-contact service industry (Brown & lam, 2008); 2) Banking institutions are the backbone of a nation's economy and its efficient management of human resources and maintenance of higher job satisfaction levels affect the growth and performance of an entire economy. Myanmar banking sector experienced a major transformation from a monopoly status as the only state-owned Myanmar Economic bank into 23 banks including 4 state-owned banks and 19 private banks. Particularly, now-a-days Myanmar private banks have seen tremendous progress following liberalization in 1992.

12 out of total 19 private banks participated in the study. As it was difficult to get access to banks and get questionnaire filled from their employees and customers, the final selection of the banks was based on the permission granted by the banks' managers to collect data. Owing to the tremendous visibility of types of bank service, and concentration of bank institutions, two major cities of Myanmar, namely Yangon and Mandalay were selected for the study. The survey was conducted there from October to November, 2014.

Data collecting procedure

Since the intent of this study is to determine any link of employee satisfaction to customer perceived service quality, both two samples and two different survey instruments were needed: one sample was employee sample and the other was customer sample. One instrument was used to measure employee attitudes and the other was for measuring the customer service quality perceptions. The unit of analysis for this study was a specific customer-contact employee and one of the customers for whom this customer-contact employee is responsible.

Only those employees who come into a direct interact with clients in the service encounter, and who meets a criteria of having at least one year working experience in their bank, were selected to participate in this research. In this regard, participated positions ranged from tellers to branch managers with an average of 33 employees participated per banking center. The basic theoretical reasoning for selecting customer-contact employees is that the suggested effect of employee satisfaction on customer perceived service quality depends on the visibility of the employee's job attitude (satisfaction) and behavior to customers.

Selected customer-contact employees were asked to read each statement of questionnaire carefully and rate their response on a 5 point Likert scale. To measure customer attitudes toward bank service quality, a questionnaire was administered to each customer of the participated employee. With the aim of obtaining one customer assessment per customer-contact employee, the author and assistants continued collecting data until having completed total 400 customer observations. The author also explained customer respondents about the purpose and implication of this study and asked their cooperation. After eliminating all incomplete responses, the final sample totaled 351 employees and 351 customers yielding a usable rate of 87 %.

Measures

Job factor satisfaction measures

Contents of all measurement scales applied in this study were adopted from previous researches. To measure employee job satisfaction, 15 items which reflect the four factors (job contents, supervisor, compensation, and co-workers) were used. The fifteen items were created by combining six items of Wiley, (1991); three items of Tornow & Wiley, (1991); three items of Spector, (1994); one item of Schmit & Allscheid, (1995) one item of Harris & Ogbonna (2001) and one item of Wangenheim, Florian V. et al. (2007).

Perceived service quality measures

To measure customer perceived service quality, 25 items were drawn by combining five items of the BANKSERF scale (Avkiran, 1994); six items of the SERVQUAL scale (Parasuraman et al.,1991); nine items of the BSQ scale (Bahia & Nantel, 2000); two items of the SYSTRA-SQ scale (Aldlaigan

& Buttle, 2002); two items of Akhtar (2011); and one item of Choudhury (2013).

Data analysis and results

Descriptive statistics

Of 351 employees respondents, 96 (27.35%) was male and 255 (72.65%) was female. In terms of age, the highest proportion of respondents fell into the age group (20-29) years (69%) of the total number of respondents. This was followed by 30-39 years (21.37%), 40-49 years (9.12%) and 50-59 years (.854%). Within the sample, 124 were junior assistants, 150 were senior assistants, 39 were assistant supervisors, 18 were supervisor, 11 were 2nd managers, and 9 were managers. Average length of service was 3.79 years ranging from minimum 1 year to maximum 18 years: 185 (50.8%) was less than 3 year length of service. Within the sample, educational level was high: 315 (89.74%) were graduates and 36 (10.26%) were master degree holders.

Among the 351 customer respondents, 43% of the respondents were between the ages of 20 to 29 years old. The majority of the respondents were female (55%) and were single (61%). In terms of the educational background and monthly salary, the majority of the respondents had a bachelor's degree (49 %) and had a monthly income of 100,000 to 200,000 kyats (48 %). 34% of respondents were entrepreneurs and 32% worked for private companies. Most of respondents reported that they usually used a single bank. Nearly 27% of customer respondents have been dealing with their main bank for 1 to 2 years. Most of customers visit their bank once a month (32%).

Preliminary Analysis

Prior to testing the hypothesis, the researcher conducted a factor analysis and a reliability analysis to test the construct validity of each questionnaire items. According to the results of confirmatory factor analysis of responses of employees' job satisfaction and customers' perceptions of service quality, it was found that not all items loaded on the proposed factors and some showed their contribution in more than one factor. To address this problem, exploratory factor analysis and factors rotation were conducted repeatedly by removing those items which show low correlation coefficients

between internal items or high correlation between various factors and external items. Ultimately, final results were reached after removing one item for job satisfaction, and six items for service quality. The summary of the final results of the factor analysis for employee job satisfaction and customer perceived service quality are presented in Table (1) and (2).

Table 1: Employee Satisfaction Factors and their variance explained % and Cronbach's Alpha values

Factors	Items included	Factor loading	Eigenvalue	Variance explained	Cronbach alpha
Supervisor	trustworthiness	0.916	4.574	32.670%	0.869
	Encouragement of an open and participative work environment	0.876			
	Consideration of personal welfare of group members	0.836			
	Living example for organizational goal	0.777			
Coworkers	Enjoyment to work with	0.905	1.942	13.868%	0.851
	Encouragement between each other to give best effort	0.904			
	Team spirit	0.876			
Compensation	Flexible enough to meet particular needs	0.873	1.685	12.034%	0.751
	As good as other organizations offer	0.872			
	Encouragement to do the best	0.772			
	Justified promotion	0.368			
Job contents	Utilization of skills and abilities	0.841	1.370	9.785%	0.646
	Likeness of job	0.756			
	Feeling of personal accomplishment	0.737			
Overall				68.358%	0.811

As can be seen in Table (1) promax rotation method produced four factors with eigenvalue greater than one, cumulatively accounting for 68.358% of the variance labeling factors as “Supervisor”, “Co-workers”, “Compensation”, “Job contents”. As internal consistency of the instrument, the Cronbach's alpha values for each factor were 0.869, 0.851, 0.751, and 0.646 respectively. Table (1) revealed that all factor loadings except the item for promotion (0.368), were exceeding 0.7, and all the Cronbach's alpha values were higher than the criteria value (0.6) (Malhotra, N.K. 2009), thus suggesting that the instrument used in the study had the sufficient reliability.

Table 2: Service Quality Factors and their variance explained % and Cronbach’s Alpha values

Factors/Dimensions	Items included	Factor loading	Eigenvalue	Variance explained	Cronbach alpha
1. Responsiveness	Waiting time is not too long	0.812	3.941	20.743%	0.666
	Not delay due to bureaucratic factors	0.791			
	Employees have the knowledge to answer questions.	0.621			
2. Tangibles	Providing one-stop-service	0.770	2.549	13.415%	0.669
	facilities feel secured	0.766			
	Availability of up to-date equipment	0.573			
	Visually appealing physical facilities	0.555			
	employees are neat-appearing	0.520			
3. Empathy	staff has knowledge of the client on a personal basis	0.795	1.482	7.800%	0.649
	keep informed every time a better solution appears for a problem	0.653			
	Keep customers informed about matter of concern to them.	0.607			
	provides information in understandable manner	0.538			
	put customers’ best interest at heart	0.491			
4. Attractiveness of bank	convenient location of bank branches	0.790	1.304	6.863 %	0.564
	Bank’s good reputation	0.747			
	Availability of sufficient number of branches	0.718			
5. Reliability	Employees’ ability to apologize when making a mistake	0.869	1.121	5.899 %	0.649
	Employees’ ability to put a mistake right	0.860			
	cash machine are reliable	0.395			
Overall				54.720%	0.724

As shown in Table (2), promax rotation method produced five factors for service quality with eigenvalue greater than one, cumulatively accounting for 54.720% of the variance. Factors were named as “Responsiveness”, “Tangibles”, “Empathy”, and “Attractiveness of bank and Reliability”. All the Cronbach’s alpha values except for Attractiveness of bank (0.564) (which is also acceptable in terms of mean inter-item correlation values range from .2 to .4) (Briggs & Cheek, 1986) were higher than the criteria value (0.6) (Malhotra, N.K. 2009), thus showing that the instrument used in the study had the sufficient reliability.

After validating the sufficiency of reliability for questionnaire items applied in this study, the research hypothesis was tested by analyzing the data using zero-order correlation and simple regression analysis.

Hypothesis test results

Table 3: Correlation and regression analysis between employee job satisfaction factors and Customer Perceived Service Quality dimensions (Tangibles)

	Correlation with “Tangibles”	Regression models (x: job satisfaction)	R2
Job contents	-.001	-.001X + 3.878 (not sig)	.000
Supervisor	.000	.000X + 3.875 (not sig)	.000
Compensation	.109*	.069X + 3.643 (sig)	.012
Co-workers	-.003	-.002X + 3.884 (not sig)	.000

* = p<.05

Table 4: Correlation and regression analysis between employee job satisfaction factors and Customer Perceived Service Quality dimensions (Responsiveness)

	Correlation with “Responsiveness	Regression models (x: job satisfaction)	R2
Job contents	.112*	.083X + 3.446 (sig)	.013
Supervisor	.042	.028X + 3.653 (not sig)	.002
Compensation	-.015	-.009X + 3.791 (not sig)	.000
Co-workers	.018	.012X + 3.714 (not sig)	.000

* = p<.05

Table 5: Correlation and regression analysis between employee job satisfaction factors and Customer Perceived Service Quality dimensions (Empathy)

	Correlation with “Empathy”	Regression models (x: job satisfaction)	R2
Job contents	.078	.064X + 3.100 (not sig)	.006
Supervisor	.110*	.082X + 3.028 (sig)	.012
Compensation	-.011	-.007X + 3.365 (not sig)	.000
Co-workers	.112*	.082X + 3.024 (sig)	.012

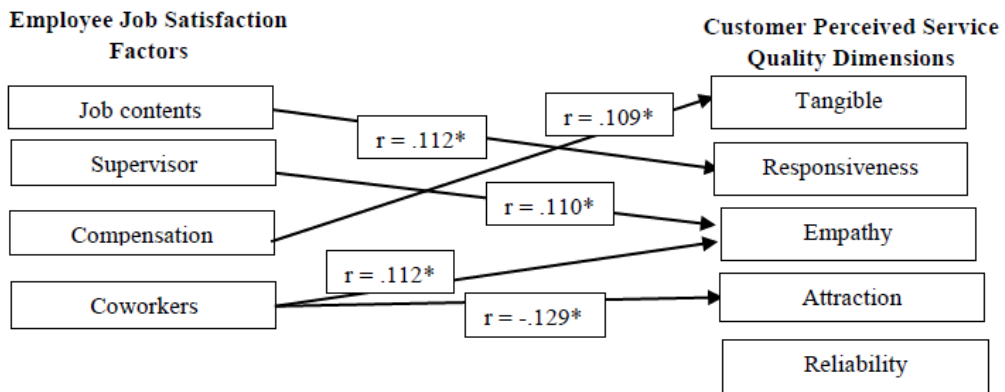
* = p<.05

Table 6: Correlation and regression analysis between employee job satisfaction factors and Customer Perceived Service Quality dimensions (Attractiveness of bank)

	Correlation with “Attractiveness of bank”	Regression models (x: job satisfaction)	R2
Job contents	.081	.072X + 3.332 (not sig)	.007
Supervisor	-.095	-.077X + 3.899 (not sig)	.009
Compensation	.015	.011X + 3.570 (not sig)	.000
Co-workers	-.129*	-0.102X + 4.003 (sig)	.017

* = p<.05

Based on the results shown in Table (3) to Table (6), all employee job satisfaction factors were found to be statistically correlated with at least one dimension of customer perceived service quality, though not strongly. Employee satisfaction with “Job contents” was positively correlated with “Responsiveness” dimension of service quality ($r = .112, P < .05$)(Table 4). Moreover, employee satisfaction with “Supervisor” was positively correlated with “Empathy” dimension of service quality ($r = .110, P < .05$) (Table 5). Further, employee satisfaction with “Compensation” was positively correlated with “Tangible” dimension of service quality ($r = .109, P < .05$) (Table 3). Finally, employee satisfaction with “Co-workers” was positively correlated with “Empathy” dimension of service quality ($r = .112, P < .05$) (Table 5) and negatively correlated with “Attractiveness of bank” dimension of service quality ($r = -.129, P < .05$)(Table 6). The correlation coefficients between these four factors of job satisfaction and customer service quality perception range from 0.109 to -0.129, which are relatively low. The results of the regression analysis confirm the correlation analysis, which indicates that also the value of *R2* of each regression model ranges from 0.012 to 0.017, which are relatively low. This suggest that customer service quality perceptions are likely to be affected (though by only a limited amount) by job satisfaction factors. However, only 4 dimensions of customer service quality were found to be affected by employee job satisfaction factors. Therefore, the hypothesis was partially supported (see Figure 2)(* = p<.05).



Discussion

This study was conducted to investigate the specific relationship of different employee job satisfaction factors to customer perception of service quality. In other words this study help a better understanding of which job aspect satisfaction affect what dimension of customer service quality perception. This study also come up with some unexpected findings.

The first result was that employee satisfaction with “Job contents” was positively correlated with “Responsiveness” service quality dimension. This finding suggests that when employees consider their jobs, they look at factors such as whether they are presented with opportunities to use their skills, they achieve personal accomplishment from their job and also what interest, if any, they may have in their jobs. Employees’ positive perceptions to these factors can lead to increased levels of job satisfaction, which would increase their willingness to meet the needs of their customers and provide the requested service promptly and answer the questions of customers willingly at each encounter.

This finding of present study was consistent with the argument of Kaplan & Norton (1996, p.130) who posited that satisfied employees are a precondition for increasing productivity, responsiveness, quality and customer service. This finding also agrees with the report of Wimonphan Piriyanailai and Nuttawuth Muenjohn (2012) who found that employees who were satisfied with job advancement, which serves as an award to be given out in the future as result of today’s hard work, could boost morale and motivate employees to work hard and be willing to efficiently deliver their

services to customers. Thus, customers are likely to receive prompt service delivery. This finding also confirms previous literature such as 'self-efficacy' theory (Bandura, 1997) that individuals are motivated to undertake certain actions based on their perceptions of self-efficacy. Perceived self-efficacy is individual's judgment of his or her ability to complete the necessary actions required to reach a designated level of performance. In this case, employees may base judgment of self-efficacy on that they achieve personal accomplishment within a given domain. This finding also supports other research which showed that intrinsic rewards may play an important role in customer-oriented behavior than their extrinsic counterparts (Huffman and Ingram, 1992). The second result indicated that employee satisfaction with "Supervisor" was found to be positively correlated with "Empathy" aspect of service quality. This finding suggests that in the event of customer contact, employees perceive their supervisor as a role model. The supervisor is seen as trustworthy, concerned with subordinates' well-being and encouraging an open and supportive working environment. When employees' such positive perceptions towards their supervisor are high, the results showed that they are more likely to exert effort in the workplace to meet the needs of customers. In terms of "empathy," employees may pay individualized attention to customers, offering personalized service, and keeping informed of matter to them as well as offering new and better solutions to customer problems in an understandable manner.

The second result is consistent with prior literature such as Schneider and Bowen (1993) who proposed that when employees' work is facilitated (i.e., via supporting mechanism such as supportive supervision and adequate resource), employees can devote themselves to fulfilling the demands of customers.

The second result supports previous studies such as Graen et al., (1982) and Scandura & Graen (1984) who examined the association between leader-member relationship and performance in the context of a leadership training program designed to enhance leader-member relationship quality. They found that subordinate performance increased as leader-member relationship quality improved over the course of the training program.

The second result also agrees with a prior research conducted by Setton, et al., (1996), a more direct examination of leader-member relationship and performance. They found that leader-member relationship quality was positively related to both in-role and extra-role behavior. The second result also support Dorman and. Kaiser, D M (2002) who concluded that a higher level of supervisor support is associated with the level of customer satisfaction with empathy.

The third result, was that employee satisfaction with “Compensation” has a relationship with customer perception with “Tangible” aspect of service quality. This finding is somewhat strange. The result seems to more concern with the organizational level rather than the individual level. This finding implies that those banks where employees perceived of their banks positively in terms of their salaries, customers of which reported a high level of perception to the tangibles of these banks. In other words, those banks that can satisfy their employees with salaries, can also satisfy their customers in terms of the tangible service quality dimension.

The third result is not in line with previous literature such as Tornow & Wiley (1991) who reported that when employee satisfaction was measured with respect to their salaries, the relationship between employee satisfaction and customer perceptions of service quality was found to be non-significant. Such disagreement may attribute to some reasons. The first is that employee who are not satisfied with their job may not be motivated to keep either themselves or their area of work neat and tidy.

Another reason is that the banks participated in the present study includes two types of banks with different practices: former banks and later banks. Former banks referred to those banks that were established within the period of 1992-1997, while later banks represent those banks that were set up after 2010. Later banks differ from former banks in some ways. Later banks provide one-stop services using up-to-date equipment, and have attractive and modern buildings with sufficient parking space. They also hire personnel focusing upon the physical appearance of potential employees, preferring young and attractive employees over older people. In addition, these later banks can provide their employees with a relatively higher salary.

On the other hand, former banks still retain their older premises, rather than trying to be attractive as modern bank buildings, and offer their workers relatively lower salaries. Under these circumstances, it is more likely to see that those banks which can provide higher salaries, also possess visually attractive facilities and appealing staff (Source: physical visit to these banks by the author). As a result, those banks that achieve employee satisfaction in terms of compensation, can also get positive customer ratings of their tangible service facilities and personnel. In this regard, the positive association was found between employee satisfaction with compensation and customer perceptions of the ‘tangibles’ service dimension.

The fourth result showed that employee satisfaction with “Co-workers” was positively correlated with “Empathy” aspect of service quality. This finding suggests that employees perceive their work group as characterized by co-operation, members work on encouraging each other, and co-workers are friendly. Thus, employees feel their job as more enjoyable and it usually leads to greater effectiveness, particularly, greater willingness to help customers by paying more attention to customers’ best interests and keeping them informed of important matters and better solutions in understandable manners.

The fourth result agrees with McGregor (1960) who posited that whether or not an employee will give his/her service wholeheartedly to the organization and work, depends on the way the worker feels about the job, fellow workers and supervisor. The fourth result also supports Gronroos (1990) who argues that internal cooperation in the form of employees helping each other can ultimately lead to employees helping customers. The fourth result also agrees with prior empirical study of Susskind et al., (2003) who discovered that a supportive group of peers was important to help perform service-related duties, which require employees to meet all requests made by customers and to ensure that customers receive the best possible service available. The fourth result is also congruent with the work of Susskind et al., (2007) who conducted in casual dining restaurant chain and found that employees felt their co-workers were very helpful, they can rely heavily on their peers, and their colleagues provide important work-related information and advice that make performing their job easier. Consequently employees

reported high level of satisfaction with co-workers and it affected creating a positive service atmosphere. Employees became more willing to deliver excellent service to their customers. Customers noticed the service and reported high positive assessment. The fourth result also supports the finding of Kim & Han (2013) who found in a state-owned rail enterprise in South Korea that employee believe their co-workers are friendly, trustable, cooperative, and have mutual interests. When such employee positive perceptions of co-workers are high, they are likely to be motivated to meet the demands of train users and be concerned with customers' best interests.

Further, the fifth result also found that employee satisfaction with co-workers was negatively related to customer perception of the "attractiveness of bank" service dimension, which referred to the availability of adequate branches at convenient locations. The fifth result is unexpected and contrary to common sense that negative effect of employee satisfaction with co-workers will lead to high level of customer satisfaction with the attractiveness of bank. This unexpected finding may be attributed to Myanmar banking practices. It is typically seen in the Myanmar banking industry that, whenever a new branch was opened, where the staff composes of not only new employees, but also personnel who have transferred from existing branches (who have experience) to assist new staff. These experienced staff were asked by their bank manager to work in the new branch. Most of such requests were made together with a 'promotion' incentive, but sometimes without. Some staff may have accepted to work in new branch because of the 'promotion' incentive even though they may not, have been all that willing (Source: interviews with staff from some private banks).

On the other hand, opening a new branch provides customers with better convenience being the branch proximity to their places. Customers would therefore report being more satisfied with the service. Thus, this link implies that a negative perception of employee with co-workers, caused by being moved to work in a new branch, may result in a positive perception of customer to more accessibility of the bank.

The final result showed that there was no relation of employee any job aspect satisfaction to "reliability" aspect of service quality. This is perhaps due to both reasons: the items that were used to measure this dimension, and

customer sample respondent. To assess reliability dimension, three items were used in the present study. Two of them seek whether the employees apologize and quickly make it right when they make an error, and the other item is related to the reliability of cash machines. With respect to this, it is likely that these first two items could be answered by only those respondents who have experienced employees' error, whereas the last item could be responded to by only those who have often used ATMs. According to survey data, the majority of customer respondents had not experienced employees' errors during their time of dealing with the bank. Only a few customer respondents have used ATMs. Under these situations, perhaps, most customer respondents were more likely to choose a neutral score from 5 likert scale to rate this dimension. This might have led to the variability in the scores for this dimension to be remained constant, which may lead to being unable to find any relationship between this dimension and any factor of job satisfaction.

Conclusion

The magnitude of correlation found between employee job aspect satisfaction and customer perception of service quality might lead someone to conclude that with such small effect sizes, pursuing a link between employee satisfaction and customer service quality perception in a given organization is not worth continued implementation. However, the size of the company here would view such effects as quite large. According to Reicheld & Sasser (1990), if a firm reduces its customer defection ratio by 5% or increase the number of loyal customers by 5%, then it can witness a 25% -85% increase in its profits. This implied that the ability to increase customer retention or reduce customer defection in term of improving service quality by a few percentage points translates into a substantial sum of money.

Another fact to encourage pursuing employee satisfaction is that such small magnitude of relationship between employee satisfaction and performance may be due to level of analysis used in the present study for employee satisfaction (individual level). According to Schmitt, Colligan, and Fitzgerald (1980) there was little correlation on the satisfaction-performance relationship at the individual-level, however, the relationship at the organization level were much stronger. Similarly, Schneider & Schmitt (1986)

posit that the satisfaction-performance relationship at the organization level may be stronger than the relationship at the individual level.

Limitation & Future study

Although this investigation offers new insights that add to the existing literature of employee job satisfaction it is acknowledged that the study has some limitations. First, data collection was restricted to only twelve private banks located in Yangon and Mandalay. In order to generalize the findings for the banking industry of Myanmar future research should include other private and public banks. Second, the sample consists of data from the banking sector only which posts another limitation of empirical generalization. Future research should investigate current finding in other industries and other service firms or other countries to replicate and extend the current work and improve the understanding of the specific phenomena. Third, the same number of respondents for both employees and customers was used as a sample in this study. In this regard, future research should expand the research scope and sample size.

Implication & Suggestion

The results of this study have important implications both for theoretically and practical perspectives. From a theoretical perspective, this study extends our understanding on the relationship of specific job facet satisfaction to customer perception of service quality in a non-western environment, Myanmar. This could stimulate further research in this area such as the effect of specific job satisfaction facets on customer satisfaction and customer loyalty. From a practical standpoint, this study provides practitioners with key information that could enable them to make managerial decisions for improving customer perception of service quality.

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References

- Adams, J.S. (1963). Toward an understanding of inequity, *Journal of Abnormal and Social Psychology*, Vol. 67 No. 5, pp. 422-436.
- Adams, J.S. (1965). Inequity in social exchange. In L. Berkowitz (Ed.), *Advances in experimental social psychology* (Vol. 2) (pp. 267-299). New York: Academic Press.
- Akhtar, J. (2011). Determinants of Service Quality and Their Relationship with behavioral Outcomes: Empirical Study of the Private Commercial Banks in Bangladesh. *International Journal of Business and Management*, Vol. 6, No. 11; November 2011
- Aldlaigan, A.H., Buttle, F.A. (2002). SYSTRA-SQ: a new measure of bank service quality, *International Journal of Service Industry Management*, Vol.13 No.4 pp362-81
- Avkiran, N.K. (1994). Developing an instrument to measure customer service quality in branch banking, *International Journal of Bank Marketing*, Vol.12 No.6 p10-18
- Avkiran, N.K (1999). Quality Customer Service Demands Human Contact. *Int. J. Bank Mark.* 17(2):61-71.
- Bagozzi, R.P. (1992). The self-regulation of attitudes, intentions, and behavior. *Social Psychology Quarterly*, 55, 178-204.
- Bahia, K., Nantel, J. (2000). A reliable and valid measurement scale for the perceived Service quality of banks, *International Journal of Bank Marketing*, Vol.18 Pp 84-91
- Bitner, Mary Jo (1990). Evaluating Service Encounters: The Effects of Physical Surroundings and Employee Responses. *Journal of Marketing*, 54 (April), 69-82.
- Bloemer, J., de Ruyter, K. & Wetzels, M. (1999). Linking perceived service quality and service loyalty: a multi-dimensional perspective. *European Journal of Marketing*, Vol. 33 No 11/12, pp. 1082-95.
- Boshoff, C. and Tait, M. (1996). Quality Perceptions in the Financial Services Sector. *International Journal of Service Industry Management* 7 (5), 5-31.

- Bowen & Schneider, (1985): Boundary spanning-role employees and the service encounter: Some guidelines for management and research, in the service encounter_ managing employees/customer interaction in service business. *Levington.MA: D.C.Health and Company*, 7, 127
- Boukis, A. et al. (2011). Incorporating Employee Satisfaction in a Customer Retention Model. *American Marketing Association / Winter 2011*
- Briggs & Cheek, (1986): The role of factor analysis in the development and evaluation of personality scales, *Journal of Personality*, Volume 54, Issue 1
- Brown, S.P. & Lam, S.K. (2008). A meta-analysis of relationships linking employee satisfaction to customer responses. *Journal of Retailing*, Vol. 84 No. 3, pp. 243-255
- Choudhury, K .(2013). Service quality and customers' purchase intentions: an Empirical study of the Indian banking sector. *International Journal of Bank Marketing* Vol. 31 No.7, 2013 pp. 529-543
- Dabholkar, P.A., Thorpe, D.I. & Rentz, J.O. (1996). A measure of service quality for retail stores: scale development and validation. *Journal of the Academy of Marketing Science*, Vol. 24, Winter, pp. 3-16
- Dormann, C and Kaiser, D. M. (2002). Job conditions and customer satisfaction. *European Journal of Work and Organizational Psychology*, 11(3), 257–283.
- Fisher, C. D. (1980). On the dubious wisdom of expecting job satisfaction to correlate with performance. *Academy of Management Review*, 5, 607–612.
- Flynn, F.J. (2005). Identity orientations and forms of social exchange in organizations. *Academy of Management Review*, Vol. 30 No. 4, pp. 737-750.
- Gazzoli, G., Murat Hancer, and Yumi Park (2010). The Role and Effect of Job Satisfaction and Empowerment on Customers' Perception of Service Quality: A Study in the Restaurant Industry, *Journal of Hospitality & Tourism Research*, February 2010; vol. 34, 1: pp. 56-77
- Gotlieb, J.B., Grewal, D. and Brown, S.W. (1994). Consumer satisfaction and Perceived quality: complementary or divergent constructs. *Journal of Applied Psychology*, Vol.79 No. 6, pp. 875-885.
- Graen, G., Novak, M.A., and Sommerkamp, P. (1982). The effects of leader-member exchange and job design on productivity and satisfaction: Testing a dual attachment model. *Organizational Behavior and Human Performance*, 30, 109-131.
- Gronroos, C. (1990). Relationship approach to marketing in service contexts: The marketing and organizational behavior interface. *Journal of Business Research*, 20, 3-11.
- Gounaris, S. P. (2006). Internal-market orientation and its measurement. *Journal of Business Research*, 59(4), pp.432-448
- Gounaris, S & Boukis, A (2013). The role of employee job satisfaction in strengthening customer repurchase intentions. *Journal of Services Marketing*, Vol.27 Iss: 4, pp.322 – 333
- Harris & Ogbonna, (2001). Leadership style and market orientation: an empirical study. *European Journal of Marketing*, 35(5/6), 744-764.

- Hartline M.D. & Ferrell O.C. (1996). The Management of Customer Contact Service Employees: An Empirical Investigation. *Journal of Marketing*, Vol 60, October, pp 52-70
- Heskett, J.L., Jones, T. O., Loveman, G.W., Sasser, W. E., Jr., & Schlesinger, L. E.(1994,March/April).Putting the service-profit chain to work. *Harvard Business Review*, pp.164–174.
- Heskett, J. L., 'Sasser, W. E., Jr., & Schlesinger, L. A. (1997).The service profit chain, *New York: Free Press*.
- Hoffman, K.D. and Ingram, T.N. (1992). Service provider job satisfaction and customer-oriented performance. *journal of Services Marketing*, Vol.6 No.2,pp.68-78
- Huseman, R.C. and Hatfield, J.D. (1990).Equity theory and the managerial matrix. *Training and Development Journal*, Vol. 44 No. 4, pp. 98-102
- Ironson, G. H., Smith, P. C., Brannick, M. T., Gibson, W. M., & Paul, K. B. (1989). Construction of a Job in General scale: A comparison of global, composite, and specific measures. *Journal of Applied Psychology*, 74, 193-200.
- Kaplan Robert S. & Norton David P. (1996). The balanced scoreboard: Translating strategy to action. N.P.: n.p.
- Kim & Han, (2013). Effects of Job Satisfaction on Service Quality, Customer Satisfaction, and Customer Loyalty: The Case of a Local State-Owned Enterprise. *WSEAS Translation on BUSINESS and ECONOMICS*, Issue 1, Volume 10, January 2013, pages. 49-68
- Levesque, T., & McDougall, G.H.G. (1996). Determinants of customer satisfaction in Retail Banking. *International Journal of Bank Marketing*, 12-20.
- Lings & Greenley, (2009). The impact of internal & external market orientation on Firm performance, *Journal of Strategic Marketing*
- Locke, E. (1976). The nature and causes of job satisfaction. In M. D. Dunnette (Ed.). *Handbook of industrial and organizational psychology*(1297–1349). Chicago: Rand Mc Nally.
- Locke, E.A and Gary P Latham (1990). Work Motivation and Satisfaction: Light at the End of the Tunnel. *Psychological Science*, 1 (July), 240-^6
- Malhotra, N.K. (2009). *Marketing research: An applied orientation (text only)* (6th ed.). New York: Prentice Hall.
- McGregor, D. (1960). *The human side of enterprise*. New York: McGraw-Hill.
- Motowidlo, S.J.(1984). Does job satisfaction lead to consideration and personal sensitivity? *Academy of Management Journal*, vol.27 No.4, pp.910-15
- Nunnally, J. C. (1978). *Psychometric theory* (2nd ed.). New York: McGraw-Hill.
- Oliver, R.L. (1993). Cognitive, Affective, and Attribute Bases of the Satisfaction Response. *Journal of Consumer Research*, 20, 3, 418-430.
- Parasuraman, A., Valarie A. Zeithaml, and Leonard L. Berry (1988). SERVQUAL: A Multiple-Item Scale for Measuring Consumer Perceptions of Service Quality. *Journal of Retailing*, 64 (Spring), 12-40.

- Parasuraman A, V.A. Zeithaml and L.L Berry. (1991). Refinement & reassessment of the SERVQUAL scale. Volume 67 number 4 winter
- Parasuraman, A, V.A. Zeithaml and L.L Berry. (1994). Reassessment of expectations as a comparison standard in measuring service quality: Implications for further research. *Journal of Marketing*, 58, 111-124.
- Parasuraman, A., Zeithaml, V.A. and Malhotra, A. (2005). E-S-Qual: a multiple item scale of assessing electronic service quality. *Journal of Service Research*, Vol. 7 No. 3, pp. 213-33.
- Piriyathanalai W and Muenjohn. N (2012). Is there a link? Employee satisfaction and service quality. *World Journal of Management*, 4(1), 82 – 92.
- Randy Brooks, (2000). Why loyal employees and Customers improve the bottom line. *Association for Quality & Participation*,
- Rogers J.D., Clow K.E. and Kash T.J. (1994) .Increasing the Job Satisfaction of Service Personnel. *Journal of Services Marketing*, v8, No 1, pp 14-26.
- Scandura, T.A. and Graen, G.B. (1984). Moderating effects of initial leader-member exchange status on the effects of a leadership intervention. *Journal of Applied Psychology*, 69, 428-436.
- Schlesinger, L.A. & Heskett, J.L. (1991a). Breaking the cycle of failure in services. *Sloan Management Review*, Vol. 32 No. 3, pp. 17-28.
- Schlesinger & Zoraitzky, (1991). Job Satisfaction, Service Capability, and Customer Satisfaction: An Examination of Linkages and Management Implications. *Human Resources Planning*, 14, No.2, pg 141-149
- Schmit, M. J. & Allscheid, S. P. (1995). Employee attitudes and customer satisfaction: Making a theoretical and empirical connection. *Personnel Psychology*, 48, 521–537.
- Schmitt, Colligan, and Fitzgerald (1980): Unexplained physical symptoms in eight organizations: Individual and organizational analyses. *Journal of occupational Psychology*, 53 (4), 305-317
- Schneider, B. (1980). The service organization: Climate is crucial. *Organizational Dynamics*, 1980, Autumn, Vol.9 (2), pp. 52-65
- Schneider, B., & Bowen, D. (1985). Employee and customer perceptions of service in banks: Replication and extension. *Journal of Applied Psychology*, 70, 423-433.
- Schneider, B. & Schmitt, N. (1986). Staffing Organizations, *Glenview, IL: Scott, Foresman*.
- Schneider, B., & Bowen, D. E. (1993), The service organization: Human resources management is crucial. *Organizational Dynamics*, 21, 39-52.
- Settoon, R.P., Bennett, N. and Liden, R.C. (1996). Social exchange in organizations: Perceived organizational support, leader-member exchange, and employee reciprocity. *Journal of Applied Psychology*, 81, 219-227.
- Smith, P. C., Kendall, L. M., & Hulin, C. L. (1969). Measurement of satisfaction in work and retirement. *Chicago: Rand-McNally*.

- Smith, 1976: Behavior, results and organizational effectiveness: The problem of criteria. In *Dunnette M.D. (Ed.), Handbook of industrial psychology* (pp.1-100). Chicago: Chicago Rand McNally
- Snipes, R.L., Oswald, S.L., LaTour, M. and Armenakis, A. (2005). The effects of Specific job satisfaction facets on customer perceptions of service quality: an employee-level analysis. *Journal of Business Research*, Vol. 58, pp. 1330-1339.
- Spector, P.E. (1994). Job Satisfaction Survey. Retrieved July 24, 2004 from <http://chuma.cas.usf.edu/~spector/scales/jsspag.html>
- Spector PE (1997). Job Satisfaction: Application, Assessment, Causes, and Consequences. *Thousand Oaks, CA: Sage*.
- Stafford, Maria Royne (1996). Demographic Discriminators of Service Quality in the Banking Industry. *The Journal of Services Marketing*, 10 (4), 6-22.
- Susskind, A. M., Kacmar, K. M. and Borchgrevink, C. P. (2003). Customer service providers' attitudes relating to customer service and customer satisfaction in the customer-server exchange. *Journal of Applied Psychology*, 88, 179-187.
- Susskind, A.M., Kacmar, K., Michele, K. and Borchgrevink, Carl P. (2007). How organizational standards and coworker support improve restaurant service. *Cornell Hotel and Restaurant Administration Quarterly*, 48, 370-379.
- Swe, T 2011.. A Study on Effectiveness of Myanmar Commercial Banks in terms of Customer Satisfaction. Yangon Institute of Economics, *Master of Public Administration Programme*
- Tornow, Walter, W. and Wiley. Jack, W. (1991). Service Quality and Management Practices: A look at Employee Attitudes, Customer Satisfaction, and Bottom-Line Consequences. *Human Resource Planning*, 14(2), 25-30.
- Wangenheim, F., Evanschitzky, H. and Wunderlich, M. (2007). Does the employee-customer satisfaction link hold for all employee groups? *Journal of Business Research*, 60(7), 690-697.
- Weatherly, KA & Tansik, DA (1993). Managing multiple demands: a role-theory Examination of the behaviors of customer contact service workers in Swartz, T.A., Bowen, D.E., Brown, S.W. (Eds), *Advances in Services Marketing and Management*, JAI Press, Greenwich, CT, 2, 279-300.
- Wiley, J. W. (1991). Customer satisfaction: A supportive work environment and its Financial cost. *Human Resource Planning*, 14, 117-127.
- Wimonphan Piriyanthailai & Nuttawuth Muenjohn (2012). Is there a link? Employee Satisfaction and Service Quality, *World journal of Management* 4(1) , 82-92
- Woodside, A.G., Frey, L.L. and Daly, R.T. (1989). Linking service quality, customer satisfaction, and behavioral intention. *Journal of Health Care Marketing*. Vol.9, December, pp. 5-17.
- Yoon, M. H., J. Suh. (2003). Organizational citizenship behaviors and service quality as external effectiveness of contact employees. *Journal of Business Research* 56 (8) 597-611.
- Zeithaml, V.A., Parasuraman, A., & Berry, L.L. (1990). Delivering Quality Service: Balancing Customer Perceptions and Expectations. *New York, NY: Free Press*

- Zeithaml, V. A., Berry L.L. and Parasuraman, A. (1996). The behavioral consequences of service quality. *Journal of Marketing*, 60(2), 31–46.
- Zhou, L. (2004). A dimension-specific analysis of performance-only measurement of Service quality and satisfaction in China's retail banking. *Journal of Services Marketing*, Vol.18 No.6/7 pp 534-46

AN ANALYSIS ON TOWNSHIP DEVELOPMENT ORGANIZATION'S BUDGET IN MANDALAY REGION*

Than Than Soe¹

Abstract

This paper analyses on Township Development Organization's Budget in Mandalay Region and focuses on the expenditures on the public works for Mandalay Region. The objective of this study is to analyse the revenue and expenditure of the Mandalay Region especially capital expenditure on public works programme. Secondary data were collected and descriptive method is used in this study. Township Development Organization spent revenues which were collected from respective Townships on public works, such as roads, bridges, urban water supply, rubbish collection, street lamps, sewerages and drainage system. By studying, It can be seen that the most budget earning Townships are Meikhtilar, Pyin Oo Lwin, Kyaukse, Myingyan and Nyaung-U. Meikhtilar Township is the most revenue source region in Mandalay Region and the second is Pyin Oo Lwin. In fiscal year 2012-2013 to 2016-2017, the Township Development Organization has successfully carried out totally 4469 public works programmes in Mandalay region. These includes 1599 programme for road and road related works, 619 bridges, 94 programmes for canals, 2042 programmes for public utilities and 115 programmes for office expenditures and totally 4469 work programmes in Mandalay region. If Township Development Organization could collect more revenues, it could implement more and better public works for regional development. Although the development organizations rely on their own revenue for development programmes, other than the fiscal year 2012-2013 and rest fiscal years, the budget disparity between the revenues and expenditures for regional development programme of Mandalay region.

Keywords: Mandalay Region, Township Development Organization, budget

Introduction

Township Development Organization became one and only organizations under the administration of State and region government bodies' accordance with section 188, 2008 State's constitution. The Development Organization, being not under the Departments of Union Ministries, has to emphasize more on Urban Management Programmes at present. The corresponding State and Region Hluttaws have enacted regional development

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organizations laws and the development Organizations have to carry out accordingly in their respective regions. According to Section.188, the Region or State Hluttaw shall have the right to enact laws for the entire or any part of the Region or State related to matters prescribed in Schedule Two of the Region or State Hluttaw Legislative List. According to Section.254, the Region or State shall collect the taxes and revenues listed in Schedule Five in accord with law and deposit them in the region or State fund and The Region or State has the right to expend the Region or State fund in accord with the law. Although the specific areas prescribed under Schedule 2 are meant as a means of distributing the duties of the Union government to State and region government, they are also relatively broad, covering eight categories, including: the finance and planning sector; the economic sector; the agriculture and livestock breeding sector; the energy, electricity ,mining and forestry sector; the industrial sector; the transport, communication and construction sector; the social sector; and the management sector. The Union of Myanmar Development Organizations were first organized under the British colonial administration with 1874 Municipal Act,1884 Municipal Act and 1887 Upper Burma Municipal Act. Then, in 1898, Municipal Act that covered and was entitled for the whole country was enacted and observed.1898 Municipal Act was valid and had been observed in its origin form for 93 years, until 1993 when it has been amended and re-devised completely.1898 Municipal Act was replaced by 1993 Development Organization Act, enacted in 1993.Then, in 1997, 1993 Act was amended. The main amendment was the transference of the authoritative responsibilities of the Development Organization from the General Administrative Directorate to the newly formed Development Directorate, under the Ministry of Border Affairs. Since that time on ward, the Development Directorate has been taken the responsibilities for the Development of both the urban and rural region.

Rationale of the Study

The 2008 Constitution legally allocated duties, responsibilities and authorities to the Union Government, Sub-Union level Government and State/Region Governments. The Development Committee has the authority to make decisions, and most of the members are elected by the local, native people. The development organizations are carrying out the fundamental

public services such as provision of water supply, municipal sewerage, rubbish collection, construction of roads and bridges, street lamps and drainage system. In addition, issuing of licences and permits for economic businesses in Townships, collection of taxes and service bills, conducting invitation for tender for regional ferry businesses and collecting road utilization fees in the region. The development organization plays a critical role in the development of region. Therefore, this study focused on the budget of the development organizations in implementing the regional development programme.

Objectives of the Study

The objectives of the study are;

- (1) To analyze the Township Development Organization budget in Mandalay Region
- (2) To examine the expenditures on public works programme in Mandalay Region.

Method and Scope of the Study

This study mainly use descriptive method. The secondary data and information are collected from Mandalay Region Development Affairs Organizations and from library and articles from websites. The scope of this study focused on the activities and budget of Township Development Organizations of Mandalay from fiscal year 2012-2013 to 2016-2017.

The Responsibilities of the Development Organizations

The Responsibilities of the Development Organizations are legally enacted and these include carrying our public services and regional economic management in the urban regions.

- (a) Public Service Programmes are drawing urban plans, water resources, sewerage system, rubbish collection, prevention and preparation for natural disasters, street lamps, roads, bridges and drainage system, homeless people, pet and animals' control, parks, swimming pools,

public conveniences and recreation centres, road and traffic rules, nomination of roads/streets and addresses etc.

- (b) Duties Concerning with Regional Economic Businesses Management are privately owned markets, roadside stalls, small-scale loan businesses, bakeries, confectioneries and restaurants, businesses in hazardous condition etc.

The revenues and expenditures of the Development Organization

As for the Township Development Organizations, the revenues are raised through levying taxes from business, service bills and license charges, and these revenue resources are re-used for Urban Development. Development Organization Departments do not achieve funds from the Union Government; there are three sources of revenues,

- (1) Collecting service fees from residences and business/industries
- (2) License fees from businesses and industries and
- (3) Public Tender license fees collected from some businesses and industries.

Revenue

Revenue means tax revenue, current revenue and capital revenue. Tax revenue includes property tax and wheel tax. Property tax includes building and land tax, road lamp tax, water tax, rubbish and sanitation tax, commission for collection of land tax. Current revenues include various license fees and fine fees. Capital revenues include resale of investment assets, acquisition of specific funds owned by liquidated organizations and revenue acquired from investment appraisals.

Expenditure

There are two kinds of expenditure accounts-capital expenditure and current expenditure including staff-salaries, allowances and basic public building expenditure. Current Expenditures are; (1) annual salaries, expenses, honorariums, and T.A (Travelling allowance), DA (Daily allowance), (2) Expenditures on labour services, expenditure transaction, (3) Maintenance

expenditure, pension salaries, lump-sum pensions etc. Capital Expenditures are; (1) The expenditures on setting up projects that need capital investment (e.g. constructing roads, supplementary asphalt roads paving, mending roads etc., (2) Other expenditures on setting up projects that need capital investment-bridge construction, construction of sewerage ditches, water supply programme, electricity, buildings, maintenance of parks, painting, purchasing dustbins, office stationary and equipment, office vehicle and garbage truck, etc.

Findings

In Mandalay Region Development Organization, there are (22) Townships, (170) wards, (1375) village tracts and (4538) villages. Since 2011, after the State and Region Governments were formed the Development Organization has taken responsibilities only for the urban region. The responsibility for rural area development programmes have been handed over to Rural Area Development Department, under the Ministry of Livestock, fishery and Rural Areas Development. The Development Organizations that previously took the responsibility for the whole Townships especially for the urban region, and the Department of Rural Area Development takes responsibility for the rural areas. Village tracts and wards are carried out by the General Administration Department. Some Development Organization programmes carried out the village tracts bordered with urban areas. The Development Organizations can specifically designate some regions that are commercially established and need development service facilities in the village tract as "Development Areas". The Township Development Organizations mainly achieve funds from businesses in urban regions and these revenue sources are spent just for urban region development programmes.

Revenue of Mandalay Region Development Organizations from the fiscal 2012-2013 to 202016-2017 is shown in Figure (1).

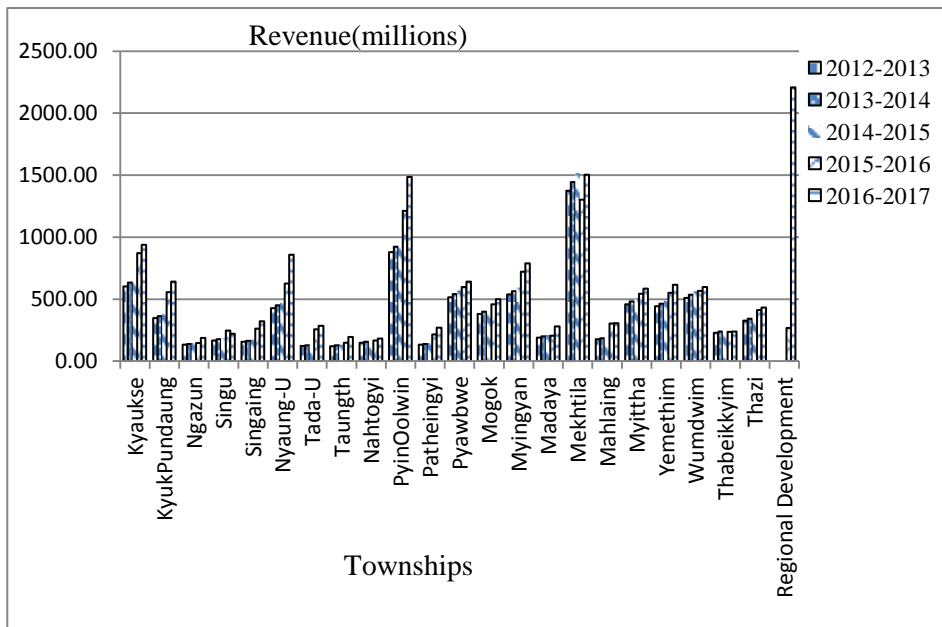


Figure 1: Revenue of Mandalay Region Development Organization from fiscal year 2012-2013 to 2016- 2017

Source: Mandalay Region Development Organization

Mandalay Region Development Organizations have the authority to execute development programmes only for the wards (in towns and cities). For the development programmes for rural areas, village tracts, Directorate of rural Area Development take the responsibility. Therefore, the fund sources for the development Organizations basically come from wards in urban regions. According to the number of wards, the revenues of Townships are different. Mostly the more the wards in Township, the more the revenues can bring from these Townships. But some Townships have few wards but the revenues from these Townships can bring more, because of the location of economic activities.

According to Figure (1), Meikhtilar Township is the most revenue source region of Mandalay Region but is organized with (14) wards. Because Meikhtila is the commercial and centre areas in Mandalay Region, the convergence area of Shan State and Dried Zone (Mandalay, Magway and

Sagaing) in Myanmar. Due to its location and transportation, flows of trade are easier than the other Townships. The total revenue earned by Meikhtilar Townships was Kyats 1375.00 millions in 2012-2013, Kyats 1444.00 millions in 2013-2014, Kyats 1516.2 millions in 2014-2015, kyats 1302.00 millions in 2015-2016 and Kyats 1502.00 millions in 2016-2017.

Pyin Oo Lwin Township is organized with (21) wards. As it is a hilly region, most residents are farmers, livestock breeders and civil servant. It was also very near to Mandalay, so road transportation and communication systems is developed. As there are many tour attraction areas in Pyin Oo Lwin, is the second top revenue contributor in Mandalay Region accounting for Kyats 1486.07 millions in 2016-2017.

Kyaukse is organized with (10) wards and is the third most revenue contributor to the development organization budget. Many people are engaged in agriculture businesses and trade. The total revenue earned by Kyaukse Township was Kyats 937.57 millions in 2016-2017.

Myingyan Township is organized with (19) wards. It stands for the fourth position of revenue contribution. The surrounding Townships of Myingyan are mainly engaged in crop cultivation and trade in agricultural products. The total revenue earned by Myangyan Townships increase year by year from 2012-2013 to 2016-2017 up to Kyats 788.995 in millions.

Nyaung-U is organized with (17) wards. The major economic development of Naung-U is based on businesses related to travel industry and hotel industry. There are many tour attraction areas in Naung-U especially Bagan. Many travelers over the world visit Bagan ancient city. Total revenues of Naung-U are Kyats 858.678 millions in 2016-2017.

Taungtha, Tada U, Patheingyi, Natogyi, Singu and Thapeikkyim are the Townships that contribute smaller funds because these townships are organized with small wards and are not commercial areas. The sources of revenue directly depend on the development of Townships.

On the other hand, the total expenditures spent by Township Development Organizations in Mandalay Region from fiscal year 2012-2013 to 2016-2017 are shown in Figure (2).

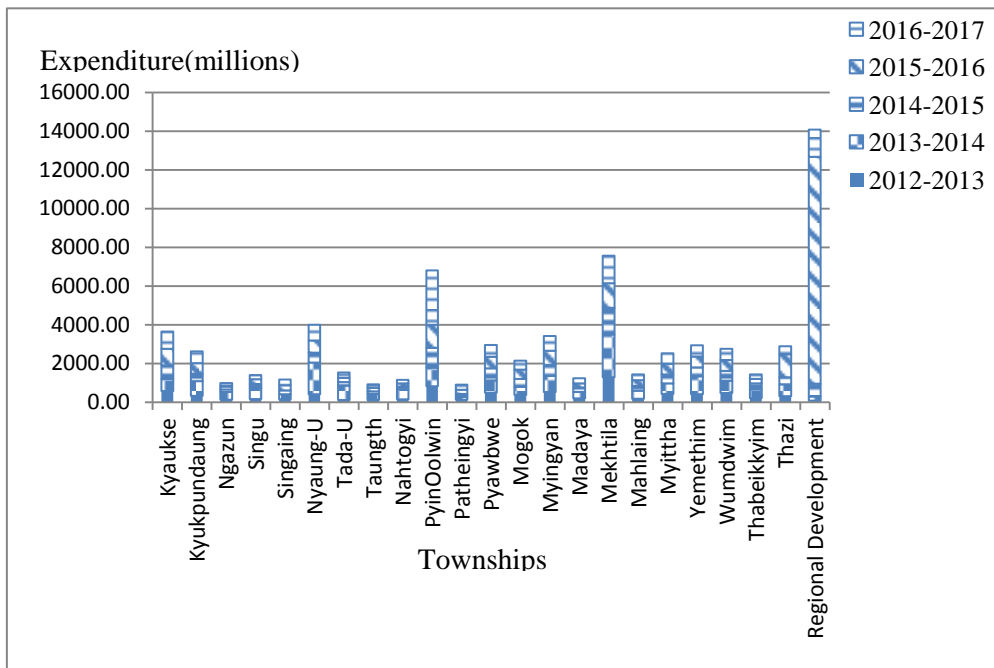


Figure 2: Expenditures of Township Development Organizations in Mandalay Region from Fiscal 2012-2013 to 2016-2017

Source: Mandalay Region Development Organization

According to Figure (2), the expenditures are high in Meikhtila, Myingyan, Pyin Oo Lwin in and Kyaukse. In these Townships, have high revenue but also high expenditures and social services. And the rest of Townships' expenditures are low.

In fiscal year 2012-2013 and 2013-2014, rural water distribution and rural earth roads were implemented. In fiscal year 2015-2016 and 2016-2017, the Mandalay Region Development Organization spent expenditures for bridges, ditches, urban water distribution, parks, painting, garbage bins, and office use vehicles and so on.

In fiscal year 2015-2016 and 2016-2017, when the Mandalay Region Development Organization spent on new buildings, tar necessary for the region and garbage bins, leads to higher and higher expenditures.

Comparison between current expenditure and capital expenditure

Comparison between the current expenditure and capital expenditure of Mandalay Region Development Organization are shown in Table (1).

Table 1: Comparison between current expenditure and capital expenditure from Fiscal Year 2012-2013 to 2016-2017 (Kyats in Million)

No.	Fiscal Year	Current expenditure	Percent	Capital expenditure	Percent	Total
1	2012-2013	3435.68	42.76	4600.11	57.24	8035.80
2	2013-2014	2399.81	15.89	12707.70	84.11	15107.52
3	2014-2015	3006.25	29.84	7067.70	70.16	10073.96
4	2015-2016	5621.01	47.94	6104.87	52.06	11725.89
5	2016-2017	5860.68	41.07	8408.27	58.93	14268.96

Source: Mandalay Region Development Organization

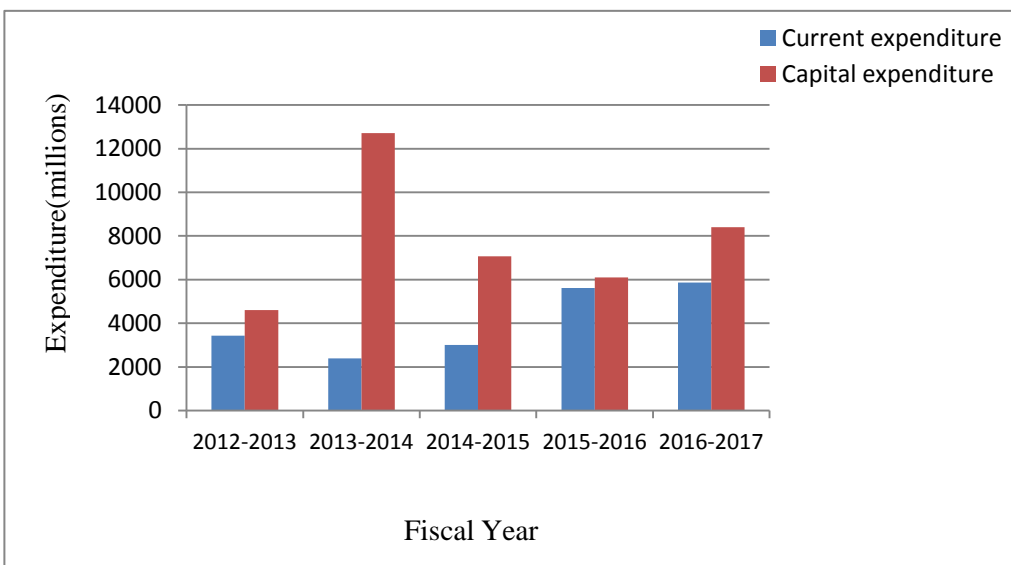


Figure 3: Comparison between the current expenditure and capital expenditure from Fiscal Year 2012-2013 to 2016-2017

Source: Mandalay Region Development Organization

According to Table(1) and Figure(3) ,current expenditure was the lowest in fiscal year 2013-2014 and second lowest in fiscal year 2014-2015.It can be seen that capital expenditures are the most in fiscal year 2013-2014 and 2016-2017 and the lowest expenditures are in fiscal year 2015-2016.

Capital expenditure and Public Works

The department of public works accounts for a large proportion of state and region expenditure, being responsible for constructing and building public infrastructure. Public works and the ministry of construction choose expenditures according to the nature and size of projects, with the Union government focusing on larger infrastructure projects, such as those that cross state and region boundaries, while Public Works focuses on smaller projects, such as those that connect Townships and villages. Generally, specific projects are selected by either the ministry of construction, state or region cabinets, or state or region hluttaws. Public works of Mandalay Region Development Organization from the fiscal year 2012-2013 to 2016-2017 are shown in Table(2) and Figure(4).

Table 2: Public Works of Mandalay Region Development Organization from Fiscal Year 2012-2013 to 2016-2017

No.	Services	Fiscal Years					Total
		2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	
1	Road	322	403	219	262	393	1599
1.1	Asphalt	48	110	79	114	132	483
1.2	Adding layers	55	51	45	50	111	312
1.3	Smooth stone roads	172	176	76	76	85	585
1.4	Ground roads	14	41	11	2	0	68
1.5	Renovations	33	25	8	20	65	151
2	Bridges	105	139	91	107	177	619
3	Canals	1	9	9	41	34	94
4	Public	302	329	366	291	751	2042

No.	Services	Fiscal Years					Total
		2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	
	Utility						
4.1	Urban water supply	160	118	173	199	211	861
4.2	Rural water supply	141	179	0	0	0	320
4.3	Electricity	1	1	17	32	18	72
4.4	Buildings	0		9	11	13	33
4.5	Parks painting	0	11	17	45	18	91
4.6	Garbage bins	0	20	150	4	491	665
5	Office expenditure	0	0	48	21	46	115
5.1	Office stationary and equipment	0	0	13	13	24	50
5.2	Office vehicle	0	0	35	8	22	65
	Total	730	883	733	722	1401	4469

Source: Mandalay Region Development Organization

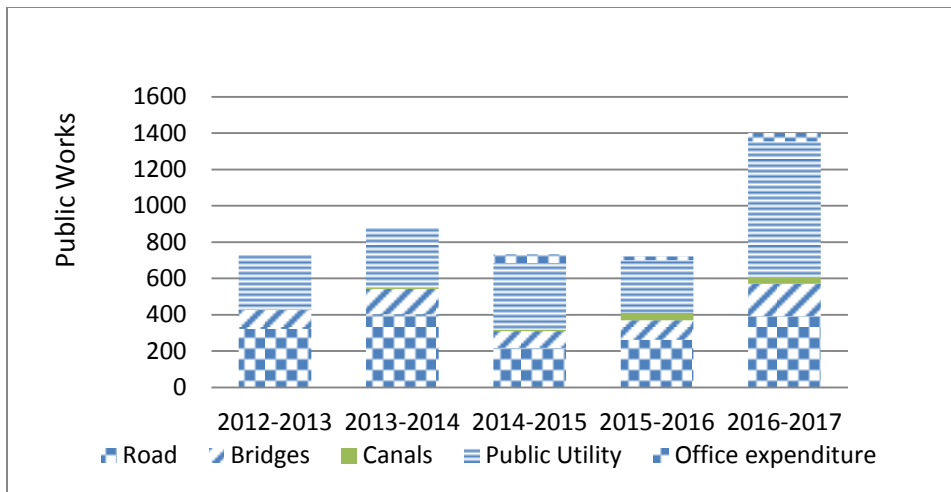


Figure 4: Public Works of Mandalay Region Development Organization from Fiscal Year 2012-2013 to 2016-2017

Source: Mandalay Region Development Organization

According to Table(2) and Figure(4), in the 2012-2013 fiscal year, Townships Development Organizations spent 3513.57 Kyats million on 48 asphalt roads, 55 supplementary layers, 172 smooth stone roads, 14 ground streets and 33 roads renovation. There were expenditures on other constructions such as 105 bridges, 1 canal, 160 city water supply systems, 141 rural water supply system and (1) electricity supply programme, accounted for 402 in total, spending 1086.54 Kyats millions. Thus it can be found that Township Development Organization spent 4600.11 kyats million on 730 construction programmes, in fiscal year 2012-2013.

In fiscal year 2013-2014, Township Development Organization spent 8636.54 kyats million on construction projects 110 asphalt roads 52 supplementary layers, 176 smooth stone roads, 41 ground streets and 25 roads maintenance and also spent 4071.17 kyats millions on other construction projects such as 139 bridges, 9 canals, 118 urban water supply, 179 rural water supply, 4 electricity supply programmes, 11 buildings, 20 parks painting. It can also be seen that Township Development Organizations spent 12707.71 kyats millions on 883 construction programmes in fiscal year 2013-2014.

In fiscal year 2014-2015, Township Development Organization spent 3824.58 kyats in million on construction projects 79 asphalt roads 45 supplementary layers, 76 smooth stone roads, 11 ground streets and 8 roads maintenance and also spent 3243.12 kyats millions on other construction projects such as 91 bridges, 9 canals, 173 urban water supply, 17 electricity supply programmes, 9 buildings, 20 parks painting. It can also be seen that Township Development Organizations spent 7067.70 kyats millions on 733 construction programmes in fiscal year 2014-2015.

In fiscal year 2015-2016, Township Development Organization spent 3125.06 kyats million on construction projects 144 asphalt roads 50 supplementary layers, 76 smooth stone roads, 2 ground roads and 20 roads renovations and also spent 2979.81 kyats millions on other construction projects such as 107 bridges, 41 canals, 199 urban water supply, 32 electricity supply programmes, 11 buildings, 45 parks painting, 4 garbage bins, 13 office equipment, 8 office vehicle. It can also be seen that Township Development Organizations totally spent 6104.87 kyats millions on 722 construction programmes in fiscal year 2015-2016.

In fiscal year 2016-2017, Township Development Organization spent 4015.84 kyats million on construction projects 132 asphalt roads 111 supplementary layers, 85 smooth stone roads, 65 roads maintenance and also spent 4392.43 kyats millions on other construction projects such as 177 bridges, 34 canals, 211 urban water supply, 18 electricity supply programmes, 13 buildings, 18 parks painting, 491 garbage bins, 24 office equipment, 22 office vehicles. It can also be seen that Township Development Organizations spent in total 8408.27 kyats millions on 1401 construction programmes in fiscal year 2016-2017.

During the fiscal year from 2012-2013 to 2016-2017, Township Development Organizations in Mandalay Regions have successfully carried out public service works such as roads, bridges, canals, public utilities and office expenditures. During these years, Township Development Organizations in Mandalay Region have carried out 1599 programmes for road and road related works, totally 619 bridges, 94 programmes for canals, 2042 programmes for public utilities and 115 programmes for office expenditures and totally 4469 work programmes in Mandalay region.

Mandalay Region Development Organization Budget

The nature of the Development Organizations' revenue and expenditure are to generate revenue from the respective regions and spend it for these region development programmes. To fulfill the needs of local people, there are various conditions of levying revenue and expenditure by the Township Development Organization in Mandalay Region. During from fiscal year 2012-2013 to 2016-2017, the revenue and expenditure of Mandalay Region Development Organization are shown in Table (3).

Table 3: Budget of Mandalay Region Development Organization (Kyats in millions)

No.	Fiscal Year	Revenue	Expenditure	Surplus and Deficit
1	2012-2013	8365.00	8035.79	+329.20
2	2013-2014	8784.31	15107.51	-6323.20
3	2014-2015	9223.96	10073.96	-850.00
4	2015-2016	10856.48	11725.89	-869.41
5	2016-2017	14268.96	14268.96	-

Source: Mandalay Region Development Organization

According to Table(3), it can be seen that other than the fiscal year 2012-2013 , total expenditures are larger than revenues in fiscal year 2013-14, 2014-15 and 2015-16.This is because the region hluttaw representatives from respective constituencies claimed for Township Development requirements that were not included in the annual budget. Thus, Region Government fulfilled their supplemental development programme. Therefore, Mandalay Region Government takes responsibility for the management to gap between budget surpluses and deficits.

Conclusion

After studying the revenue and expenditure of Mandalay Development Organization, it is found that the most budget earning Townships were Meikhtilar, Pyin Oo Lwin, Kyaukse, Myingyan and Nyaung-U. Meikhtilar Township is the most revenue source region in Mandalay Region but is organized with (14) wards. Because of Meikhtila is the commercial and centre areas in Mandalay Region, the convergence area of Shan State and Dry Zone (Mandalay, Mgway and Sagaing) in Myanmar. Pyin Oo Lwin is the second top revenue contributor in Mandalay Region accounting for Kyats 1486.07 millions in 2016-2017. Kyaukse is the third highest revenue contributor to the development organization budget. Many people are engaged in agriculture businesses and trade. Myingyan Township stands for the fourth position of revenue contribution. The surrounding Townships of Myingyan mainly engaged in crop cultivation and then trade their agricultural products. And then the major economic development of Naung-U is based on businesses related to travel industry and hotel industry. There are many tour attraction areas in Naung-U especially Bagan. Many travelers over the world visit to Bagan ancient city. Total revenues of Naung-U are Kyats 858.678 millions in 2016-2017.

Moreover, the expenditures of Meikhtila, Myingyan, Kyaykse, PyinOoLwin were larger than the other Townships. In fiscal years 2015-2016 and 2016-2017, the Mandalay Region Development Organization spent expenditures for construction of new building, paving the road and for tar necessary for the region garbage bins. Furthermore, by studying the budget of Mandalay Development Organization, other than the fiscal year 2012-2013 , total expenditures are larger than total revenues in fiscal years 2013-14, 2014-15 and 2015-16. This is because the region Hluttaw representatives from respective constituencies claimed for Township Development requirements that were not included in the annual budget. During the five fiscal years, Township Development Organizations in Mandalay Region have carried out 1599 programmes for road and road related constructions, 619 bridges, 94 programmes for canals, 2042 programmes for public utilities and 115 programmes for office expenditures and total of 4469 work programmes in Mandalay region. In order to accomplish more public welfare works, the

development organizations should find ways and means of increasing revenue through people's cooperation. And the Township Development Organization should keep the good situation of achieving revenues increase year by year without causing burdens to people.

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References

- (2008). *The Constitution of the Republic of the Union of Myanmar 2008*. Ministry of Information.
- (2012). *Mandalay Region Budget Law*.
- (2012, 2013,2014,2015,2016,2017). *Mandalay Region Development Organization*.
- (2012,2013,2014,2015,2016,2017). *Mandalay Region Development Budget*.
- (2012-13, 2016-17). *Mandalay Region Hluttaw Report*.
- Jones, G. D., De, S. K., & Smurra, A. (2015). *State and Region Public Finance in Myanmar*.

ANALYTICAL STUDY ON THE LEGALITY OF MULTI-LEVEL-MARKETING*

Nan Kham Mai¹

Abstract

Multi-Level-Marketing (MLM) business is a form of direct sales with special characteristics. MLM business was introduced in Myanmar more than two decades. On 16 September 2018, the Ministry of Commerce declared the MLM marketing as essential service and it is banned in Myanmar. Prior to that date, the legality of MLM business is a controversial issue in Myanmar. In fact, MLM business is not totally banned in every. “Can the Order of the Ministry of Commerce totally eliminate the MLM business in Myanmar?” is a key question in this research paper. This paper aimed to analyze the legality of Multi-level Marketing in the context of US and Singapore Regulations as Model Laws to suggest a solution for Myanmar. It stresses the characteristics of the MLM and case study. It is conducted by exploring the ethical issue of MLM business and the countermeasures taken in the US and Singapore. By studying the US and Singapore practices on anti-MLM, it is found that there are different methods to deal with MLM issues. During the period which unable to pass the anti-MLM Law, Myanmar should make sure in enforcing the Prohibition Order which banned MLM business in Myanmar. It is suggested that the Law eliminating the illegal MLM business is urgently needed to pass in Myanmar.

Keywords: Legality, Multi-Level-Marketing, Pyramid scheme.

Introduction

Multi-Level-Marketing (MLM), which is also called network-marketing or pyramid selling, is a form of direct sales with special characteristics. In other words, a system of selling products which members get paid for selling products to other members and if that member recruits others, the second layer is called down line of the first member. The first member gets the override from all sales of the down lines.

Multi-Level-Marketing was introduced in Myanmar more than two decades. Recently, the campaigns groups that oppose the MLM business bring

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*. Best Paper Award Winning Paper in Law (2018)

up the voice of victims who were falling in the trap of MLM sales. The legality of MLM business is a controversial issue due to its negative impact on Myanmar society. Currently, there is no Anti-MLM Law in Myanmar. The Bureau of Special Investigation, Ministry of Home Affairs and the Department of Foods and Drugs Administration (FDA) under Ministry of Health are the authorities to take action on the MLM Company.¹ From February 2018, the Bureau of Special Investigation investigates all the documents of 44 MLM Companies. Recently, the FDA, with the cooperation of the Bureau of Special Investigation, sued the one of the well-known MLM Company in Myanmar, Aim Star Network (MNR) Co.ltd on 16 June 2018.² There were previous cases which the FDA sued two MLM companies, such as Entry Trading Co.Ltd., Myint Mo Khun Arr Co.Ltd., World Class Innervation (Myanmar) Co.Ltd., the Wisdom Plus Co.Ltd., J&C Center Import Export Co.Ltd., on the date of 8 June 2018. The ground for taking action was due to failing to take approval from the FDA.³

On 18 September 2018, the Ministry of Commerce declared that all MLM businesses are banned and violation of the Prohibition Order shall be punished under Section 5 of the Essential Supplies and Services Law 2012. According to section 4(c), the Ministry may issue prohibiting order, supervision order, preventing order relating to service stipulated and declared as essential service. Under section 5, whoever violates any order under section 4, shall on conviction, be punished with imprisonment for a term from a minimum of six months to maximum of three years and shall also be liable to fine not exceeding five hundred thousand Kyats.

According to the Ministry's Order, MLM is considered as essential service under section 4(c). As a consequence, each MLM company announced to suspend selling products due to the Ministry's Order. And the MLM

¹ Tun Myat Thu,(2018), "Well –known MLM Company is charged by the Government", The Voice Journal issued on 18 June 2018. Retrived from: <http://thevoicemyanmar.com/news/22549-mlm>

² Tun Myat Thu, (2018), Opcit.

³ Toe Wai Aung (2018), "Four Landscaping MLM company to be opened by the Food Section31", Myanmar Times Weekly Journal issued on 8 June 2018. Retrieved from: <https://myanmar.mmtimes.com/news/111270.html>.

companies are not dissolved. Therefore, the products of all MLM companies may continue distributing their products by other means of marketing.

MLM business is not totally banned in some countries like the United States but it is considered illegal business in some countries such as Singapore, Japan and China. In the US, although it is considered that all MLM businesses are not illegal, for protecting consumers' rights, the Federal Trade Commission of the US (hereinafter the FTC) issues the guidelines and opens the complaints center for consumers. In this paper, "Can the Ministry's Order absolutely eliminate the MLM business in Myanmar?" is a key question. In order to contribute in studying MLM system, the paper describes the perspectives of MLM systems and the practices in the US and Singapore is explored. The factors in some leading cases which can determine the legality of MLM business in the US and Singapore are analyzed. Suggestion for Myanmar is finally includes as the outcome of the paper.

Aims and objectives

The purpose of this paper is to examine the legality of Multi-Level-Marketing in the United States and Singapore. It aims to distinguish the accepted MLM and unacceptable MLM under the US practice and to study the Singapore Practice in eliminating the unlawful MLM business. This paper provides not only the knowledge of the moral and ethical problems of MLM business but also the solution of the problems. It enables to suggest Myanmar how to deal with the issues of MLM.

Methodology

To achieve the goal of this paper, MLM Laws in the US and Singapore are studied. In order to consider how Myanmar should deal with the controversial issue on the legality of MLM business, the criteria to determine illegal pyramid scheme, Article 5 of the FTC Law and Consumer guidance issued by the FTC is analyzed. In addition, the provisions relating to the MLM scheme under some States in the US are studied. Furthermore, it examines the Singapore's Anti-MLM Law. It analyzes the perspectives under Section 2 of the Multi-Level Marketing and Pyramid Selling (Prohibition) Act and the (Excluded Schemes and Arrangements) Order. Then, this paper discusses how

the US and Singapore view on the MLM business. Furthermore, the archival cases from the Singapore court, the US federal court, circuit court, and court of appeal in the US are studied and analyzed. This paper is categorized as a qualitative research paper using scholar's articles, laws, order and judgments of the courts.

Findings

In the United States, not all MLM is a legal, ethical manner of doing business and Pyramid scheme are illegal. According to case study, the Federal Trade Commission (FTC) takes action harshly on the companies which are marketing using illegal pyramid scheme. In determining the legality of MLM, Singapore's has different view. The legality of MLM must be checked by three principal conjunctive requirements under the Multi-Level Marketing and Pyramid Selling (Prohibition) Act, and the (Excluded Schemes and Arrangements) Order. In Myanmar, there is no statute to control MLM business exclusively. Currently, the Prohibition Order issued by the Ministry of Commerce is a tool to take action of MLM business, Unlike Singapore practices, which does not allow any individual or corporate to apply for registration of business intending to promote MLM, punishment under the existing law cannot eliminate MLM in Myanmar. From the date of issuing the Order, there is no MLM company dissolved. In addition, Bureau of Special Investigation and the Department of Foods and Drugs Administration (FDA) take action on some MLM businesses according to the FDA Law for selling, distribution of unregistered products. Under the existing FDA Law, it is unable to make MLM business as an unlawful Company based on their marketing structure. Instead, it can only sue the MLM Company for selling products without the approval of the FDA. Under the FDA Law, if the MLM Company gets the approval from the FDA, there is no problem for selling products despite using pyramid scheme or arrangements. For these reason, Myanmar should make sure of monitoring the MLM companies' activities, whether they are complied with the Prohibition Order. Moreover, education for Consumer is needed for not being victim of MLM traps and Consumer Complaint center for MLM issues should be established. Furthermore, Myanmar should enact the Law eliminating the illegal MLM business as fast as possible.

Ethical Problem of MLM Business

Since a MLM operates by recruiting a network of salespeople, the chances of such organizations to easily degenerate into unethical, fraudulent, recruitment-centered pyramid schemes is quite high. The distributor's compensation depends entirely on the organization they build.

A MLM operates as pyramid or endless chain scheme is unethical. The ethical (and legal) problem is thus deception: distributors join a company to earn money, but overspend by buying company products they neither need nor are able to sell. It is unethical in two respects. They are fraudulent and recruitment rather than product-centered business. Pyramid schemes are fraudulent because they promise a large return for a small investment. Those who join pyramid scheme early often do make a great deal of money. Those who come later, however, make little or even lose money because there simply are not enough remaining people left to recruit into the network.¹ MLM typically identify various levels of performance- Pearl, Diamond, Manager, Supervisor, etc.² In the endless chain scheme, participants will receive money once they reached position 5 on the list. The Scheme looks like this:

Copies in generation	Participant's position
10	--
100	10
1,000	9
10,000	8
100,000	7
1,000,000	6
10,000,000	5

¹ Daryl Koehn, "Ethical Issues Connected with Multi-Level Marketing Schemes," *Journal of Business Ethics*, vol. 29, nos.1&2(2001):153-160.

² Daryl Koehn, (2001) "*Ethical Issues Connected with Multi-Level Marketing Schemes*", *Journal of Business Ethics*, vol.29. nos.1 & 2 , p.153.

Therefore, unless a participant can recruit 10,100,000 new members, he will not receive money. Some MLMs encourage participants to sell products to family members and friends and/ or to recruit them into the MLM. It is because the use and misuse of trust in private social relations. Customers and (prospective) distributors are mostly approached by people they know: family members, friends, acquaintances, or former classmates.¹

Determination of the Legality of MLM in the US

The common criteria to determine the legality of the MLM business is to assess the ways of income through the business activities. If the money earned from the sales to the public, it may be a legitimate MLM. If the money made is based on the number of recruited people and sales to them, it could be a pyramid scheme and it is illegal. In the US, each State has its own MLM Law respectively. There is no Federal Statute for anti-MLM, however, the decision of FTC and the Federal Court affect on the MLM more than legislation from individual State. States' Statute define the illegal pyramid schemes as prohibitions or restrictions applicable to pyramid promotional schemes, chain distribution schemes, multi-level marketing, etc.²

According to Georgia Code, "Pyramid promotional scheme" means any plan or operation in which a participant gives consideration for the right to receive compensation that is derived primarily from the recruitment of other persons as participants into the plan or operation rather than from the sales of goods, services, or intangible property to participants or by participants to others.³

New York General Business Law called "a chain distributor scheme" as a sales device whereby a person, upon condition that makes an investment, is granted a licence or right to solicit or recruit for profit or economic gain one or more additional persons who are also granted such licence or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such licence or right upon such condition. However,

¹ Daryl Koehn, (2001) "*Ethical Issues Connected with Multi-Level Marketing Schemes*", *Journal of Business Ethics*, vol.29. nos.1 & 2 , p.153.

² <http://www.mlmllegal.com>.

³ Georgia Code §10-1-410, cited from: <http://www.mlmllegal.com>.

it does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale.¹

According to Jeffrey Babener,² both MLM and pyramid scheme have multilevel payment systems. However, MLM is a legal, ethical manner of doing business and Pyramid scheme are illegal. Therefore, not all MLM businesses are illegal pyramid schemes.³

To determine whether a MLM business is a pyramid, a court must look at how the MLM business operates in practice.⁴The famous cases are studied how the FTC and the Court decided on legality of MLM. The FTC defines the MLM in the matter of Koscot Interplanetary, Inc.,⁵ the FTC characterized the Pyramid scheme as “the payment by participant of money to the Company in return for which they [the participants] receive (1) they receive the right to sell the product and (2) the right to receive the return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users.” Participant in the Koscot marketing plan paid an initial amount up to \$ 5000 to the company for the inventory and the right to recruit others. The distributors who recruited other received \$2650 of the recruit’s \$5000. The only way a Koscot distributor could get the payment back was to recruit more distributors.

In the matter of Amway Corporation, Inc., et al.,⁶ the Amway plan, the system is based on retail sales to consumers. However, the Amway system does not involve inventory fee for a new distributor. A kit of sales will pay back when the distributor decide to leave Amway. Making product sales a precondition to receiving the performance bonus, Amway buy back 70% and ten customers rule deter unlawful inventory loading Amway is not a business to sell distributorships and is not a pyramid distribution scheme.

¹ N.Y Gen. Bus. Law §359-fff, cited from: <http://www.mlmlegal.com>.

² A network marketing legal expert and attorney based in Poland, Oregon.

³ Jeffery, A. Babener,(1992) “ Identifying illegal Pyramid Schemes”, *Home Office Computing Magazine*, issued in August.

⁴ <http://www.ftc.gov>, <https://law.justia.com/cases/kansas/supreme-court/1973/46-924-1.html>.

⁵ 86 F.T.C.1106. Retrieved from: <http://www.mlmlegal.com>.

⁶ 93 F.T.C 618. Retrieved from: <http://www.mlmlegal.com>.

In *FTC v. Skybiz.com, Inc., et al.*,¹ the Court distinguished the multi-level- marketing program and the prohibited marketing scheme. Accordingly, “multi-level-marketing program” means any marketing program in which participants pay money to the program promoter in return for which participants obtain the right to: (1) recruit additional participants, or have additional participants placed by the promoter or any other person into the program participant’s downline, tree, cooperative, income center or other similar program grouping; (2) sell goods or service; and (3) receive payment or other compensation, in whole or in part, based upon the sale of those in the participant’s downline, tree, cooperative, income center or other similar program grouping. Whereas, “prohibited marketing scheme”² means a pyramid sales scheme, Ponzi scheme, chain marketing scheme, or other marketing scheme or program in which participants pay money or valuable consideration to the company in return for in which they receive the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of product or services to ultimate users. For the purpose of this definition, “sale of product or services to ultimate users” does not include sales to other participants or recruits in the multi- level marketing program or to participants’ own accounts.

In *FTC v. Burn Lounge, Inc.*,³ Burn Lounge participants joined the scheme by buying packages, which included a Burn Page and merchandise. Participants earned rewards by recruiting others to join the scheme, i.e., by recruiting new participants to buy packages. In each of these scenarios, the participants sold something (inventory or packages), but the rewards the participants received in return were largely for recruitment, not for product sales. Burn Lounge required Moguls to purchase a product package to get the chance to earn cash rewards, provided cash rewards for the sale of packages by a Mogul’s recruits, and had no rules promoting retail sales over recruitment.

¹ No.01-CV-396(2001),01-5166(10th Cir 2003)

² For the purpose of this definition “sales of product or services to ultimate users” does not include sales to other participants or recruits in the multi- level marketing program or to participants’ own account.

³ No.12-55926 D.C. No.2:07-cv-03654-GW-FMO (9th Cir 2014).

In the US, an alleged pyramid scheme may be imposed one or more of the following:

- Fine or compensation or pay consumers redress
- Bar the company, for a limited period or permanently, from-
 - (i) participating in pyramid scheme,
 - (ii) engaging in advertising,
 - (iii) selling for a specific period or permanently,
 - (iv) sharing customer lists
- Court’s Order contains record-keeping provisions to allow the Agency to monitor compliance with the order.¹
- Imprisonment²
- Freeze the assets of the illegal pyramid schemes.³

Table 1: Difference between MLM and Pyramid Scheme⁴

No.	Pyramid Scheme	MLM
1.	Plans that promise profits mainly for recruiting new members	MLM plan only offers products or services that customers want. It is not based on sales to distributor.
2.	Gifting clubs that new recruits give money to current members with the promise that they will receive money from future recruits	There is no guarantee how much the money will be made.
3.	All payments are doomed to collapse.	Sustainable, based on repeat sales of products and services

To sum up, not all MLM business are illegal in the US. The legality of the LM is determines by whether MLM business acts in the form of pyramid scheme or not. The pyramid scheme is illegal under State Law.

¹ <http://www.ftc.gov>.

² The length of imprisonment may vary depending on the individual State’s Law.

³ *FTC v. Burn Lounge, Inc.*, No.12-55926 D.C. No.2:07-cv-03654-GW-FMO(9th Cir 2014).

⁴ www.fraud.org.

Determination of the Legality of MLM in Singapore

Singapore enacted the Multi-Level Marketing and Pyramid Selling (Prohibition) Act in 1973 which was amended in 2000. The purpose of this Act is not to control the MLM business but to eradicate the MLM in Singapore. According to Minister of Finance in the debate of the Bill, he emphasized as “the objective of this Act should be to eliminate them rather than attempt to control them...because to contrary to the Public interest.”¹

According to Section 2 of the Multi-Level Marketing and Pyramid Selling (Prohibition) Act, “pyramid selling scheme or arrangement” means any scheme or arrangement for the distribution or the purported distribution of a commodity whereby—

- (a) a person may in any manner acquire a commodity² or a right or a licence to acquire the commodity for sale, lease, licence or other distribution;³
- (b) that person receives any benefit, directly or indirectly, as a result of—
 - (i) the recruitment, acquisition, action or performance of one or more additional participants in the scheme or arrangement; or
 - (ii) the sale, lease, licence or other distribution of the commodity by one or more additional participants in the scheme or arrangement; and
- (a) any benefit is or may be received by any other person who promotes, or participates in, the scheme or arrangement (other than a person referred to in paragraph (a) or an additional participant referred to in paragraph (b)).

The term “pyramid selling scheme or arrangement” is very broad on which covers nearly all schemes which incorporate an element of overriding

¹ Official Report (26 August 1973) vol. 32 at cl.1287.

² The term “commodity” is defined very widely to mean any goods, service, right or other property, whether tangible or intangible, capable of being the subject of sale, lease, or licence.

³ Multi-Level Marketing and Pyramid Selling (Prohibition) 2000 Ed. CAP. 190 2 Informal Consolidation—version in force from 3/1/2016

commission, or indeed schemes where any person benefits in any way as a result of the actions of other participants.¹

In **Chua Hock Soon James v. Public Prosecutors and other appeals**,² for unlawful business falls under the scope of the term “pyramid selling scheme or arrangement”, there are three principal conjunctive requirements:

- (a) a person (A) recruits another person(B) into the scheme wherein B acquires a commodity or a right or a licence to acquire the commodity for sale, lease, licence or other distribution.
- (b) B receives any benefit, directly or indirectly, as a result of the recruitment acquisition, action or performance of one or more additional participants (i.e., C, D, E and onwards) in the scheme.
- (c) Any benefit is or may be received by any other person (other than B and the participants recruited by B) who promotes or participates in the Scheme, e.g. A.

In addition, “pyramid selling scheme or arrangement” shall be taken not to include such schemes or arrangements for the sale, lease, licence or other distribution of a commodity, or any class of such schemes or arrangements, as the Minister may by order prescribe, subject to such terms or conditions as may be specified in the order.³

In the order, regarding the excluded scheme and arrangement, the definition of “pyramid selling scheme or arrangement” in section 2 shall be taken not to include Insurance company, Master Franchises, Direct Selling company.⁴

¹ Adrian Chan &Lim Kean Hao, “Multi-level Marketing in Singapore: The current Legislative Approach”, Retrieved from: [http:// vl.lawgazette.com.sg/2002-11/Nov02-focus2.htm](http://vl.lawgazette.com.sg/2002-11/Nov02-focus2.htm)

² [2017] SGHC 230.

³ Section2 of the Multi-level Marketing and Pyramid Selling (Prohibition) Act and Guidelines by Ministry of Trade and Industry Singapore (MTI).

⁴ The Multi-Level Marketing and Pyramid Selling (Excluded Schemes and Arrangements) Order 2000.

Paragraph 2(1) (C) of the Amended Order 2001 then set out eight conjunctive conditions (ie., all eight conditions must be met at the same time) in order that any other scheme be exempted from the said definition of pyramid selling scheme or arrangement and similarly not be prohibited in Singapore. The eight conditions are as follows:

- i. No payment in order to participate¹
- ii. Method by which benefits accrue²
- iii. No benefits to be paid for recruitment³
- iv. No representations on accrual of benefits⁴
- v. No income claims⁵
- vi. No false or misleading representations or material omissions⁶
- vii. Sixty-day compulsory refund period⁷
- viii. Compulsory information in writing.⁸

It is unlawful for any person or company to promote or participate in the MLM business. Under Section 3(1), it shall be unlawful for any person to promote or participate in a multi-level marketing scheme or arrangement or a pyramid selling scheme or arrangement or to hold out that he is promoting or participating in such a scheme or arrangement.⁹

If the person committing an offence under this Act is a company, every individual who at the time the offence was committed was a director, general manager, manager, secretary or other officer of the company concerned in the management of the company or who was purporting to act in any such capacity, as well as the company, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. The Law restricts individual and company not to apply to be registered which

¹ Sub Paragraph 2(1) (c) (i) of the amended Order.

² Sub Paragraph 2(1) (c) (ii) of the amended Order.

³ Sub Paragraph 2(1) (c) (iii) of the amended Order.

⁴ Sub Paragraph 2(1) (c) (iv) of the amended Order.

⁵ Sub Paragraph 2(1) (c) (v) of the amended Order.

⁶ Sub Paragraph 2(1) (c) (vi) of the amended Order.

⁷ Sub Paragraph 2(1) (c) (vii) of the amended Order.

⁸ Sub Paragraph 2(1) (c) (viii) of the amended Order.

⁹ Section 3 of the Multi-level Marketing and Pyramid Selling (Prohibition) Act.

is designed to promote a multi-level marketing scheme or arrangement or a pyramid selling scheme or arrangement.¹

A person who contravenes section 4 (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 5 years or to both. Where a company which is designed to promote a multi-level marketing scheme or arrangement or a pyramid selling scheme or arrangement contravenes section 5 (1) by obtaining incorporation or registration under the Companies Act, that company and every officer thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 5 years or to both.

Thus, to recapitulate, the purpose of Singapore anti-MLM Law is to eliminate the MLM business in Singapore and the punishments for unlawful business are imposing imprisonment together with fine.

Conclusion

In the US, a MLM is legal, except lack of ethical manner in doing businesses and Pyramid scheme are illegal. According to case study, the Federal Trade Commission (FTC) takes action harshly on the companies which are marketing using illegal pyramid scheme. In determining the legality of MLM, Singapore has different view. The legality of MLM must be checked by three principal conjunctive requirements under the Multi-level Marketing and Pyramid Selling (Prohibition) Act. And the Excluded Schemes and Arrangements Order.

The differences between the US practice and Singapore practice are in three points;(1) the purpose of taking action, (2) the way to take action, and (3) concept it is based. The purpose of taking action by the FTC is just to control the illegal practices of MLM and not to eliminate the MLM marketing system. In contrast, Singapore anti-MLM Law expressly states the purpose of the Act is to eliminate the MLM business in Singapore, not to control the business. Regarding the ways to take action, the US methods prefer imposing fines rather than imprisonment. Whereas, Punishment accordance to

¹ Section 4 and 5 of the Multi-level Marketing and Pyramid Selling (Prohibition) Act.

Singapore practice are imposing imprisonment with fines. The differences between the methods of two countries are due to the concept each is based. The action taken by the US attempts to correct the business manner of MLM. Singapore assumed the MLM as an unlawful and punishable action done by business entity or individual.

In Myanmar, there is no statute to control MLM business exclusively. Most recently, the Prohibition Order issued by the Ministry of Commerce ban all forms of selling goods by MLM marketing system. However, it did not intend to dissolve all MLM companies. Unlike Singapore practices, which does not allow any individual or corporate to apply for registration of business intending to promote MLM, punishment under the existing law cannot eliminate MLM in Myanmar. From the date of issuing the Order, there is no MLM company dissolved. According to the lesson learned from the US and Singapore, Myanmar should make sure of monitoring the MLM companies' activities, whether they are complied with the Prohibition Order. Moreover, education for Consumer is needed for not being victim of MLM traps and Consumer Complaint center for MLM issues should be established. Furthermore, Myanmar should enact the Law eliminating the illegal MLM business as fast as possible.

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References

National Laws

Georgia Code §10-1-410, cited from: <http://www.mlmlegal.com>.

N.Y Gen. Bus. Law §359-fff, cited from: <http://www.mlmlegal.com>.

The Multi-Level Marketing and Pyramid Selling (Prohibition) Act in 1973 (amended in 2000).

The Multi-Level Marketing and Pyramid Selling (Excluded Schemes and Arrangements) Order 2000.

The Amendment of Multi-Level Marketing and Pyramid Selling (Excluded Schemes and Arrangements) Order 2001.

Prohibition Order issued by the Ministry of Commerce, Myanmar (18.9.2018).

Cases

Chua Hock Soon James v. Public Prosecutors and other appeals [2017] SCHC 230.

FTC v. Burn Lounge, Inc, No.12-55926 D.C. No.2:07-cv-03654-GW-FMO(9th Cir 2014).

FTC v. Skybiz.com, Inc., et al No.01-CV-396(2001), 01-5166 (10th Cir.2003)

The matter of Koscot Interplanetary, Inc.,.86.F.T.C.1106.

The matter of Amway Corporation, Inc., et al.,¹ 93 F.T.C 618.

Articles and Reported News

Daryl Koehn, (2001) “Ethical Issues Connected with Multi-Level Marketing Schemes”, *Journal of Business Ethics*, vol.29. nos.1 & 2 , p.153.

Jeffery, A. Babener,(1992) “ Identifying illegal Pyramid Schemes”, *Home Office Computing Magazine*, issued in August

Tun Myat Thu,(2018), “Well –known MLM Company is charged by the Government”, *The Voice Journal* issued on 18 June 2018.

Toe Wai Aung (2018), “Four Landscaping MLM companies to be opened by the Food Section 31”, *Myanmar Times Weekly Journal* issued on 8 June 2018.

LEGAL PROTECTION ON PRISON OFFICIALS AND PRISONERS IN MYANMAR

Moe Phyu Htun *

Abstract

This research is attempted to explore lack of protection for prison officials and prisoner's rights in prison. Practically, Prison officials are facing challenges such as the problem of the overcrowding in prison, Lack of prison security system, training for staff, protection from delinquent prisoners, health care and stress as a result of their occupation, difficult working and unsafe environment. Indeed, every prisoner is also losing minimum standard of living and the protection of their fundamental right. It is analyzed the legal protection on prison officials and prisoners provided in the International Human Rights conventions, Regional Convention, European Prison Rules and United Nations' Minimum Rules and Basic Principles as fundamental principles which are grounded in a deep respect for the human rights. Although overcrowding, health care and the sanitation infrastructure are provided in existing law relating to prison system, prison officials and prisoners in Myanmar, in practice great deal of issues are occurred in these matters which can lead to conditions that constitute inhuman and degrading treatment for prisoners and unacceptable working conditions for prison officials. As a result, current legal framework provided for protection on prison officials and prisoners should be amended as country's legislation, administration and judiciary are directly reflected on prison system of Myanmar.

Keywords: International Convention, United Nations' Minimum Rules and Basic Principles, Legal protection on prison officials and prisoners

Introduction

Human Rights law also provides a framework to guide prison management including protection of prison officials and prisoners leading to prison reform. International standards and norms relating to prison system, prisoners and prison officials adopted in the Universal Declaration of Human Rights (UDHR)1948, International Covenant on Civil and Political Rights (ICCPR)1966, International Covenant on Economic, Social and Cultural Rights (ICESCR)1966, Convention against Torture and Other Cruel, inhuman

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or Degrading Treatment or Punishment (CAT)1984, Standard Minimum Rules for the Treatment of Prisoners (SMR)1955, the Code of Conduct for Law Enforcement Officials (Code of Conduct) 1979, Principles of Medical Ethics Relevant to the Protection of Prisoners against Torture (Principles of Medical Ethics) 1982, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principles on Detention or Imprisonment) 1988, and Basic Principles for the Treatment of Prisoners (BPT) 1990.

Materials and Methods

This research explored the requisite protection for prison officials and the rights of the prisoners under the National Law, the International Human Rights Conventions, United Nations' Minimum Rules and Basic Principles. Especially, it is based on United Nations' Standard Minimum Rules for the treatment of prisoners (the Mandela Rules), 1955. This research is focused on the survey, the text books and other materials published by scholars.

Research Objective

This research aims to recognize the shortage of right of prison officials and prisoners in prisons. In prison administration should provide how to protect the rights of prison officials and prisoners in accordance with International standards and to ensure to suitable treatment. In order for a prison system to be managed in a fair and humane manner, national legislation, policies and practices must be guided by the international standards developed to protect the human rights of prison officials and prisoners

Prison System in Myanmar

The provisions relating to the prison system and protection on prison officials and prisoners in Myanmar is described in the Prison Act 1894, The Prisoners Act, 1900, the Identification of Prisoners Act, 1920 and Manual of Rules for the Superintendence and Management of Jails in Burma (Myanmar) 1894 (Jail Manual), revised in 1950 and provided the framework for the

establishment of a prison system in colonial era Myanmar and continues to be used today.

In July 2015, a draft Prisons Law was introduced in Myanmar with the objective to safeguard peace in the community and the rule of law, prevent repeat offending and provide for the rehabilitation of prisoners with a view to their release. The draft Prisons Law is set to replace Myanmar's legal framework on prison conditions. The draft law will guarantee that minimum standards of health, food, potable water, accommodation, sanitation and hygiene are met.¹

According to Paragraph.4 of the Jail Manual, 1968, the following are the classes of Jails in Myanmar -

- (i) Central Jails intended for the confinement of all classes of prisoners, including prisoners sentenced to transportation.
- (ii) District Jails intended for the confinement of all classes of prisoners with the exception of convicts sentenced to terms of imprisonment exceeding five years.
- (iii) Camp or Extramural Jails intended for the confinement of prisoners employed on extramural work as may, from time to time, be prescribed by Government.
- (iv) Subsidiary Jails intended for the confinement of under trial prisoners and of convicted prisoners whose sentences are too short to admit of removal to other jails. For the rules regarding management of police lock-ups declared to be Subsidiary Jails, wherein a list of such Subsidiary Jails is also given.

Currently, there are four classes of prison. They are Central prison, A-rated prison, B-rated prison and C-rated prison. Central prison intended for the confinement of all prisoners who convicted any sentence. It can accommodate up to 5000 convicts. A-rated prison intended for the confinement of all prisoners, including prisoners sentenced to death penalty. It can accommodate up to 1000 convicts. B-rated prison intended for the confinement of all prisoners, with the exception of convicts sentenced to terms of imprisonment exceeding fifteen years. It can accommodate up to 500 convicts. C-rated

¹ Myanmar Alin, News, 10 November 2016

prison intended for the confinement of all prisoners, with the exception of convicts sentenced to terms of imprisonment exceeding five years. It can accommodate up to 300 convicts. So, provisions relating to classification of jail in Jail Manual is not conformity with practically exercise.

Under paragraph.359 of the Jail Manual, 1894, to every prisoner a sleeping berth shall be assigned and no account shall a prisoner be permitted to lie on a cement, asphalt, brick or earthen floor, or in any place. The number of berths in each ward shall be in accordance calculated on the scale prescribed in jail manual.

Paragraph 991 of Jail manual guarantees a minimum of 36 square feet (3.34 square meters) per prisoner which is only slightly smaller than the ICRC's recommendation 36.72 square feet (3.4 square meters) for shared accommodation, excluding space for toilets and showers. It is not conformity with current expression of MNHRC is only 18 square feet (1.67 square meters).

The following table showed the condition of prison overcrowding in current Myanmar

Number of Prisoners in respected Prison

No	Name of Prison	Class	Number of Prison Officials	Limited prisoners	Accepted prisoners
1	Insein	Central	250	5000	Over 15000
2	Mandalay	Central	250	5000	8328
3	Toungoo	A	118	1000	1199
4	ShweBo	A	118	1000	2310
5	Katha	B	63	480	1003
6	Khamti	C	63	300	688

Source: ShweBo, Mandalay, MNHRC

The above mentioned table shows that the condition of prison overcrowding in current Myanmar is twice or thrice than its capacity. Overcrowding causes a great deal of issues, including health care system in prisons for prison officials and prisoners, more extra duties of prison officials without holiday, As the ratio of prison officials and prisoners are not balanced

in prison management. It can lead to conditions including unacceptable working conditions for prison staff.

The following plan focuses on 10 ways of reducing overcrowding in prisons around the world. Overcrowding or congestion is the biggest single problem facing prison systems with consequences that can at worst be life-threatening and at best prevent prisons from fulfilling their proper function. But supporters of prison reform argue that it's possible to reduce overcrowding without compromising public safety.

1. Send fewer people to prison for drug crimes.
2. Allow drug offenders to serve shorter sentences.
3. Judges greater discretion over sentencing.
4. Give judges even greater discretion.
5. Lower the “truth-in-sentencing” requirement.
6. Make sure that people aren't disproportionately punished for using crack instead of powder cocaine.
7. Allow more prisoners to reduce their sentences through credit for good behavior.
8. Give prisoners a full year off their sentences for participation in a drug rehabilitation program.
9. Release more elderly prisoners from Bureau of Prisons custody.
10. Send more foreign inmates back to their home countries.¹

The classification of prison in Myanmar is also found that classification of prison does not conform to Jail Manual and classify as Central, A, B, C. It is also seen that prisoners' sleeping ward area does not conform to international standard and provision of Jail Manual. The lack of adequate space is only one of the numerous problems that are experienced as a consequence of overcrowding in prisons. By looking at this condition, it is found that prisons in Myanmar are experiencing overcrowding. Therefore, it should be reformed to protect prisoners and prison officers as an infrastructure in prison reform of Myanmar.

¹ <http://www.penalreform.org/keep-informed>

Protection on Prison Officials in Myanmar

A strong prison system is needed to protect the prison official. Men, women and children who are in prison are still human beings. Equally, prison staffs are human beings. So, they have a chance to get the same living standards like other people. Prison leaders face numerous challenges, many of which are not within their control.

According to Paragraph.201 of the Jail Manual, 1894, the gate-keeper shall open only one gate at a time, and shall never, under any circumstances, have both gates open at once. Neglect of this rule shall be punished very severely. The passage between the entrance gates shall always be lighted at night.¹

According to Section.19 of the Prison Act, 1894, the Jailer shall not be absent from prison for a night without permission but, if absent without leave for a night, he shall immediately report the fact and the cause of it to the Superintendent.²

The night shall ordinarily be divided into five watches, namely, from 6 p.m. to 9 p.m., 9 p.m. to 11 p.m., 11 p.m. to 1 a.m., 1 a.m. to 3 a.m., and 3 a.m. to 6 a.m.³

The duty assignment of the prison officials does not conform with that provided in Jail Manual. They employed more serve extra duties and lack of holiday. Because of the ratio of prison and official prisoners does not sufficient in prison management. It is needed to appoint prison officials seek to their health, social, mental and personal security and other protections.

Rule.27 of the Standard Minimum Rule for the Treatment of Prisoners (SMR), 1955 stated that prison should be safe environment and should not fear for all prisoners and staff, and for visitors' physical safety that live and work in them. Therefore Prison Security System should consist of remotely controlled doors, CCTV monitoring, alarms, cages, restraints, nonlethal and lethal weapons, riot-control gear and physical segregation of units and prisoners may all also be present within a prison to monitor and control the movement and activity of prisoners within the facility.

¹ Paragraph.209 of the Jail Manual,1894

² Section.19 of the Prison Act, 1894

³ Paragraph.305 of the Jail Manual,1894

There are although seventeen CCTV cameras according to prison security system of Owe Bo prison in Mandalay; no cameras are set in Shwe Bo, Saging Division.

Under paragraph.256 of the Jail Manual, it is found that uniforms for non Myanmar Jailors, Myanmar Jailors and Jailors who are native of India are divided. In addition, under paragraph.261, clothing for Myanmar, Karen and Gurkha warders and for other citizens is not the same.

The directions of the Medical Officer, afford medical aid to all the jail staff and their families living on the jail premises.¹ The long-serving prisoners govern the prisons as there is not enough prison staff to control the prison and the country cannot pay enough salaries for the staff.²

Rule.74 (3) of the Mandela Rule state that Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favorable in view of the exacting nature of the work.

As of 2011, AAPP found that there was one doctor for every 7,314 prisoners and that at least 12 prisons were without a designated doctor.³ Now, there are four medical officers, fourteen medical subordinates and there are over 800 sick prisoners. Among these 800 prisoners, 600 prisoners are suffering HIV/AIDS.⁴

Upon The request of prisons without medical staff, relevant medical staff, the Ministry of Health shall provide medical staff to those prisons.⁵

According to Paragraph.43 of the Jail Manual, an officer, without previous experience of jail Administration, who is appointed to the whole-time charge of any jail shall, if circumstances allow, be appointed for a period of six months' training at either the Rangoon or Insein Central Jail.⁶

¹ Paragraph.925(25) of the Jail Manual,1894

² Myanmar Times,13.December,2016

³ AAPP, Submission to the United Nations Periodic Review of Burma, 2011, p.5

⁴ Seven day New journal, 8.March.2018

⁵ Section.21 the draft Prisons law, 2015

⁶ Paragraph.43 of the Jail Manual,1894

Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.¹

After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.²

Under Rule.76(1) (c) of the Mandela, training shall included security and safety, including the concept of dynamic security, the use of force and instrument of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation.

Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.³ Rule.82 (2) of the Mandela Rule, prison staff shall be given special physical training to enable them to restrain aggressive prisoners.

According to Section.7 (g) of the draft prison law, 2015, the superintended shall shackle any prisoner who he or she considers to require maximum security or state of prison or character of prisoner. If needed, he can place such kind of prisoner individually in a solitary confinement cell.⁴

According to section.49 of the draft Prison Law, 2015, no prisoner is allowed to riot, rebel, escape, or damage prison properties and buildings with a cowed, or attempt or prepare or encourage doing the above at any time.⁵

According to Paragraph.326 of the Jail Manual, if a prisoner is convicted of an offence committed an assault on a warder or other officer maybe cancelled amnesty. Law enforcement officials shall also, to the best of their capability, prevent and vigorously oppose any violations of them.⁶

¹ Rule.47 (2) of Standard Minimum Rules for the Treatment of Prisoners(SMR),1955 and Rule.81(1) of the European Prison Rules,1987

² Rule.47 (3) of Standard Minimum Rules for the Treatment of Prisoners(SMR), 1955 and Rule.81(2) of the European Prison Rules,1987

³ Principles.20 of Basic Principles on the Use of Force and Firearms by Law Enforcement Officials(Principles on Force and Firearms) , 1990

⁴ Section.7 (g) of the Draft Prison Law, 2015

⁵ Section 49 of the draft Prisons law, 2015

⁶ Article.7 of Code of Conduct for law enforcement officials, 1979

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.¹ National legislation regarding health and safety at work shall apply in prison in the same way as it does in the community.²

Prison staff, including guards and medical staff, may feel psychological repercussions from working and may be in need of support themselves. The prison administration should provide confidential counseling to all staff members who work with prisoners. Staff members should be given special training and support.³

There are factors in many prisons that have negative effects on mental health, including: overcrowding, various forms of violence, enforced solitude or conversely, lack of privacy, lack of meaningful activity, isolation from social networks, insecurity about future prospects, and inadequate health services, especially mental health services, in prisons.⁴

International rule and norm, Jail manual and Draft Prison Law in Myanmar provided that every prison has a medical officer. In practice there is no medical officer in every prison. In Myanmar, special treatment for HIV voluntary testing and counseling should be encouraged. So, upon the request of prisons for medical officer, relevant medical officer, the Ministry of Health and Sport shall provide to appoint medical officer to those prisons. There are not only provisions relating to previous health care for prison officials in the Prison Act and Jail Manual but also in the draft of prison law. Staffs need to be specially trained to carry out to detect and prevent any escape attempt or secretion of contraband. Now, a new warder needs to attend a basic training of prison for four months in Mandalay and officers need to attend training of officer rank for three months in Insein (Yangon).

¹ Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

² Rule.72(1) and 74 of Standard Minimum Rules for the Treatment of Prisoners (SMR), 1955

³ World Coalition, organization, Death penalty and Mental Health, Factsheet for Prison Staff, 2014, p.3

⁴ World Health Organization, op.cit., p.1

Protection on Prisoners in Myanmar

The State Government needs to ensure fundamental right of each prisoner such as food of nutritional value, adequate for health and strength in accordance with the International standard and norms. And then they should given protection for personal security, by means of rehabilitative method and vocational training, reduction from punishment and visitation right.

The classification of prisoners in prison management needs confirmative norms provided under International Convention such as ICCPR, SMR and the Principles for the Protection of all Persons under Detention. Under paragraph.721 (1, 2) of the Jail Manual, civil prisoners should be divided into two classes such as Special and Ordinary.

Previously, according to paragraph 665 of the Jail Manual, convicted prisoners were separated by classification into three classes A, B and C of prisoners depending on committed offences. Today, it is found that prisoners were not separated after 1964 and all prisoners are combined into a single class, Class C. Now, classes of prisoners should be separated depending on types of committed offence rather than the current combining of prisoners. In this regard, Myanmar has to respect standards and norms provided in International Convention, Regulations and Guidelines for prison reform. Prisoners' rights and protection should have equality while they are serving their sentences.

Living standard facilities are basic physical requirements for prisoners, paragraph 1084 of the Jail Manual, there are 20 kinds of food fed to a prisoner daily calculated at the current price about 1336 kyats. The kinds of food fed to a prisoner in OweBo Prison Mandalay Division are 14 kinds of food, calculated in accord with current price at 600 kyats for per prisoners. Beef is fed twice a week.

In October, inmates at Myin Chan prison staged a demonstration over lack of food supplies, medical care, overcrowding and corruption. According to prison advocacy groups, such abuses are rarely reported but widespread within Myanmar's correctional institutions. It was true that prison staff governed through inspiring fear.¹

¹ Myanmar Times , 13 December, 2016

Correctional In October, inmates at Myin Chan prison staged a demonstration over lack of food Department plans to increase their daily meal allowance starting from 1st January, 2018. It has agreed to increase the daily meal allowance from the former k.600 to k.975 for prisoners in prison and k.1000 for prisoners in prison camp. The prisoners are given meat in their meals just two times a week including beans in meals on a daily basis. Before, prisoners were fed beans just five times a week. The daily cost of feeding for supporting of prisoners compared with the current feeding rate and the feeding rate in the Jail manual. Feeding rate in 2018 plan does not fulfill the rate in the jail manual.

In order to ensure the good health of the prisoners, the Prison Department must provide areas and facilities for exercising.¹ The ministry can appoint medical staff under negotiation with the Ministry of Health, or the ministry can appoint directly.²

Upon The request of prisons without medical staff, relevant medical staff, the Ministry of Health shall provide medical staff to those prisons.³

Rule 24 of the SMR, Principle 9 of the Basic Principles for the Treatment of Prisoners, and the Principles of Medical Ethics Relevant to the Protection of Prisoners all enshrine the main guiding principle of healthcare in prison, which is that prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge and without discrimination on the grounds of their legal status. The Principles for the Protection of all Persons under Detention provides for a medical examination upon admission to prison and regular medical care provided from that point forward.⁴

According to Section 166 of the Penal Code, whoever, being a public servant, knowingly disobeys any direction of the law intending to cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

¹ Section.16 of the Draft Prison Law, 2015

² Section.20 of the Draft Prison Law, 2015

³ Section.21 of the Draft Prison Law, 2015

⁴ AAPP, Prison Conditions in Burma and the Potential for Prison Reform, 2016, p.26,27

Whoever voluntarily causes hurt or grievous hurt for any confession or information which may lead to the detection of any offence, shall be punished with imprisonment of either description for a term which may extend to seven or ten years, and shall also be liable to fine.¹

Ensure Prison staffs do not torture prisoners, or subject prisoners to cruel, degrading or inhuman treatment.² Any Prison staff will be guilty if he or she commits the following: Torture, cruel, inhuman or degrading treatment that violates human rights or humiliates a prisoner.³ If Any prison staff is guilty of violation of section 50(h) he or she shall be sentenced to imprisonment not exceeding three months, or subject a fine not exceeding 50,000 kyats, or to both.⁴

According to Rule.43 (1) of the Mandela Rules, in no circumstance may restorations or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. According to Article.2 of the CAT state that Orders from a superior officer may not be invoked as a justification of torture. And Article.3 of the Code of Conduct for Law Enforcement Officials (1979) provides that Law enforcement officials may use force only when it is strictly necessary.

With international agreement on prison officials and prisoners found provisions relating to basic standard and protection from torture and inhuman treatment of prisoners. These enactments can find in Draft Prison Law, 2015 in Myanmar. Although there is no provision relating to protection from torture on the prisoners in Prison Act and the Jail Manual, action are taken under Penal Code if a public servant intentionally inflicts injury on a prisoner. Now, prison official who committed torture and cruelty, he shall be liable to under current Draft Prison Law, 2015 in Myanmar.

Under Section.36 (a) of the draft Prison law, 2015, no criminal prisoner sentenced to labour or employed on labour for more than eight hours

¹ Section 330 and 331 of the Penal Code, 1861

² Section.8 of the Draft Prison Law, 2015

³ Section .50(h) of the Draft Prison Law, 2015

⁴ Section .56 of the Draft Prison Law, 2015

in any one day.¹ The superintendent shall help any prisoner, who was not assigned to hard labor, be employed if he or she desires it.²

According Section.17 of the draft prison law, 2015, regarding the assigning of labor, the Prison Department shall provide appropriate vocational, agricultural and livestock trainings.³ Prison Department shall produce products with the use of prison labor.⁴

The Superintendent shall: Pay Set wages to prisoners working in income generating activities in prisons. Make sure that defined compensations are established regarding injuries, and death of prisoners while working.⁵

Vocational Training (Owebo) Prison Mandalay gives vocational training such Hair-cut and Beautification, Chief-cook, Knitting, Gold leaf packet, Embroidery, Tailoring, Carpentry, Weaving, Lapidary and engraving, Mechanic, Eyelash, Tatting and Diamond cutting. Owebo, Shwe Bo and Moulmein prison have different Vocational Training.

There are not provisions relating to vocational training for prisoners in the Prison Act and Jail Manual. These provisions can be found in the draft Prison Law, 2015. Kinds of vocational training can vary based on prisoner trainer skill and requirements of prisoner trainees. Prison will accept voluntary trainers for vocational training. Also, the prison department provided that vocational training should include inventive ways of other international prisons to prepare prisoners for life after their release.

Seven International Prisons around the world are finding inventive ways to prepare prisoners for life after their release such as financial literacy for prisoners in Ethiopia, working for the weekend in Slovenia, working and studying behind bars in Uruguay, making minimum wage in Poland, prisoners study for free in India, staying connected with Belgium's prison cloud and reading for freedom in Italy.

¹ Section.36(a) of the Draft Prison Law, 2015

² Section.7(i) of the Draft Prison Law, 2015

³ Section.17 of the Draft Prison Law, 2015

⁴ Section.18 of the Draft Prison Law, 2015

⁵ Section.37(a, b) of the Draft Prison Law, 2015

The Prison Department shall provide educational opportunities for prisoners who are still studying or who are illiterate.¹ Education opportunities for prisoners, according to Paragraph.623 of the Jail Manual, all juveniles under 18 years of age, who are undergoing sentences of a year or more, shall be brought under instruction in reading, writing and arithmetic. They shall be taught for an hour in the morning and an hour in the afternoon. An elderly prisoner may be allowed to teach the boys.

Rule.78(2) of the Mandela Rule state that the service of social works, teacher and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

In Myanmar, since 2006 Insein, Mandalay and Thayawady Central have been offering educational opportunities to inmates. In 2014, two prisoners passed matriculation exams firstly.² Educational opportunities for prisoners are provided only for Insein and Owebo prisons. It is needed to development prison education system for other prisons as well.

In an effort to democratize education for prisoners in India, the Indira Gandhi National Open University set up 94 study centers in jails across the country that offer a broad range of educational and vocational classes leading to degrees, free of cost. As of May 2015, more than 25,000 Prisoners had participated in the program, earning everything from vocational certificates in baking or welding to master's degrees in sociology. The university also works with inmates after their release to help them find employment.³

In order to have more knowledge about domestic and international affairs, the Prison Department must open libraries whereby prisoners can read newspapers, journals, magazines, publications and watch television sets.⁴In order for recreational purposes, the Prison Department must provide entertainment, information and education programs.⁵

There are two kinds of remission such as ordinary remission and special remission. The provisions relating to amnesty and remission enacted

¹ Section.14 of the Draft Prison Law, 2015

² Myanmar Times, Wednesday, 07 September 2016

³ Rebecca McCray, Seven International Prisons that put rehabilitation before punishment, 2015

⁴ Section.13, Ibid

⁵ Section.15, Ibid

International Convention as well as draft prison law in Myanmar. According to paragraph 842 and 848 of the Jail Manual ordinary remission grants 15 days and special remission permits 29 days in one year. If a prisoner employs the duty of guard, he would get as ordinary remission for 8 days, of supervising of work 6 days and acting of night duty 5 days respectively in one month. In practice, if a prisoner employs the duty of guard, he would get as ordinary remission for 2 days, of supervising of work 1 day and acting of night duty 1 day respectively in one month.

The President has the power to grant a pardon, the power to grant amnesty in accord with the recommendation of the National Defence and Security Council.¹

The new NLD-led government issued four major releases in their first month in office. On April 8, 2016 had released 199 political prisoners. On April 17, 2016 had released of 83 political prisoners. On May 24, 2017 had released 259 prisoners.

On August 4, 2017 the students from Mandalay and Insein who passed matriculation examination are remitted by the President of Union under 401 (1) of the Code of Criminal Procedure.² April 17, 2018, 8490 prisoners serving jail terms in various correctional facilities across the country have been unconditional amnesty under the Sub-section (1), Section 401 of the Criminal Procedure Code.³

National Laws of Brazil and Italy provide remission for reading one philosophy book; prisoner can meet remit 3 or 4 days from sentence. Reading may be an effective way to reduce boredom in prison and may soon become a way to cut jail time. Redemption through reading is not only a smart low-cost measure to reduce population in jail, but it is also an important chance for the prisoner's personal growth, forming him to a better life. So a cut of the sentence obtained in this way can be appreciated like similar reductions planned for study and work. Without doubt they will leave a better person.

¹ Section.204 of the Constitution of the Republic of the Union of Myanmar, 2008

² Notification No.102(1)/8, 4.8.2017

³ Republic of the Union of Myanmar Office of the President, Order No. 17/ 2018, 17. April.2018

Section 33 of the draft prison law, 2015 state that a schedule and regulations shall be arranged in each prison, in order to visiting guests and official guests to be able to meet prisoners.¹ A prisoner and his or her lawyer are allowed to discuss freely in a designated area in accordance with law.²

According to Rule.58(2) of the Mandela Rule, where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.³

Requests for feeding prisoners on special occasions by charitable bodies or persons is allowed on only one or two days in the year may be granted, provided the food is prepared in the Jail premises.⁴ If any organization or anyone wants to donate food or things for prisoners, the superintendent may allow it after through consideration.⁵

Now, it is found that preaching of famous Pongyis (Buddhist monk) and meditation camps are held in prison. Although the person who serves prison terms shall have no right to vote under section.392 (b) of the Constitution of the Republic of the Union of Myanmar, allowed the right to vote at UK and European if offenders sentenced to a custodial sentence of less than four years. All prisoners are citizens of a Country. Therefore they must have citizen right or constitutional right such as voting right.

Both the Prisons Act and Jail Manual ensure visitation rights for civil and un-convicted prisoners, while the Jail Manual allows for up to two visitations per month with family. Although, the right of conjugal visit is allowed in the Mandela Rule, there is no similar provision in existing laws in Myanmar. The draft prison law, 2015 provided that the prison Department must have correctional plans religious preaching, meditation camps, counseling and educational opportunities, entertainment, information for changing prisoners physically and psychologically with the aim of

¹ Section.33 of the draft prison law,2015

² Section.37 of the Draft Prison Law, 2015

³ Rule.58(2) of the Mandela Rule

⁴ Paragraph.362 of the Jail Manual,1968 and Section 35 of the Draft Prison Law, 2015

⁵ Section.35 of the draft prison law,2015

reintegration into society as a good person who will not reoffend after being released.

Finding

The management of prison system is difficult and complex and changes to the system take time. The prison system should also be under the control of the civil rather than the forcible power. Developing countries including Myanmar, lack the necessary resources to bring their prison system up to internationally accepted standards. They lack the funds, trained personnel, technology, infrastructure, or expertise to proceed with all of the necessary reforms. Policy makers should invest more resources in treating and rehabilitating offenders while they are incarcerated. In practice, the job of a prison official is inevitably facing challenging in prison environment. It also identifies protection on officials in prisons and systematic control of prisoners. In order for prisons to run well, prison rules must be current and enforceable, as well as enforced. The government may assist to official statement on prison policy for managing prisons and provide direction and guidance for current and future reforms. Government should work together with development partners and agencies to develop a strategic plan for the prison service and many reforms that are required. And also Government needs to amend an outdated legislative framework which supports prison reform. The modern legislative framework will promote change within a prison service and to bring existing practices into compliance with international human rights standards.

Conclusion

The prison system comprises only a part of that country's judicial and legal system and portion of the overall governance structure and institutions that country. Prison system is necessary to ensure the protection of human rights within the country, but it is also beneficial to society more broadly. Prisons should be safe environments for all who live and work in them, in other words for prisoners and staff, and for visitors. No one in a person should fear for his her physical safety. Officials must take the necessary technical training to be aware of security requirements. Staff has been trained in their

duties according to a set curriculum and national standard. Classification of prisoners depends on prison building and the number of prisoners cannot be classified. Therefore, prison and prisoner management should repair to assist the prison management and to protect the prisoners. Despite the obvious need for legislative updates and reform, the more pressing issue in Myanmar is dealing with actual conditions. It is suggested that these enactments will be incorporated into current prison system in Myanmar for reducing overcrowding in prison. Moreover, most of the prisoners have little knowledge of remission; it is needed to serve to know the effect of remission that is the one of the reformative methods for prisoners.

Reference

Law, Act, Rules and Notifications

The Myanmar Prison Act, 1894

The Manual of Rules for the Superintendence And Management of Jails in Burma 1894
(Jail Manual)

The Myanmar Penal Code, 1861

The Draft Prison Law.2015

The Constitution of the Republic of the Union of Myanmar, 2008

The European Prison Rules,1987

Republic of the Union of Myanmar Office of the President, Order No.102(1)/8, 4.8.2017

Republic of the Union of Myanmar Office of the President, Order No. 17/ 2018, 17.
April.2018

Convention

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,1988

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles on Force and Firearms) , 1990

Code of Conduct for law enforcement officials, 1979

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Standard Minimum Rules for the Treatment of Prisoners (SMR) (Mandela Rule) 1955

The International Covenant on Economic, Social and Cultural Rights (ICESCR),1966

Books

Assistance Association for Political Prisoners, Prison Condition in Burma and the potential for Prison Reform, 2016

Rebecca McCray, Seven International Prisons that put rehabilitation before punishment, 2015

World Health Organization, Mental health in prisons. Geneva, 2007

Journal

Myanmar Alin, News, 10 November 2016

Myanmar Times , 13 December,2016

Myanmar Times, Wednesday, 07 September 2016

Seven day New journal, 8.March.2018

Website

<http://www.penalreform.org/keep-informed>

PUBLIC SERVICE BROADCASTINGS AS RELIABLE SOURCES FOR HUMAN RIGHTS IN MYANMAR

Yin Yin Lae*

Abstract

Public Service Broadcasting organizations play a crucial role in ensuring the public's right to receive a wide diversity of information and ideas in a State. These are nonprofit organizations that distribute programming to the nation's public television and radio stations. In Myanmar, radio services first came on air in 1936 and regular programming by Bama Athan channel began in 1946. Television service was first introduced in 1979 and MRTV was first launched in 1980. Nowadays, there are public TV channels, private channels and organizational channels. Then, there are a lot of radio channels owned by public as well as private. Their programmes have been designed to support for promotion of health conditions, non-formal education, cultural and heritages, civic education and agricultural production and preservation. Besides, these channels have to produce timely about the rightful information for upcoming natural disasters, current news for education, weather news, health care and spread disease, political issues and so on. The people in distant rural areas rely on the public TV channels and radio channels. Whereas Myanmar is now building to real democracy and freedom of media going to gradually improve in the process of national development. In this regard, the Television and Broadcasting Law is enacted in 2015. The law provided to transform the state-owned media as public service broadcasting and the freedom of expression and freedom to give/take right information. But, actually, it cannot be implemented yet. Unless the Broadcasting organizations produce the important news freely, these could not be the reliable sources for public rights. Especially, the public could not get the procedural rights and substantive rights from broadcasting. The paper aims to highlight the importance of the role of broadcasting organizations in country's development process. The paper leads the policy recommendations for broadcasting channels on the rights of social, economic, culture and politics.

Keywords: Public Service Broadcasting, freedom of expression, right to information

Introduction

Public Service Broadcasting (PSB) is the most important source of information, as well as of entertainment for most people around the world. Public Service Broadcasting Organizations play a crucial role in ensuring the public's right to receive a wide diversity of information and ideas. The Public

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Broadcasting Service is a nonprofit organization that distributes programming to the nation's public television stations. Broadcasting is the one of media which is accessible for many people to watch or listen to the news. Myanmar is a highly agricultural nation with approximately 70 per cent of the population living in rural areas. They are facing difficulty to get print media and rely on broadcasters for their required information and entertainment needs.

The Public Service Media Bill was drafted by the Ministry of Information (MOI) and had been submitted to the Parliament for approval in 2014. Myanmar Radio and Television (MRTV) shall be transformed as a Public Service Radio and broadcasting enterprise once the Parliament approves the bill. In early 2015 the MOI withdrew its proposed public service media law because there are some issues in printed media. The MOI drafted the Charter of public service broadcasting for MRTV and had been submitted the Union Attorney Office and still now discussed.

When the Public Service Media Bill is approved that would reform MRTV into a public broadcast service media that will be the autonomous public broadcast service. It is free from political interference and pressure from commercial force. It receives government support to produce informative, independent programs. It shall be independent in all matters concerning the content of program and the management of its affairs as public service organizations of many other countries.

At present, MRTV is also transitioning to a public service broadcaster but MRTV has still undertaken some reforms to this end such as providing more news content in a variety of ethnic languages, expanding network coverage and a greater focus on staff training and news quality. In the past few years, MRTV has placed a greater emphasis on providing its news, increasing coverage and expanding and training its newsroom staff. Consequently, news coverage for MRTV has increased in the past few years to 60 per cent of its airtime. In October 2013, MRTV also launched three digital channels; the National Races Channel, a Farmer's Channel, and a Hluttaw Channel. In April 2013, MRTV launched an online portal which, among other things, has streaming video from its digital channels.

Materials and Methods

A review and analysis was made of the legal concepts and terminology of public service broadcasting and freedom of expression and right to information and also international legal instruments and national laws relating to freedom of expression and right to information.

Findings

PSB's role in national development can be analysed from political, economic and social perspectives. In the political sphere, this role can be found in the areas of democracy and good governance, political transparency, foreign policy, human rights, war on terrorism, and public relations. In the economic sphere, broadcasting can play their role in the areas of economic policy and growth, economic empowerment, advertisements, investment and tourism, etc. In the social sphere, broadcasting's role cover social issues, such as corruption, criminal violence, education, food security, public health and cultural and heritages. In order to be more effective the role of PSB in national development, it must be freedom of expression, right to information and editorial independence.

The Television and Broadcasting Law (2015) defines the role of government broadcasting services as radio and television services which is owned and administered by union level government organization, state, region and self-administrative regional governments in order to broadcast public information accurately. International standards do not recognize this as a legitimate type of broadcasting. According to international standards, they should either be transformed into independent public service broadcasters or perhaps privatized to become commercial broadcasters. The existing government broadcasters (MRTV) in Myanmar must take time to decide what to do and supported the need to transform independent public service broadcasters. Both broadcast regulators and broadcasters should be strictly independent of government.

Definition of Public Service Broadcasting

Public service broadcasting (PSB) is an important role to play in providing access to and participation in public life. PSB is about people. It provides programmes to national audiences, including all minorities and

sections of society, which very often are not catered for by the commercial sector. It operates through an accountable and transparent structure of management and is supported by public funds. PSB, operating through all forms of media, is also about quality, reliability and independence. It provides a broad range of opinions, whether in education, news and information, or cultural and entertainment programming, all of which are ethical and professional in content and sensitive to citizens' needs and values; and it is about setting standards for fairness at work, social justice and protection for journalists and all who work in the industry.¹

Public broadcasting is defined as a meeting place where all citizens are welcome and considered equals. It is an information and education tool, accessible to all and meant for all, whatever their social or economic status. Public broadcasting must also appeal to the imagination, and entertain. Public broadcasters develop knowledge, broaden horizons and enable to people to better understand themselves by better understanding the world and others.²

Characteristics of Public Service Broadcasting

Public service broadcasting organizations are generally associated with a number of features are;

1. general geographical availability;
2. concern for national identity and culture
3. independence from both the State and commercial interests;
4. impartiality of programmes;
5. range and variety of programme; and
6. substantial financing by a general charge on users.³

In understanding the role of PSB, the following factors could be taken into account in judging whether a PSB system is playing the role it is expected to perform:

¹ UNESCO, *Public Service Broadcasting: A Best Practice Sourcebook*, 1st edition, 2005, p.10.

² UNESCO, *Public Service Broadcasting: A Best Practice Sourcebook*, 1st edition, 2005, p.13

³ Toby Mendel, *Public Service Broadcasting, A Comparative Legal Survey*, 2nd edition, 2011, p.6

- a) **Universality:** Public broadcasting must be accessible to every citizen throughout the country. It forces the public broadcaster to address the entire population and seek to be used by the largest possible number.
- b) **Diversity:** The services offered by public broadcasting should be diversified in at least three ways: the genres of programmes offered, the audiences targeted, and the subjects discussed. Diversity and universality are complementary in that producing programmes intended sometimes for youth, sometimes for older people and sometimes for other groups ultimately means that public broadcasting appeals to all.
- c) **Independence:** Public broadcasting is a forum where ideas should be expressed freely, where information, opinions and criticisms can circulate. This is possible only if the broadcaster is independent, thereby, allowing the freedom of public broadcasting to be maintained against commercial or political influence.
- d) **Distinctiveness:** Services offered by public broadcasting must have particular character of its programmes. It is a matter of doing things differently, without excluding any genre. This principle must lead public broadcasters to innovate, create new slots, new genres, set the pace in the audiovisual world and pull other broadcasting networks in their wake.¹

Perspectives Human Rights for Public Service Broadcasting

According to Wilbur Schramm (Father of Communication Studies), "By making one part of a country aware of other parts, their people, arts, customs, and politics; by permitting the national leaders to talk to the people, and people to the leaders and to each other; by making possible a nation-wide dialogue on national policy; by keeping the national goals and national accomplishments always before the public--thus modern communication, widely used, can help weld together isolated communities, disparate subcultures, self-centered individuals and groups, and separate developments into a truly national development."²

¹ UNESCO, *Public Service Broadcasting: A Best Practice Sourcebook*, 1st edition, 2005, Pp.15-16.

² MDIF, *Media Development's Role in Social, Economic, and Political Progress*, p-1 (www.mdif.org/ mdif@mdif.org)

PSB's role in national development can be analysed from political, economic and social perspectives.

In the political sphere, PSB can make the political system more transparent by helping people understand the operations of government, participate in political decisions, and hold government officials accountable. PSB can defend human rights as enshrined in national constitutions and recognised by the Universal Declaration of Human Rights (UDHR). Such rights include the right to life, freedom of speech, freedom of association, and the right to a fair hearing.

Media can boost economic development by promoting good governance and empowering citizens, so that economies can function better. It has given about economic growth, increase in competitiveness, sustainable development, reduction of poverty and inequality, increasing wages and benefits, and industrial policy. The media can provide atmosphere for healthy trade; foster business climate of transparency and accountability; and ensure that accurate financial information is available to investors.

To play a role in social development, the media assist the society in tackling problems of corruption, criminal violence, communal conflicts, public health and related issues. The media can expose corruption in both the government and corporate sector. Radio and television could broadcast early warnings, evacuation information and increase public awareness about risks and responses. As a medium, one of the most basic applications of the television lies in its ability to portray the devastation of disasters, both as they occur and in their aftermath.¹

Independent media has a positive impact on society, three sections addressing three areas where media can have a positive effect on societies:

Governance Impact: Corruption has a negative impact on society, particularly in furthering poverty and income inequality. It is a link between a free, strong, and independent media and reduced corruption. A free media exposes private and public sector corruption. It monitors government officials and increases voters' knowledge, allowing voters to hold corrupt politicians accountable during elections, causing politicians to reduce corruption.

Economic Impact: Economic actors need accurate and timely information to allocate resources efficiently. Investors and other groups

¹ MDIF, *Media Development's Role in Social, Economic, and Political Progress*, p-3 (www.mdif.org/ mdif@mdif.org)

increasing value and demand a governance-monitoring role from the media. A free and independent media can provide information and monitoring to the economic policy development process leading to more effective economic policies. It can also reduce political risk and increase good governance conditions that are important for economic development.

Social Impact: In order for development to be just and sustainable, citizens must productively participate in the decisions that shape their lives. Participation requires an informed citizenry. A free and independent media supply timely and relevant information to citizens allowing them to change their own behavior and to demand higher social standards for society.¹

Independent media play a critical role in improving governance and reducing corruption, increasing economic efficiency and stability, and creating positive social and environmental change. The media provide information to actors throughout society allowing them to participate in the decisions and debates that shape their lives. The media also play an important monitoring role in a democracy that enables citizens to hold their governments and elected officials accountable—leading to better policies and service implementation.²

According to the Media Law 2014, one of the objectives of the law is based on to make news accessible to every citizen. The entitlement of media workers are provided in Section 4 shall have the rights to investigate, publish, broadcast information and related opinions to which every citizen is entitled in accordance with rules and regulations.³

The Television and Broadcasting Law (2015) is paving the way for private TV broadcasters to operate legally in Myanmar and limits on foreign ownership of private TV broadcasters, establishes a national TV broadcaster, and authorizes the creation of a council to regulate the national broadcaster. The overriding objectives of this law are;-

- (a) to promote the use of broadcast spectrum, designated by the Ministry of Telecommunication and Information Technology, as a common development resource,

¹ MDIF, Media Development's Role in Social, Economic, and Political Progress, p-3 (www.mdif.org/ mdif@mdif.org)

² MDIF, Media Development's Role in Social, Economic, and Political Progress, p-6(www.mdif.org/ mdif@mdif.org)

³ Section 4 of the Media Law , 2014

- (b) to promote access by the public to a wide variety of broadcast services as well as broadcasting content,
- (c) to ensure that broadcast services meet minimum standards, and to provide the public with a system for participating in pursuing quality broadcasting which meets the information, education and entertainment needs of the people of Myanmar.¹

PSB and Freedom of Expression

For the media (including radio and television) to effectively influence national development, they must be free and independent.

The Universal Declaration of Human Rights (UDHR) is generally considered to be the flagship statement of international human rights, binding on all states as a matter of customary international law. It guarantees the right to freedom of expression in the following terms:

“Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”²

The International Covenant on Civil and Political Rights (ICCPR) is imposed legally binding obligations on States Parties to respect a number of human rights set out in the UDHR. Myanmar has neither signed nor ratified many of the international treaties that pertain to freedom of expression such as the International Covenant on Civil and Political Rights (ICCPR).

In Myanmar, Section 354 of the Constitution, 2008 sets freedom of expression, every citizen shall be at liberty in the exercise of the rights to express and publish freely their convictions and opinions except union security.³ Furthermore, freedom of expression is protected in a constitution in order to set conditions on ordinary laws which would otherwise impact it.

The State Law and Order Restoration Council Law 9/89 also known as the State-Owned Economic Enterprises Law gives the state the sole right to carry out broadcasting service and television service which is prescribed under Section 3 to be operated solely by the Government to be carried out by joint venture between the government and any other person or any other economic

¹ Section 3 of the Television and Broadcasting Law, 2015.

² Article 19 of the Universal Declaration of Human Rights, 1948.

³ Section 354 of the Constitution of the Republic of the Union of Myanmar, 2008.

organization subject to conditions.¹ Therefore, all domestic TV and radio broadcasters are either fully state-owned enterprises or joint-ventures between the State and private companies.

MRTV is also transitioning to a public service broadcaster but MRTV has still undertaken some reforms to this end such as providing more news content in a variety of ethnic languages, expanding network coverage and a greater focus on staff training and news quality.

According to the Television and Broadcasting Law, 2015, a public broadcasting service is made for the public and financed and controlled by the public. It is free from political interference and pressure from commercial forces. Through a public broadcasting service, citizens are informed, enlightened and entertained.²

It recognizes important guiding principles for the regulation of broadcasting, including freedom of expression, diversity and independence. Sections 3 and 4 of the Law, setting out the objectives and guiding principles for regulation, which provide refer to internationally recognized standards such as freedom of expression, professionalism, diversity, independence, fair competition, universal service, and fairness and non-discrimination in the allocation of licenses. It is provided as follow,

The development and regulation of broadcast industry in Myanmar shall be based on the following principles:

- (a) freedom of expression, professionalism and independence of the broadcast media
- (b) balanced development of public service broadcasting, commercial, community and government broadcasting services
- (c) rational and efficient use of the broadcasting spectrum designated by the Ministry of Telecommunication and Information Technology.
- (d) promotion of fair competition and media pluralism in the field of broadcasting
- (e) fairness, objectivity, non-discrimination, efficiency and transparency in the procedure for granting frequencies and licenses for broadcast media ensuring that all areas of the country receive broadcast service.³

¹ Section 4 of the State-Owned Economic Enterprises Law, 1989.

² Section 46 of the Television and Broadcasting Law, 2015.

³ Section 4 of the Television and Broadcasting Law, 2015.

PSB and the Right to Information

It is well established under international law that States should put in place clear rules limiting undue concentration of ownership of the media. This is based on the fact that international guarantees of freedom of expression protect not only the right of the speaker but also the rights to “seek” and “receive” information and ideas (i.e. the rights of viewers and listeners). As a result, restrictions on undue concentration of media ownership, which may look like restrictions on the freedom of expression rights of owners, are actually measures to protect the freedom of expression rights of listeners and viewers.

In this regard, the ICCPR provided as follow, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression. Consequently, States parties should take appropriate action, consistent with the Covenant, to prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views.¹

According to Section 6(a) of the Media Law, a news media worker is entitled to access government information.² Section 31(a) of the Media Rules states right to information as follow “Any authorized individual, organization, departments who are responsible to release what the public have the right to know; must not delay and refuse without sound reason requests for viewing and copying data, photographs, illustrations, facts and figures, accounts that the public have the right to know”. Section 31 also prescribes a timeframe of 24 hours within which the relevant government authority or organization must either provide the information or give sound justification why the information cannot be provided. Section 31 (d) also gives the News Media Council the responsibility to serve as a grievance mechanism should media workers believe the government has not offered sound justification for denying access to public information.

Under the Media Rules, there are no government-wide guidelines for what qualifies as confidential information. This will lead to a lack of uniformity in access to information across the government. In effect, departments enjoy wide discretion over what information is made public, weakening the effectiveness of the Law. The system also lacks clear

¹ Article 19 of the International Human Right Commission

² Section 6 (a) of the Media Law, 2014

procedures regarding how to submit a request for information. Furthermore, the right to information stipulated in the News Media Law only extends to media workers and not to the population at large.¹

MRTV as a Public Service Broadcasting Enterprise shall obtain a license in accord with the law to transmit radio and television programs.² Broadcasting Enterprises under the Public Service Act are;-

- (a) have the right to operate independently;
- (b) have no pre-censorship and hindering over their freedom to express or distribution of their programs in the media;
- (c) have freedom to express their editorials and their own information; and
- (d) enjoy copyright related benefits.³

The Public Service Broadcasting enterprise shall;-

- (a) be able to produce free terrestrial radio and television programs throughout the nation;
- (b) be able to produce radio and television channels in different languages of national races in their respective Divisions or States or Self-administered divisions or Self-administered areas;
- (c) in order to be able to implement broadcasting programs as stated in the above subsections a and b, required spectrums shall be allocated for the Public Service Broadcasting enterprise in accord with broadcasting law.⁴

The Public Service Broadcasting enterprises shall receive minimum of 70 percent of its expenditures from the State's budget; or the precise amount of it from some kind of tax incomes, as stipulated by the Parliament. The annual funding shall be directly sent to the Public Service Media.⁵ The Public Service Broadcasting enterprises shall seek 30 percent of its budget required for the operation in the advertising and sponsorship.⁶

Broadcasting organizations in Myanmar informs the public about government policy, plans and implementation and knowledge and education

¹ UNESCO, Assessment of Media Development in Myanmar, 2016, p.16

² Section 7 of the Public Service Media Bill, 2013.

³ Section 9 of the Public Service Media Bill, 2013.

⁴ Section 60 of the Public Service Media Bill, 2013.

⁵ Section 64 (a) of the Public Service Media Bill, 2013.

⁶ Section 66 of the Public Service Media Bill, 2013.

through various media including radio and television broadcasting. Currently, access to government information remains limited. However, the News Media Law offers significant opportunity for improving journalists' access to government information. Myanmar does not have any constitutional guarantee of right to access government information for citizens and does it have a Right to Information Law.

PSB and Management of Spectrum Allocation

At present, informal spectrum management plan exists in Myanmar. The MCIT provides the MOI with frequencies that can be used for TV and radio broadcasters. According to the Broadcasting Law, a National Spectrum Management Plan will be developed by the National Broadcasting Development Authority.

The Television and Broadcasting Law establish the Broadcast Authority and Broadcast Council as the regulatory bodies overlooking the broadcasting industry and responsible for adopting a broadcasting Code of Conduct and developing internal procedures for investigating and processing alleged for processing grievances in the broadcasting sector. The Council will also bring about a greater degree of independence in the regulatory system.¹

Broadcasting institutions shall prioritize the production and airing of locally-produced programs.

- (a) Radio broadcast institutions which reaches the entire country shall allot at least 70 percent of its programs to local programs.
- (b) Commercial TV institutions with national coverage shall allot at least 30 percent of its programs to locally-produced programs.
- (c) Commercial TV institutions with national coverage shall also carry at least 20 percent of programs from the local independent producers, of which 10 percent shall be broadcast at prime time.²

Section 68 allows the Council to review and adjust these rules, either generally or for any particular broadcaster, so that may provide a means to address this concern. The Council should consider increasing the percentage of local programming that national television channels are required to carry.

MRTV operates under the Ministry of Information. Myanmar Radio is operated by MRTV and places a strong focus on news. It allocates 45 per cent

¹ UNESCO, Assessment of Media Development in Myanmar, 2016, p.70

² Section 67 of the Television and Broadcasting Law, 2015.

of its airtime to news, which is broadcast 10 times per day. Myanmar Athan is divided into two stations; one covering the North of Myanmar and one covering the South. They both air news in the prominent ethnic languages of their respective geographic areas. The station covering the North of Myanmar broadcasts has nine ethnic languages for 15 hours per day, and the station covering the South of Myanmar broadcasts in eight ethnic languages for 13 hours per day. In 2013, MRTV launched the National Races TV Channel (NRC), which broadcasts a total of 17 hours of news per day in 11 ethnic languages.

To this end, MRTV has opened news bureaus in thirteen locations across the country to collect the news. The daily news schedule of NRC is provided below. While the establishment of the NRC is a novel initiative by the government to provide minority ethnic groups with information, regionally produced content is limited and mainly educational in focus. Therefore, MRTV is promoting wider public access to news, education and information, the media needs of a diverse society cannot adequately be met by any singular monolithic content producer, especially one under State control.

Importance of Code of Conduct

Focus on Broadcasting Law, formation of a broadcasting council and a broadcasting authority are important role for granting broadcasting licenses. These enactments can be seen as essential building blocks for effective self-regulation and adequately ensure quality, unbiased reporting.

It includes numerous mechanisms and systems to promote both external and internal diversity in broadcasting, it provides for fair and appropriate systems for both licensing broadcasters and promoting professionalism, and a number of public interest rules. Council shall be autonomous and independent from government authorities, juridical and natural persons involved in the planning, production, and broadcasting of radio and television programmes.¹

The Code of Conduct shall define content and production standards in the following areas:

- (a) balance and impartiality in news and current affairs programming and the duty to strive for accuracy in these programmes;

¹ Section 75 of the Television and Broadcasting Law, 2015.

- (b) protection of children;
- (c) classification of programmes, including films, according to the recommended age of viewers;
- (d) the terms, conduct and editing of interviews;
- (e) the use of covert recording and subterfuge;
- (f) keeping within accepted boundaries of taste, decency and ethical values, including in relation to the portrayal of sexual conduct, violence and antisocial behavior, the use of strong or abusive language, and the broadcasting of text message sent in by viewers or listeners;
- (g) the coverage of crime and anti-social behavior;
- (h) distinguishing between factual material and comment;
- (i) the treatment of religion, ethnic minorities, women and men, minors and disadvantaged groups;
- (j) human right issues;
- (k) respect for privacy;
- (l) the use of subliminal images or sounds; and
- (m) appropriate advertising, including truth.¹

In current situation, there have some issues in broadcasting organization relating to code of conduct, specifically the accuracy of news and classification of programmes. When the Council has been established, it has the duties with complaints from natural or juridical persons regarding the breach of the codes of conduct or from persons with a direct legal interest regarding the non-compliance by a broadcast institution with its license, provisions of the broadcasting law and any rules and regulations adopted by the Council.²

PSB and Justice of Human Right

Under the Broadcasting Law, penalties are administrative action of the Broadcasting Commission or Authority and legal actions before the Court.

The National Broadcasting Council shall impose administrative sanctions on any broadcast institution found violating license agreement, and

¹ Section 77 of the Television and Broadcasting Law, 2015.

² Section 15 (e) of the Television and Broadcasting Law, 2015.

other pertinent provisions of this law or rules or regulations adopted by the Council.¹

The type of administrative sanction or sanctions shall depend on the gravity and frequency of the offense or violation. Sanctions available at the disposal of the council include the following:-

- (a) Warning;
- (b) Temporary suspension for the broadcast program found violating the law;
- (c) Limiting the air time in broadcasting;
- (d) Imposing cash penalty;
- (e) Suspension of certain amount of time to the broadcasting institution;
- (f) None extension of the broadcast license;
- (g) Revocation of the broadcast license.²

The Council shall revoke or suspend the licenses if it is found out that the license holders violate the provisions of this law or deliberate use of wrong information in license application. The Council, shall revoke the licenses only under following conditions:-

- (i) normal transmission cannot be started after passing the test transmission period as provided for in section 32;
- (ii) suspension of the broadcasting service or going off-air for more than three months without notifying and seeking prior approval of the council;
- (iii) transferring the license to another institution or a person without prior approval of the Council;
- (iv) serious violations of the broadcasting law, Council's rules and regulations, programme standards or the code of conduct, including those related to allocated spectrum and the areas to be covered, and basic mechanical requirement for the broadcasting technology and broadcasting equipment.³

Section 91 provides for an appeal from certain decisions of the Council namely those relating to issuing licenses, to renewing licenses, to suspending or revoking licenses and to imposing administrative fines to the

¹ Section 87 of the Television and Broadcasting Law, 2015.

² Section 88 of the Television and Broadcasting Law, 2015.

³ Section 89 of the Television and Broadcasting Law, 2015.

President.¹This is simply not legitimate. Appeals against decisions of the Council should never be decided by a political actor but should, instead, go to the courts. Section 91 of the Law should be repealed and replaced by a rule allowing for appeals from decisions of the Council to go to the courts.

Anyone who operated a broadcasting service without license issued by the Authority shall be charged from minimum thirty million kyats to maximum fifty million kyats and confiscated properties.²

Anyone who continued its broadcasting service after termination of its license until such license is renewed by the Authority shall be charged from minimum five million kyats to maximum ten million kyats.³

Anyone who violates the prohibition as deliberate use of wrong information in license application shall be charged from minimum ten million kyats to maximum thirty million kyats and confiscated properties.⁴

Anyone who continued its broadcasting service upon revocation and suspension of its license shall be charged from minimum thirty million kyats to maximum fifty million kyats and confiscated properties.⁵

The Ministry of Information declare that if the content of program are contains the unfair and abuse treatment of religion ,ethnic minorities ,women ,minor and disable person and the use of abusive language ,any person may inform to the Ministry of Information.

Before the Broadcasting Law can be enforced, the Ministry of Information is resolved the complaints. It is settled by amicable means out of court. In other words, it is imposed administrative action by the relevant minister. Nowadays, the Broadcasting Law is promulgated by 2015 and should settle by the provisions of the Broadcasting Law for future cases before court.

Conclusion

The Broadcasting Law will bring about a significant improvement in terms of both independence and transparency of broadcasting regulation. The Broadcasting Law includes some positive aspects, such as recognition of the basic principles of freedom of expression and media pluralism, and of the

¹ Section 91 of the Television and Broadcasting Law, 2015.

² Section 96 of the Television and Broadcasting Law, 2015.

³ Section 97 of the Television and Broadcasting Law, 2015.

⁴ Section 98 of the Television and Broadcasting Law , 2015.

⁵ Section 99 of the Television and Broadcasting Law , 2015.

fundamental principles of fairness, transparency and processes needed to develop further media policy. The law also offers a basis for the development of independence regulation, and includes a balanced allocation between public service media, commercial broadcasters and community broadcasters.

However, the law has several substantial areas of concern that will significantly undermine the freedom and independence of the media. And then, all domestic TV and radio broadcasters are either fully state-owned enterprises or joint-ventures between the state and private companies so it is not independent from the government. It is impact the national development. In order to be more effective the role of PSB in national development, it must be freedom of expression, right to information and editorial independence.

Although Myanmar is not a signatory to the ICCPR, it needs to consider the customary international law. These provisions are fundamental to human development and serve as an international standard to assess the validity of domestic laws and governments are held accountable to these provisions of ICCPR.

In order to better of human right in PSB, 2008 Constitution should be amended to strengthen guarantees of freedom of expression and the right to information. State-owned broadcasters should be turned into public service or private broadcasters, and all references to state-owned media should be removed from the Broadcasting Law. The public service remit for public service broadcasters should be defined in and protected by law.

The National Broadcasting Authority should develop the Broadcast Spectrum Management Plan in consultation with broadcasters and civil society and develop a dissemination plan and public awareness. The government and media development organizations should provide adequate funding and technical assistance to the newly created MNMC in order to perform its functions as a media self-regulatory body. The drafting of both a new public service media bill and an MRTV charter must be an inclusive process with representatives from the broadcast industry and civil society. Similarly, the new law and charter should contain provisions for an open, transparent and free process for the appointments of the public service broadcasters' governing body.

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References

Laws and Conventions

The Constitution of the Republic of the Union of Myanmar, 2008.

The Media Law of Myanmar, 2014

The Public Service Media Bill, 2013.

The State-Owned Economic Enterprises Law, 1989.

The Television and Broadcasting Law, 2015.

The Universal Declaration of Human Rights, 1948.

Books and Articles

MDIF, Media Development's Role in Social, Economic, and Political Progress,
(www.mdif.org/ mdif@mdif.org)

Toby Mendel, Public Service Broadcasting, A Comparative Legal Survey, 2nd edition, 2011

UNESCO, Assessment of Media Development in Myanmar, 2016

UNESCO, Public Service Broadcasting: A Best Practice Sourcebook, 1st edition, 2005

LEGAL PROTECTION AGAINST DOMESTIC VIOLENCE IN MYANMAR

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Abstract

This research paper attempted to explore the prevalence of domestic violence in Myanmar. Domestic violence means all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim. Most of the victims are facing challenges such as forms of threat, verbal abuse, assault, rape and murder. It is observed how victims are assaulted in practice by their spouse or partner, while children are cruelly treated by their partners. In Myanmar, the relating to the victims of domestic violence protect under the related laws. As a result, this research evaluates that it is not comprehensive legal provisions in Myanmar to protect the victims who are suffering the mental violence. Accordingly, there is no adequate protection in Criminal Law concerning with domestic violence, Myanmar should enact the specific law to take measure to eliminate domestic violence and to ensure victims equal protection of law by putting clear definition of domestic violence into the law.

Keywords: Legal Protection, Penal Code, Domestic Violence

Introduction

Domestic violence is one of the forms of violence against the victims. Most of the women and children suffered the forms of threat, battering, rape, sexual assault, physical and mental violence. Domestic violence is a human rights violation that undermines the health, livelihoods and opportunities of women in Myanmar. Domestic Violence remains a key factor that undermines the ability of women to participate as full and equal citizens in society. This research paper analyses the legal protection against domestic violence in Myanmar. Firstly, it presents about the definitions and types of domestic violence. Secondly, it also mentions the prevalence of domestic violence in Myanmar. And then, it also prescribes the legal action against domestic violence under existing laws. Thirdly, it focus the enforcement measures and its procedures for domestic violence. Lastly, it also discusses the role of

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institutions and rehabilitation measures which assists the victims to protect from violence. For effective legal protection against domestic violence, the victims may prosecute an offender to get their remedy under criminal law and civil law.

Materials and Methods

This research is mainly focused on:

- Studying on related laws concerning to domestic violence
- Analyzing the cases
- Citing the other materials published by authors

Research Objectives

The primary purposes of doing this research is:

- To clearly know the legal awareness of the domestic violence to the society
- To protect the victims who are facing the domestic violence
- To enhance the victims how to get their remedies both criminal action and civil action
- To deter the domestic violence which can cause the mental violence

Definitions and Types of Domestic Violence

The definitions of domestic violence are prescribed in ASEAN countries except Myanmar. Moreover, the definition of the domestic violence was defined by other countries and by the Conventions.

“Domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.¹

¹ Article 3 (b) of the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011

A domestic unit consists of the members of a family who live together along with nonrelatives such as servants. The living spaces and possessions belong to such a unit.¹

“Domestic violence” means the commission of one or more of the following acts:

- (a) wilfully or knowingly placing, or attempting to place, the victim in fear of physical injury;
- (b) causing physical injury to the victim by such act which is known or ought to have been known would result in physical injury;
- (c) compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;
- (d) confining or detaining the victim against the victim’s will;
- (e) causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim;
- (f) causing psychological abuse which includes emotional injury to the victim;
- (g) causing the victim to suffer delusions by using any intoxicating substance or any other substance without the victim’s consent or if the consent is given, the consent was unlawfully obtained; or
- (h) in the case where the victim is a child, causing the victim to suffer delusions by using any intoxicating substance or any other substance, by a person, whether by himself or through a third party, against-
 - (i) his or her spouse;
 - (ii) his or her former spouse;
 - (iii) a child;
 - (iv) an incapacitated adult; or
 - (v) any other member of the family;²

Domestic violence is referred to as violence that happens and could happen towards:

¹ <https://www.thefreedictionary.com/household>

² Section 2 of Domestic Violence Act, Malaysia, 1994

- husband or wife;
- dependent children; and/or
- persons living under the roof of the house and who are dependant of the households.¹

"**Physical violence**" means parties shall take the necessary legislative or other measures to ensure that the intentional conduct of committing acts of physical violence against another person is criminalised.²

"**Sexual abuse**" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman.³

"**Sexual violence**" means parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a. engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
- b. engaging in other non-consensual acts of a sexual nature with a person;
- c. causing another person to engage in non-consensual acts of a sexual nature with a third person.⁴

"**Psychological violence**" means parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised.⁵

"**Economic or Financial abuse**" with holding economic resources such as money or credit cards

¹ Article 2 of the Law on the Prevention of Domestic Violence and The Protection of Victims, Cambodia, 2005

² Article 35 of Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011

³ Section 3 (d) of the Protection of Women Form Domestic Violence Act, India, 2005

⁴ Article 36 (1) of Council of Europe Convention on preventing and combating violence against women sand domestic violence, .2011

⁵ Article 33 of Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011

- stealing from or defrauding a partner of money or assets
- exploiting the intimate partner's resources for personal gain
- withholding physical resources such as food, clothes, necessary medications, or shelter from a partner
- preventing the spouse or intimate partner from working or choosing an occupation.¹

In studying the types of domestic violence, the following four types can be found. These are physical violence, mental violence, sexual violence and economic violence. However, the types of domestic violence are not mentioned in Myanmar. Therefore, the types of domestic violence were provided by other countries.

Criminal Liability for Domestic Violence in Myanmar

In Myanmar, criminal law, the aggrieved party or on behalf of the aggrieved party can prosecute the offender. Concern with the domestic violence cases there are two legal actions against domestic violence in Myanmar. Domestic Violence is a crime to prosecute not only the criminal action but also the civil action.

Domestic violence also destroyed stability of family unit and it has negative impact on children. Children suffered from depression and shame of the social stigma of family problems. As the result, some dropped out of schools and run away from the family. It perpetuates a culture of violence in the mindset of those children who are exposed to domestic violence in their daily life.²

Domestic violence is prevalent forms of violence in Myanmar. Addressing domestic violence is complicated by many factors, among them victims' legal and emotional ties to, and often their economic dependence on, those who are abusing them. However, the greatest impediment to ending domestic violence is the cultural acceptance of it as a family matter. Domestic violence laws are a critical step in moving violence against women from the private to the public sphere. They affirm unequivocally that domestic violence

¹ www.helpguide.org

² www.helpguide.org

is unacceptable and should be punished. Ideally, a law on domestic violence should prohibit physical, sexual, emotional and economic violence, and extend protection to those in intimate relationships, irrespective of their marital status and living arrangements.¹

There is no legislation that specifically addresses the issue of domestic violence, which means that violence in the context of intimate relationships must be dealt with under the laws that address intentional infliction of injury and assault. While Sections 100 to 102 of the Penal Code provide the rights to self-defence, arising as soon as there is a reasonable apprehension of danger to the body, there does not appear to be case law dealing with women's self-defence in the context of domestic violence as exists in some other common law countries. Also, there are no mechanisms for restraining orders that would enable a woman to prevent a violent spouse, relative or boyfriend from having contact with her.²

According to Section 9 (a) of the Child Law, 1993 states that every child has the inherent right to life.

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 guardian.

The child shall be entitled to a monthly allowance for maintenance from his parents who fail or refuse to maintain him.³

According to Section 18 (a) of the Child Law, 1993 provides that mentally or physically disabled child -

- (i) has 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.
- (ii) has the right to obtain special care and assistance from the State;

¹ The case for Anti-Violence against Women Laws, Gender Equality Network , 2013, P-10

² Section 3 of the Child Law, Myanmar, 1993

³ Section 11 of the Child Law, Myanmar, 1993

According to Section 15 of Monogamy Law, 2015 states in a divorce according to Section 14, the person who commits a matrimonial crime shall forfeit all his property rights.

If a husband who is married according to a law or a religion or a custom, enters into another marriage with another woman while the original union is still legally recognized, such marriage is not legal and thus the second wife shall not be entitled to inheritance when that husband dies. The husband who marries and lives together with another spouse shall also not be entitled to inheritance if that second wife dies.¹

Whoever if the married husband or wife according to a law or a religion or a custom that having enter into another marriage with another husband or woman while the original union is still legally recognized shall be punished with imprisonment for a term not exceeding 10 years and shall all be liable to fine.²

Concerning the domestic violence in Myanmar, Penal Code mainly protects the domestic violence cases under Sections 312, 313, 322, 340 and 375 respectively.

In relevant with the domestic violence, it can be found that the following case;

In case of Daw Aye Myint Yi Vs U Naing Aung (a) Ar Chan and Ma Saung Hnin Thit Oo, this case happened in Amarapura Township, Mandalay. The offenders open a tailor shop named Hein Arkar and employed Ma Aye Kyin as housemaid with salary, 55,000 kyats per month. A person who is living in the same ward with the offenders complained that Ma Aye Kyin is abused by her employers to the head of the ward. That's why Ma Aye Kyin was brought to the office of the head of the ward on 28th February, 2017 and kept her at U Myint's house, head the ward When they asked Ma Aye Kyin, she told that U Naing Aung hit her with rice cooker power cord, punched her and slapped her face and also stick needles in her skin. She also showed her bruises and wounds. U Hla Toe Naing, head of the ward complained it to the Amarapura Police Station as plaintiff and the offenders are charged with Sections 326/325 of the Penal Code.

¹ Section 16 , Monogamy Law, 2015

² Section 17, Monogamy Law, 2015

In the case of *Deputy Superintendent of Police Myo Thein Vs Tin Thu Zar and 5 others*¹ and *Deputy Superintendent of Police Toe Myo Vs Tin Thu Zar and 5 others*², this case happened in the Kyautdadar Township, Yangon. In this case, on 22th June, 2016, a reporter complained to the Myanmar National Human Rights Commission that the offenders who are the owner of the Ava tailor shop and her family members abused the minor housemaids: Ma San Kay Khaing, 17 and Ma Thazin, 16. On 20th September, 2016, Anti-Trafficking Unit 6, Yangon complained to the Kyautdadar Police Station as plaintiff and the police charged them with section 24/32 of the Anti-Trafficking in Persons Law. Moreover, the Social Welfare Department charged them with Section 66(d) of the Child Law on 21st September, 2016. The decision of the court is among the six family members, Daw Tin Thuzar and Daw Su Mon Lat were sentenced rigorous imprisonment for a term of 16 years and one month, U Yazar Htun was sentenced rigorous imprisonment for a term of 13 years and one month and U Tin Min Lat was sentenced rigorous imprisonment for a term of 9 years and 1 month.

By analyzing the cases, it can be seen that most of the victims seriously suffered the violence in society. It affects the health problem not only the physical harm but also mental harm to survivors. And, the survivors face the difficulties such as long-term health problem, lack of job opportunity, trauma and depression in long life. For legal protection against domestic violence, there is no specific provision relating to domestic violence, the offenders can be charged under the related laws.

Civil Claims for Domestic Violence in Myanmar

The advantage of pursuing civil remedies is also that a lesser level of burden of proof under is required. A civil order requires proof based on a balance of probabilities (i.e. which is the more likely or probable event), whereas convictions under criminal law require a higher standard of proof beyond reasonable doubt. However, treating all forms of violence against women as criminal offences may result in depriving women of the option of

¹ Criminal Case No. 110/ 16, Inn Sein District Court, Yangon

² Criminal Case No. 2/17, 3/17, 4/17, Inn Sein District Court, Yangon

obtaining civil orders only. (Criminal offence necessitates the initiation of criminal proceedings and mandatory reporting)¹

In most countries victim/complainants' rights are protected by taking a dual approach.- first to recognize victim's rights to services, which are broadly defined to include rights to legal assistance, counselling, assistance with gaining repossession, assistance in finding shelter, etc. Second, is to put in place mechanisms that facilitate victim's access to justice and support services.²

In Myanmar, in relevant with the civil claims for domestic violence;

According to Section 7 of the Civil Procedure Code, every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

The plaint in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.³

According to Section 27 of the Myanmar Buddhist Women's Special Marriage Law, 2015 states that notwithstanding any provision contained in law and custom, if a non-Buddhist man, who has contracted a marriage under this law, violates any provision under section 24, the Buddhist woman can divorce the non-Buddhist man. If the woman would divorce the man due to that reason –

- (a) the man shall waive the portion that he is entitled to from the property owned by both, and pay compensation to the Buddhist woman;

¹ Developing Anti-violence against Women Laws, Gender Equality Network, 2013, P- 4-5

² Developing Anti-violence against Women Laws, Gender Equality Network, 2013, P- 24

³ Section 3 of the Civil Procedure Code, 1908

- (b) the guardianship of all children shall be with the Buddhist woman;
- (c) the man shall pay maintenance for children who are minors.

According to Section 30 of the Myanmar Buddhist Women's Special Marriage Law, 2015 mentions that however, due to any religion, custom or any law that has effect on such religion or custom, and that does not allow the marriage between a non-Buddhist man and a Buddhist woman, the man can divorce the woman if he wishes. Due to such a reason, if the man divorces the woman, or forsakes, or behaves cruelly and causes mental harm, whether or not it amounts physical violence, notwithstanding the provision of the said custom or law –

- (a) the man shall waive the portion entitled to him from property owned by both parties, and pay to the Buddhist woman;
- (b) the guardianship of all children shall be with the Buddhist woman;
- (c) the man shall pay maintenance for children who are minors.

Traditionally, the Dhammathats provided that in cases of disagreement a husband could chastise his wife with a light cane or split bamboo. Case law suggests that a wife may submit to ill-treatment and condone it, but if she comes to Court, she is entitled to protection.¹

The Dhammathats, or treatises of "rules which are in accordance with custom and usage and which are referred to in the settlement of disputes relating to person and property," are a principle source of Myanmar Customary Law. They are not codes of law in the strict sense, and there is wide variance among them in content and quality. They reflect the social customs of the day, and judges to rule by and for the people to live by. They record decisions, real or imaginary, to establish rules of persuasive force.²

Under Myanmar Customary Law, there are mainly three kinds of divorce. They are divorce by mutual consent; divorce by husband's entry into the priesthood; and divorce on account of matrimonial fault. Regarding with matrimonial fault to claim for divorce, there are two kinds of matrimonial fault: matrimonial faults and grievous or serious matrimonial faults. Under

¹ The case for Anti-Violence against Women Laws, Gender Equality Network , 2013, P-10

² Dr Maung Maung, Law and Custom in Burma and the Burmese Family , 1963, P- 7

ordinary matrimonial fault there are misrepresentations, adultery on the part of the husband, desertion, and ordinary cruelty. Adultery on the part of the wife and grievous cruelty are factors of serious or grievous matrimonial faults.¹

In the case of *Maung Kywe Vs Ma Thein Tin*², it was held that there is a distinction between mere ill-treatment or personal violence and cruelty. In order to constitute cruelty ill-treatment in the shape of physical violence or infliction of mental pain must be done with indifference or delight in pain caused to the sufferer.

In the case of *Daw Pu Vs Maung Tun Kha*³, while a single act of cruelty will attract the rule of partition as of divorce by mutual consent, it has been ruled that where cruelty is aggravated by the guilty party who, instead of being repentant, is desirous of divorce or by it being committed with intent to force the other party to seek divorce or by frequent repetition of acts or cruelty or amounts to grievous hurt within the meaning of section (320) of the Penal Code, the guilty party forfeits his or her interest in the joint property of the couple.

In the case of *Daw Mee Mee Tun Vs U Mg Mg Lwin*,⁴ the Supreme Court had decided that: In this case U Mg Mg Lwin frequently committed sexual intercourse with other women. Moreover, he married with a second wife during the period of the first legally marriage. It was held that it is contrary to Myanmar custom and social life and constitutes the grievous cruelty to Daw Mee Mee Tun. Therefore, the wife has the right to divorce and the husband d who commits a grievous matrimonial fault shall waive all his property rights.

In the case of *U Jack Sue (a) U Than Shwe Vs Daw Aye Aye Maw (a) Daw Maw*⁵ it was held that Cruelty includes not only making to hurt physically but also mentally. It can be varied in form and done in various ways. U Jack Sue did cruelty physically in front of the son and also he did many acts in several times to cause mental cruelty to his wife. Thus, Daw Aye Aye Maw is entitled to get divorce. The original court considered

¹ Mya Sein, Myanmar Customary Law", 2004, PP 129-130

² I.L.R, 7 Ran, 790

³ 1946, Ran, 126

⁴ MLR 2012, P-48

⁵ MLR, 2013 P-54

the above mentioned facts in passing final decree in divorce is in accord with law.

In case of domestic violence, the abused women may complaint about the violence to get their damages under Customary Law and Civil Procedure Code. But, it can be seen that the protection orders for domestic violence do not enact for specific provisions in these laws.

Enforcement Measures

Concerning with the criminal cases to protect the domestic violence in Myanmar, the procedures are as follows:

Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the President of the Union prescribe in this behalf.¹

In order to investigate into cognizable cases, any officer in charge of a police –station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of chapter XV relating to the place of inquiry or trial.²

Regarding the Cognizance of offences by Magistrates, except as hereinafter provided, any District Magistrate or Sub divisional Magistrate, and any other Magistrate specially empowered in this behalf may take cognizance of any offence –

- (a) upon receiving a complaint of facts which constitute such offence,
- (b) upon a report in writing of such facts made by any police-officer
- (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.³

¹ Section 154 of Criminal Procedure Code, Myanmar, 1898

² Section 156 (1) of Criminal Procedure Code, Myanmar, 1898

³ Section 190, of Criminal Procedure Code, Myanmar, 1898

According to Section 200(A) of Criminal Procedure Code, 1898, a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate.

The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.¹

Under Section 494 of Criminal Procedure Code, 1898, any public prosecutor may without the consent of the court in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdraw,

- (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;
- (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.

With regard to the civil suits to get the remedy for domestic violence in Myanmar, It can be applied the procedures as mentioned below;

If a woman wants to claim divorce under Myanmar Customary Law, she will apply to the court according to Civil Procedure Code. According to the provisions laid down in the Civil Procedure Code, 1908 and the Evidence Act, 1872, all Civil Court have to proceed the civil case relating to domestic violence. And then, All civil judges are vested the powers to examine the case in these laws. In adjudication of the civil cases and criminal cases, the procedures are the same such as examination of witness, examination of plaintiff and accused, admission of evidence.

¹ Section 493, of Criminal Procedure Code, Myanmar, 1898

According to Order IV Rule 1(a) of the Civil Procedure Code, 1908 every civil suit shall be instituted by presenting a plaint to the court or such officer as it appoints in behalf.

Under Order IV Rule 1(b) of the Civil Procedure Code, 1908 every plaint shall comply with the rules contained in orders VI and VII, so far as they are applicable.

The defendant may, and if so required by the Court shall at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.¹

At the first hearing of the suit the Court shall, after reading the plaint and written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.²

In case of domestic violence, the victims have to access to complaint for their experience of violence. Enforcement measures should be more effective and applicable to protect the domestic violence in Myanmar. Domestic violence concerns not only the private issue but also the public issue. So, in order to prevent the domestic violence, enforcement measures like as prosecutor, judges and police officer should take action effectively in prosecuting process in accord with law.

The Role of Institutions and Rehabilitation Measures

In Myanmar, the role of institutions and rehabilitation measures protect the rights and enhance the advancement of the victims. Institutions include government organizations and non-governmental organizations.

The Myanmar National Human Rights Commission came into existence by the government notification No.34/ 2011 of 5 September 2011. Based Principles and composed of 15 members, it embraces the principles of plurality and ethic and gender balance in its composition.

¹ Order VIII Rule 1 of the Civil Procedure Code, 1908

² Order XIV Rule 5, of the Civil Procedure Code, 1908

The MNHRC stated that ‘any citizen may send complaint to the Commission’ when his or her fundamental rights in the Constitution of the Republic of the Union of Myanmar are violated. It stated that the citizens had to mention the necessary facts so that the commission could deal with the complaint effectively. Matters should not have been brought before, or be under, or have been finally decided by a court. The Commission would investigate the cases and contact the concerned person, company or government department. The Commission would tell them to change if they need to change and if they didn’t listen, the Commission would send a letter to the president advising him to take action’¹

In conducting an inquiry, the commission shall abide by the principles of natural justice. In addition, the commission may invoke the relevant provisions of the Code of Civil Procedure, the Code of Criminal Procedure and the Evidence Act as appropriate.²

If the Commission finds out the credible evidence, inquiry of a complaint, of the violations of the rights of an individual or individuals, the report submitted under sections 38 and 39 shall mention the recommendations on the following:

- (a) a determination that a violation of human rights has occurred and a recommendation that such human rights violation and similar violations should not be repeated or continued;
- (b) appropriate measures by a person or any agency to redress the violation of human rights;
- (c) obtaining due compensation for the victim of violation of human rights for any loss or damage suffered;
- (d) recommending for action to any department, organization, service, person or the relevant authority and to require the to inform the Commission within reasonable period of the steps that have been taken to give effect to that recommendation.³

¹ Affecting Women and Children in ASEAN: Myanmar, 2013, 614

² Section 29 of Myanmar National Human Rights Commission Law, 2014

³ Section 40 of Myanmar National Human Rights Commission Law, 2014

It can be concluded that Myanmar National Human Rights Commission protects the violation of the human rights. The powers and duties of the Human Rights Commission are visiting the scene of human rights violations, inquiries, received the complaint. Moreover, it promotes the awareness training of human rights and combating all forms of discrimination in Myanmar.

The Myanmar Women's Affairs Federation (MWAFF) was formed in 2003 in order to implement the policy of the MNCWA at the grass-roots level. Myanmar National Committee for Women's Affairs (MNCWA); Myanmar National Working Committee for Women's Affairs (MNWCWA) and Myanmar Women's Affairs Federation (MWAFF) have been established as the National Mechanism to implement the 12 tasks set down by the Fourth World Conference for the advancement of women. The president and the general secretary of MWAFF are members of MNCWA. MWAFF is partly funded by the Government and also gets funds from some small-scale business, fund-raising ceremonies and activities from well-wishers and volunteers. Human resources of MWAFF are mainly voluntary members from the various Ministries.

Complaint about gender-based discrimination can be lodged with the MWAFF. Groups at the Central, State, Division and District levels screen the letters of complaint and forward them to the department concerned for necessary action. According to the follow up report of Myanmar to the Committee's concluding observations, the concerned authorities receive the complaints and investigate the cases and take action against offenders according to the law.¹

In order to enhance the awareness raising , the government need to implement the violence against women including domestic violence effectively.

- to implement awareness raising activities on CEDAW which describe all forms of discrimination against women as a violation of human rights.

¹ Affecting Women and Children in ASEAN: Myanmar, 2013, P- 614

- to provide special training to judicial officers to ensure the upholding of dignity and human rights of women and girls affected by violence when taking legal action.
- to build the capacity of the Myanmar Police Force, judicial officers, health care staff and volunteers to actively respond to, and prevent all forms of violence against women and girls.
- to raise awareness of the general public through the media to eliminate all forms of violence against women and girls.
- to implement community –based initiatives in preventing and responding to all forms of violence against women and girls.
- to increase men's participation in preventing and responding to all forms of violence against women and girls.
- to take legal action against perpetrators as well as to provide them with counseling and other awareness raising.¹

Moreover, Myanmar Women Affairs Federation is combating the violence by legal protection with Myanmar Police Force, Courts and hiring lawyer. It can be seen that Myanmar Women Affairs Federation supports the survivors of domestic violence. It provides awareness training, counseling centre, legal protection and reception of complaint and scrutinizing the cases to protect the violence against women and girl including domestic violence.

On 25th November 1953, the name of the Division of Social Development was changed to the Division of Social Welfare. In 1972, Department of Social Welfare (DSW) was established. DSW has laid down the policies, objectives and programs based on social justice and integration strategies to provide welfare services to the community.²

The Department of Social Welfare (DSW) is providing essential social care and protection to children who are in need of special protection, such as orphans, street children, abused children, working children, and handicapped children. The staffs of the institutions and those who are involved in taking care of children have been given awareness-training courses on prohibition of all kinds of child abuse.

¹ National Strategic Plan for the Advancement of Women, MNCWA, P-13-14

² <https://www.dsw.gov.mm/en/about-dsw>

As the focal department, the major responsibilities of DSW are being taken measures on prevention, protection and rehabilitation programs for children and their families, youth, women, person with disabilities, elderly, ex-drug addicts and people who are facing with social problems. Moreover, organizing the contribution of the voluntary organizations and supporting them play the main roles in the implementation of DSW.¹

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.²

According to Section 26 of the Child Law, 1993 states that every child may enjoy fully the rights mentioned in this Law -

- (a) the Government departments and organizations shall perform their respective functions as far as possible;
- (b) voluntary social workers or non-governmental organizations also may carry out measures as far as possible, in accordance with law.

The Social Welfare Officer has the following powers in respect of the investigation under sub-section (b) –

- (i) informing the parents, guardian or police officer and causing the child to be brought before him;
- (ii) entrusting the child to the parents or guardian on execution of a bond or sending the child to a temporary care station, before receiving the decision of the Director General.
- (iii) calling and examining necessary witnesses
- (iv) hearing the explanation of the parents, guardian or the child, if necessary.³

Concerning the domestic violence, Department of Social Welfare contributes to combat the domestic violence especially children. It also assists the livelihood of children such as job opportunity, health-care services,

¹ <https://www.dsw.gov.mm/en/about-dsw>

² Section 18 (b) of the Child Law, Myanmar, 1993

³ Section 33 of the Child Law, Myanmar, 1993

education, reconciliation with their family and awareness training by collaborating with other organizations. Department of Social Welfare also prosecutes the violence in respective courts on behalf of the victims.

Findings

Regarding the domestic violence in Myanmar, the victims should be more aware of the laws and how to protect their rights from violence. The nature of domestic violence consists of culture norm as a violation. Most of the victims who are facing domestic violence need to access legal protection such as criminal liability and civil claim. As a result, this research evaluates that it is not comprehensive legal provisions in Myanmar to protect the victims who are suffering the mental violence. So, in Myanmar, in order to ensure effective implementation a specific law should be enacted to prescribe the definition of domestic violence, to protect the victims who are living under the same roof of the house, to prescribe the protection orders for domestic violence in implementation the law and to set up the institution which prosecute the offenders in implementation the law.

Conclusion

Domestic violence can cause problems of physical, mental, sexual nature and has economic effects on the survivors. It occurs not only to rural women but also urban women in society. The victims of domestic violence may be a man or a woman or a child. Domestic violence actually occurs between the persons living under the roof of the house. So, it may affect the victim's dignity, economic and health problems. The results of domestic violence or abuse can be depression, low self-esteem, lack of trust in others, unable to work hard and sleeping problems. The victims who are facing domestic violence need to access legal protection. For legal protection against domestic violence in Myanmar, although there is no specific provision relating to domestic violence, the offender can be prosecuted under the related laws. In Myanmar, Penal Code is not prescribed the specific definition of domestic violence to prevent the violation. It protects the physical violence only but it is not adequate legal provision for mental violence. Therefore, according to the current situation in Myanmar, the specific law should be enacted to combat domestic violence and to ensure the rights of the human being.

References

Laws

Child Law, Myanmar, 1993

Civil Procedure Code, Myanmar, 1908

Criminal Procedure Code, Myanmar, 1898

Domestic Violence Act, Malaysia, 1994

Law on the Prevention of Domestic Violence and the Protection of Victims, Cambodia, 2005

Monogamy Law, 2015

Myanmar Buddhist Women's Special Marriage Law, 2015

Myanmar National Human Rights Commission Law, 2014

Penal Code, Myanmar, 1861

Protection of Women Form Domestic Violence Act, India, 2005

Books

The case for Anti-Violence against Women Laws, Gender Equality Network, 2013

Dr Maung Maung, Law and Custom in Burma and the Burmese Family, 1963

Mya Sein, Myanmar Customary Law, 2004

Affecting Women and Children in ASEAN: Myanmar, 2013

National Strategic Plan for the Advancement of Women, MNCWA

Convention

The Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011

Website

<https://www.dsw.gov.mm/en/about-dsw>

<https://www.thefreedictionary.com/household>

www.helpguide.org

Journal

New Light of Myanmar Newspaper, 2nd october, 2016

Cases

1946, Ran, 126

Criminal Case No. 110/ 16, Inn Sein District Court, Yangon

Criminal Case No. 189/ 2017, Amarapura Township Court

Criminal Case No. 2/17, 3/17, 4/17, Inn Sein District Court, Yangon

I.L.R, 7 Ran, 790

MLR 2012

MLR, 2013

PRACTICAL ISSUES OF CONDOMINIUM MARKET IN MYANMAR

Me Me Linn*

Abstract

Condominium market is popularly advanced by the growth of population and development of the urban areas in Myanmar. Although the Condominium Law was enacted in 2016, the condominium market has been started since about 20 years ago by the related laws; the Contract Act, 1872, the Transfer of Property Act, 1882, the Urban Rent Control Act, 1960 and the Transfer of Immovable Property (Restriction) Law, 1987. The condominium market is increasingly launched high number of sales by residential demand. However, most of the developers still have the insufficiency of management such as the condominium executive committee, maintenance plan and the building insurance policy. Then, the buyers or unit owners face the issues on difference between leasehold land and freehold land of condominium, lack of preparedness plan of natural disasters, rights to immoveable property and common property, and long-term mortgage rights. These problems have arisen due to the incomplete and inappropriate elements of the Myanmar Condominium Law. This paper aims to study the principles of Condominium Law, analyze the problems of the Myanmar Condominium Law. The paper highlights the performance of the condominium executive committee, enforcement to keep the building insured and appliance of the dispute resolution for condominium-living.

Keywords: Condominium management, common property, building insurance

Introduction

Condominium is a multilevel building in an area that is divided into sections which are structured functionally for housing complemented with common equipment, common facility and common land. As there are the crowded populations and rare the land spaces in the big cities of Myanmar, the local residents have been getting interested to stay in the common buildings since 2000s. Accordingly, the constructors had paid attention to build the high-storeyed buildings on their owned land or agreeable land with land owners. And then, the high-storeyed buildings or condominium buildings have emerged on the land owned by the City of Yangon Development

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Committee or Department of Urban and Housing Development by making the contracts with the mutual interests on contractual terms. In 2013, Myanmar Parliament drafted the Condominium Law (Bill) and issued the Condominium Law in 2016 in order to support urban and regional development; to create community housing in order to provide adequate of housing for an increasing population in the urban areas; and to establish a legal framework in which condominium apartments. In addition, there are the relevant laws such as the Contract Act 1872, the Transfer of Property Act, 1882, the Urban Rent Control Act, 1960 and the Transfer of Immovable Property (Restrictions) Law, 1987. This paper analytically approaches the present condominium market and its issues.

Aims and Objectives

- To identify the rights of the Condominium Unit Owners under the Condominium Law;
- To solve the problems of ownership, common property rights and inadequacy of housing for an increasing population; and
- To support the systematic development of the housing sector, the development of the living standard of citizens, and economic development;

Research Methodology

This paper analyzes the legal framework of the condominium market to address the issues of the ownership and transfer of ownership on the real estate of condominium property. It observes how to balance the protection of individual rights of the unit owner on the unit and the collective rights on the common property of the condominium. The paper uses the literature reviews and analytical study on the practical procedures for ownership of condominium and related issues.

Research Findings

By the growth of population and development of the urban areas in a country, people are interested to stay in the safe and complemented building like condominium. All condominium projects have Planning Permit, Building

Completion Certificate, Ownership Books, By-laws and the Sale Contracts. In order that the buyer of condominium unit entitles to the validity of ownership, they can rely on the main law, the Condominium Law 2016, as well as the relevant laws. This paper argues the concept of condominium and especially details the major issues occurred in the condominium law and practice. The paper points out the legal measures for a solution to resolve the ownership problems of condominiums and the problems of the Myanmar Condominium Law.

Terminology on Condominium

The origin of the word condominium can be traced back to its Latin meaning of dominion with others or shared dominion; in other words, joint rule over a territory. Condominium owners jointly own the common property of their developments including parks and parking spaces.¹ Condominium is derived from the Latin *con*, or with, and *dominium*, or control. Essentially, condominium means control of a piece of property with other individuals.² The concept of the condominium is a legal form for the ownership of real property. A typical condominium development is a multi-storeyed, multi-unit building; condominiums do exist in different forms.

The Condominium and related terms are defined in the Condominium Law that is enacted by the Notification No.24/2016 on January 29 of 2016. There are (11) Chapters and (39) Sections in the Law and the Ministry of Construction passed the much anticipated the Rules relating to the Condominium Law under notification No.267/2017 in December 7, 2017. The Law provides the definitions, objectives, formation of management committee and its duties and powers, functions and duties of the department, registration and establishment of a condominium, rights and obligations of the developers, and offences and penalties.

Condominium means a building constructed according to this law as collectively owned six and above levels building on collectively owned

¹ The Alberta New Home Warranty Program, the Way Home/ Your New Home Buying Condominium Guide, p-7.

² <http://www.fairlingtonvillages.com>

registered land. In this expression, common properties and units managed for the purpose of being used by collective owners are also included.¹

Condominium means a single real-estate unit in a multi-unit development in which a person has both separate ownership of a unit and a common interest, along with the development's other owners, in the common areas.²

A condominium, is the form of housing tenure and other real property where a specified part of a piece of real estate (usually of an apartment house) is individually owned, while use of and access to common facilities in the piece such as hallways, heating system, elevators, exterior areas is executed under legal rights associated with the individual ownership and controlled by the association of owners that jointly represent ownership of the whole piece.³

Common property means properties connected with condominium as follows-collectively owned land registered according to this law; the parts of the collectively owned building and installed equipment which are beneficial to all collective owners, except individually owned apartments constructed on the said collectively owned land; and buildings constructed or managed to be used for the benefit of the collective owners, educational and health buildings and properties, compounds, gardens, trees and flowers, water supply, waste disposal and sanitary facilities, energy distribution facilities, roads, bridges and drains, telecommunication facilities.⁴

Common land means the land and vacant area belonging to all co-owners where the condominium and the collectively owned property is situated.⁵

Unit owner means an ownership certificate holder who has legally owned an apartment or apartments by this Law. In this expression, an heir to this person or person in legal succession is also included.⁶

¹ Section 2 (a) of the Condominium Law, 2016.

² Bryan A. Garner, *Black's Law Dictionary*, Seventh Edition, 2000, p-238.

³ Myanmar National Building Code, Part 2, Architecture and Urban Design, Myanmar Engineering Society, 2012, P-38.

⁴ Section 2 (b) of the Condominium Law, 2016.

⁵ Section 2 (c), of the Condominium Law, 2016.

⁶ Section 2 (f), of the Condominium Law, 2016.

Unit Owner describes the legal person that holds title to a unit. This may be a single person, a married couple, a corporation, trust, or other form of legal entity.¹

Developer means a department, organization or person which/who has obtained a business license according to this law allowing it/him to invest money in order to establish a condominium business.²

Co-developer means any person or organization who is appointed by the related Executive Committee by Section 24 (a) of the Law in order to cooperate in the time of constructing the condominium. This term includes the foreigner or foreign company.³

Executive committee means the executive committee of a condominium elected and organized under this law for the management and maintenance of the condominium.⁴

In studying the terminology on condominium, its concept is a legal form for the ownership of real property. A typical condominium development is a multi-storeyed, multi-unit building; condominiums do exist in different forms. However, with the growth of urbanization and population, the constructors or construction companies used to buy and sell the high-storeyed building like the condominium.

Historical Development of Condominium Market in Myanmar

In tracing the market of storeyed buildings before 1960s, storeyed buildings such as one-storeyed, two-storeyed, three-storeyed and four-storeyed buildings were mainly used the I-Section or H-Section beams. Since the post-1960s, the iron bucket type concrete has been in wide use. In the 1980s, especially in Yangon, the population had risen, so the construction of buildings had become a thriving form of commercial business. In downtown areas and the suburban areas of Yangon, one storeyed or two-storeyed

¹ Ken Harer, Heather McCormick and Kevin Britt, *Condominium Common Sense, A Handbook for Washington State Condominiums*, Condominium Law Group, PLLC, 2007, p-127.

² Section 2 (e) of the Condominium Law, 2016.

³ Rule 2(d) of the Rules relating to the Condominium Law, 2017.

⁴ Section 2 (k) of the Condominium Law, 2016.

building was demolished, and was replaced with four apartment buildings i.e., two apartments on the top and two below. This kind of apartment with two floors and an attic is known as Hong Kong Style Apartment.¹

In the 1990s, the City of Yangon Development Committee directed the contractors that the ground floor must be 10' high while the other floors must be 9' high. Since that time, 6 or 7 or 8-storeyed buildings were mainly constructed but there was no instruction to install the elevator. Each one layer in the storeyed apartments was called the Hall Type. Then, in the 2000s, the construction companies found large compounds in some townships of Yangon Region, and constructed housing apartments called Eain Yar. Though, like the hall types, these apartments have kitchen bathroom, toilet, staircase, and living room because of having two to three bed rooms in the apartments, they are called Room Types. Later, contractors are getting interested to build the high-storeyed building, so called condominium at that time in Myanmar. They believe that the condominiums can solve the popularity growth because of having privacy, spaciousness and car parking. Nowadays in Myanmar, the buildings of 10 to 12 and above levels are installed elevators in order that the residents can enjoy the convenience.²

Before the Condominium Law has enacted, a common practice in the sale of condominium was the use of what essentially amounts to an option to deal the sale contracts. The unit owner or occupier had to apply the owner book of the apartment depending on the owned lands by the City of Yangon Development Committee (YCDC), by the Department of Urban and Housing Development (DUHD) and by the Contractor or Construction Company. If he bought the apartment from YCDC, it issued the ownership book of the apartment. If he bought from DUHD, it issued the ownership book of the condominium for the unit owner. If he bought from Construction Company, the contractor used to make a sale contract with the buyer who wanted to buy the condominium. This contract is only evidence for the ownership of the condominium and there is no any other reliable instrument.

¹ Hla Than, an Engineer, Engineering Department (Building), the City of Yangon Development Committee, "Study on flats in Yangon"

² Ibid.

In 2016, the Condominium Law emerged to create community housing in order to provide adequate of housing for an increasing population. Any developer is entitled to deal the condominium market and he has to do registration the over square feet of 20,000 lands which have been transferred by the original owner as the common land to the relevant registration office.¹ Then, he has to apply for the license to the relevant management committee in accordance with the stipulations.² After getting the license, he has to apply for the permit to build the condominium to that committee in attachment with the structure of building and land, the common property and rational share value.³ After approval to build, the developer shall construct in accordance with the rules and regulations and he shall register to the relevant registrar for the documents of condominium building.⁴ Then, the developer shall transfer the registered certificate of the concerned unit to the transferee when he performs the gift, relinquishment, exchange, sale or transfer by the conclusive order or decree of any court for that unit.⁵ Therefore, the transferee who has owned the registered certificate becomes the unit owner and he shall be awarded the rights of the unit owner according to the Condominium Law.

Analytical Study on Condominium Market in Myanmar

Condominium markets are usually being at the big cities by the factors of population density, better job opportunity, well schools and universities, better health care, good security as well as great access to public transportation. Condominium developers used to consider those advantages for their reputation and economic success. The potential buyers always make balance with the price and condominium environs as well as profile of condominium property. Thus, it can be said that condominium markets are depending on the economic, demographic and residential conditions mostly in urban areas of big cities in Myanmar.

According to 2014 Myanmar Population and Housing Census, Myanmar is divided into 15 States and Regions. Accordingly, the census

¹ Section 10 of the Condominium Law, 2016.

² Section 13, of the Condominium Law, 2016.

³ Section 14, of the Condominium Law, 2016.

⁴ Section 15, of the Condominium Law, 2016.

⁵ Section 20 of the Condominium Law, 2016.

results show that Yangon Region has the largest population (7.36 million), followed by Ayeyawady (6.18 million), Mandalay (6.16 million), Shan (5.82 million), and Sagaing (5.32 million). These five States and Regions account for almost 60 percent of the total population of the country. The least populated States and Regions are Kayah (286,000), Chin (478,000) Nay Pyi Taw (1.16 million), Tanintharyi (1.40 million) and Kayin (1.57 million)¹. Therefore, Condominium developers deal their construction business mostly in Yangon, Mandalay and Taunggyi.

It is found that market demands are totally generated overall population growth. The population density of Myanmar in March 2014 is 76 persons per square kilometer (km²). Comparing the population density by State and Region, Yangon has the highest density (716 per km²), followed by Mandalay (200 per km²), Ayeyawady (177 per km²), Mon (167 per km²), Nay Pyi Taw (164 per km²) and Bago (124 per km²). The least densely populated States and Regions are Kayah (24 per km²), Kachin (19 per km²) and Chin (13 per km²).²The Census results show that for every 100 persons in Myanmar, 70 persons live in rural areas and 30 persons live in urban areas. The conditions of housing units are important characteristics which indicate the quality of life of the population. About four out of five households in Myanmar are owners of their housing unit. In urban areas, 66 percent of households own the housing units where they reside, 20 percent are tenants while 7 percent live in housing provided by the Government.³

In the analytical study on condominium market, the potential demand becomes more apparent with population growth and also urbanization. Myanmar Governments have done urbanization in Yangon, Mandalay and other developed areas since the past few years. People prefer living in the cities because of a high paying jobs, quality of life and cultural events. This means there will be an increased in demand for housing. This point is attracting the construction companies because level of income is important factor for condominium market. Then, the potential buyer considers about the

¹ The 2014 Myanmar Population and Housing Census, The Union Report, Census Report Volume 2, Department of Population, Ministry of Immigration and Population, May 2015, p-16.

² Ibid.

³ Ibid, p-30.

mortgage finance for the availability of loan. The demand is also conditioned by the other factors such as accommodation: number of bedrooms, living rooms, bathrooms, storage etc, quality of locality: superior, average or low cost, construction: good quality finishes and facilities, tenancy or ownership and small or large section: build up area. However, all of these data shall be reflected with the existing laws so that both the buyers and developers could be legally protected.

Legal Framework on the Condominium Market

The Republic of the Union of Myanmar is the ultimate owner of all lands and shall permit the citizens right of private property and inheritance.¹ The residents of popularized areas who construct the condominium and want to buy or lease or mortgage or sell have to observe the laws which are concerned in the condominium and its properties. In the Condominium market, the main law is the Condominium Law 2016 and the related laws are the Contract Act 1872, the Transfer of Property Act 1882, the Urban Rent Control Act, 1960, and the Transfer of Immovable Property (Restriction) Law, 1987.

The main law is the Condominium Law 2016 that was enacted by Notification No. 24/2016. The purpose of the condominium law is to support the development of projects in urban settings with increasing populations. It will also grant the right to own and transfer condominiums and in theory strengthen ties among the Myanmar and international residential development community. The law provides the registered condominium to the relevant committee by Section 9 and 10, and that committee can allow the registration or deny or direct to do something. Then, the Law supports about land ownership, car parking problems, disputes between the unit owners, social welfares and security issues, fire insurance of condominium and maintenances and repairs for the installation, rights and responsibilities of developers and unit owners.²

Every person who wants to own the high-storeyed building needs to make a contract for his purpose of lease or sale or mortgage according to the

¹ Section 37 of the Constitution of the Republic of the Union of Myanmar, 2008.

² The Condominium Law, 2016, Notification No.24/2016, 29.1. 2016

Contract Act 1872. In the contract, the contracting parties shall put the contractual terms such as time and payment for delivery, awarding the property deeds, disclosure to grant the titles, enjoyment of the interest of property, payment of tax and revenue, and the rights and liabilities of the buyer and seller. The both sides of the contracting parties shall take care of the contracts which need to be performed or need not be performed; voidable contract and void agreements; consequences of the breach of contract; termination of the contract; and ratification.¹

The Transfer of Property Act, 1882 provides that the seller conveys the property to the buyer in present or in future in order to transfer of property. According to this Act, the buyer can make the resale or mortgage or lease or gift or exchange accompanied with the rights and liabilities of the tangible immovable property by registered instruments. In this Act, the rights and liabilities of the buyer for sale of immovable property described in Section 55 (5, 6) and the rights and liabilities of the lessee for the lease of immovable property described in Section 108 (b) of this Act. The sellers of immovable property respectively are subject to the liabilities, and have the rights. The buyer has the right to request for examination all documents of title, to ask the best of information in respect to the property or the title and to be conveyed the property for execution at a proper time and place.² In every transfer of immovable property, delivery must be made in the same way as goods sold during the lifetime of the contracting parties. The problems may be occurred in the lease contract because there is no balance between the much population and less housing in Myanmar.³

Regarding the lease contract, there may be occurred the rent problem of between the lessor and lessee, the rights and obligations of the landlord and tenant are provided in the Urban Rent Control Act, 1960. As the Condominium buildings are used to build and deal business in the urban areas, any lease contract of condominium shall follow this law. This Act prescribed the rights and duties of tenant in Urban Area. In respect of the rights of the tenant, this Act allows a Controller to do under the provisions of Section 13 (1) on the tenants to pay rent for his living the environments of the building

¹ The Contract Act, 1872, India Act 9/1872, 1.9.1872

² Section 55 (1) of the Transfer of Property Act, 1882.

³ The Transfer of Property Act, 1882, India Act 4/1882, 1.7.1882

and to notify the landlord by a letter of inspector. And then, the Act provides the repairmen of building and liabilities of tenant. In Section 21 (1), when the tenant occupying any residential premises gives notice in writing terminating the tenancy in respect of any such premises, or has vacated such premises.¹

In the case of immovable property, the Transfer of Immoveable Property (Restriction) Law, 1987 prohibits the transfer of immovable property such as sale, mortgage, gift, exchange, and lease from citizens to foreigners and vice versa.² Under this law, Myanmar government may allow diplomatic missions, United Nations' organizations and other organizations the ownership and use of immovable property. The most recent exemption from the general restrictions is the Condominium Law 2016 that allows the foreigners to purchase apartments in a condominium. However, the condominium in Myanmar has the different types of issues even after the Condominium Law 2016.

Practical Issues of the Condominium Market in Myanmar

The Condominium Law and its Rules include high-rise buildings, facilitate inheritance issues, get land-ownership permits, and help to apply for insurance and bank installment loans. Although the Condominium Law and Rules have passed, there are some issues that cannot be solved by the Law. Disputes arise easily in densely populated areas such as condominium-living environment with regards to problems such as water leakage, electric equipments, social welfares, the use of common property, committee members, the contribution of funds and common expenses, negligence to comply with the condominium regulations etc.

While the research paper analyzes the issues such as Registration of high storeyed-buildings as Condominium, Ownership Certificate, Transferring Ownership, Foreign Ownership, Common Property, Management System and the Building Insurance Policies, it is found that two types of problems. The first one is factual issues of the condominiums which were built before the Condominium Law 2016 and the second one is legal issues of the condominiums which were built after the law 2016.

¹ The Urban Rent Control Act, 1960, Notification No. 8/1960.

² The Transfer of Immoveable Property (Restriction) Law, 1987, Notification No. 1/1987.

Factual Issues

Before the Law 2016, the unit owners who bought the high-storeyed building as the name of condominium are still facing the ownership, transfer, common property rights and management. Section 12 of the Law provides that the multi-level buildings which are still building or have been built before the enforcement of this Law shall be registered as condominium to the relevant committee by Sections 9 and 10, and that committee can allow the registration or deny or direct to do something. In this regard, the issue is whether those buildings which have the characteristics of condominium shall compulsorily be registered or not. As the offence and penalty for non-registration of those buildings is not found in the Law, the developer can take easily as his option. If he does not register as condominium, the unit owners who have already bought the units as condominium will not enjoy the unit owners' rights conferred by the Condominium Law. Until and unless the developer registers the buildings to be condominium, the unit owners will face the problems of ownership, transferring ownership, common property and management systems.

a. Ownership Certificate

Unit Owners have exclusive ownership rights to their unit and the right to share the common elements of the condominium project with the other co-owners. In studying the current practices of the condominium in Myanmar, the rights and obligations of the unit owner are multiple and complicated in the unit ownership certificate. The common practice in the sale of condominium is the use of what essentially amounts to an option to deal the sale contracts. The unit owner or occupier can apply the ownership certificate of the unit which he has made concerned contract from developer.¹ Then, he/she can register, with the registration officer, documents for the transfer of a unit by any method of transfer specified in Section 20 as he/she has the right to change the title to his/her name². After the successful registration, the unit owner will possess the unit registration certificate.

¹ Section 19 of the Condominium Law, 2016.

² Section 26 of the Condominium Law, 2016.

If the unit owners have ownership certificate, they are entitled to use the common property such as car parking, swimming pool and any of installed equipment depending on the ratio of unit possession. In regard of collective owned land, the unit owners can get the common land registration certificate as the ratio of unit possession. This Common Land Registration Certificate must firstly be initiated by the developer and original land owner. Whether the land is freehold land or grant land, they can register as common land after they agreed to do so with contractual terms¹. The registration officer will categorize the type of land and enrolled into the registration books.² After possessed the Common Land Certificate, the developer has to pass the unit owners on their proportional rates of their units.³ That is allowed by section 15(c) of the Condominium Law that state-owned land may be registered as condominium land. As a consequence, the unit owners legally own the unit and a share on common land.

As a result, registration for the condominium before the 2016 Law becomes essential point to have ownership for the unit owners.

b. Transferring Ownership

The condominium developments across the urban area have seen enormous growth in popularity. When transferring a registered unit by any of the methods specified below, the transferor and the transferee shall register the instrument of transfer with the registration officer as prescribed within 30 days from the day of transfer -

- a. Gift, release, exchange;
- b. sale;
- c. transfer of ownership by an order or decree of a final and exclusive court.⁴

The unit owners have the rights to transfer the units by inheritance and succession but they need to register for this regard according to existing laws.

¹ Rules 20 and 21 of the Rules relating to the Condominium Law, 2017

² Rule 23, of the Rules relating to the Condominium Law, 2017

³ Rule 19 (a), of the Rules relating to the Condominium Law, 2017

⁴ Section 20 of the Condominium Law, 2016.

The Registrar shall sign and seal on this transfer registration.¹ Then the unit owners have the right mortgage the unit to a bank. However, the unit owner shall submit the Unit Registration Certificate to Bank as a guarantee for loan.²

Before adopting the Condominium Law, the unit owners did not have the right to mortgage their units from Bank as they could not get the land ownership. Although they have the ownership books and property title deeds, they cannot create the mortgage by deposited of title deeds according to Section 58 (f) of the Transfer of Property Act 1882. They cannot get bank loans for fixed assets that would help improve business opportunities. If they possess the proportional landownership, they can hope the bank loans which would increase the demand for condominiums through installment purchase that benefits both bankers and property owners. These issues are now solved by the provisions of the Condominium Law 2016.

To enjoy the above rights, the existing buildings called condominium need to be registered in consistence with the Condominium Law 2016.

c. Common Property

The Condominium Law provides that the unit owners shall possess the common property as soon as they bought the condominium. As the "condominium" is collectively owned by the unit owners, they can enjoy the common area and common property. The common property includes the building foundations, outer walls, columns, beams, roofs, staircases, corridors, entrances and exits of the building, central and appurtenant installations for services such as power, light, gas, hot and cold water, heating, air-conditioning, internet broadband, car parking, swimming pool, playground and the fixtures, the assets for property management by a management committee.

However, the unit owners who bought the condominium before 2016 Law can not have these common property rights. And, there were very few common properties because of the lack of Law at that time. So, these common area and common property is a key issue for condominium developers and unit owners because contractors could not fulfill the common property rights

¹ Rules 41 of the Rules relating to the Condominium Law, 2017.

² Rules 43 of the Rules relating to the Condominium Law, 2017.

or collective rights. In this case, the common property issue is recently occurred as the collective rights such as the car parking with separate charges which is asked by the contractors. In summing, there must be the management committee for the management affairs of the condominium for example maintenance of the elevators, security, electric equipment, water supply, municipal taxes and social welfares.

d. Management System

In the analytical study of the Condominiums that were built before 2016 Law, it is found that there are not systematic features of management system. Even in the Law and Rules, management disputes surely will arise among unit owners if the management system is not well. Membership of the Executive committee ensures that each condominium owner has the right to participate in the control, management and daily operation of the condominium community. Rule 57 provides the functions and duties for the Executive Committee to manage the common property, to build the fund, to maintain the records on common property, to discuss for renovations and minor repairs to the interiors of unit, and to set up the appropriate insurance such as fire insurance for all of the unit owners.¹

However, the Rules relating to the Condominium Law additionally provide the legal framework for the establishment of an association of the unit owners in each condominium, with an executive committee, tasked with the management and governance of the condominium, based on the requirements set out in the Rules relating to the Condominium Law. The condominium association has the right to sue (and be sued) in its own name, so has the ability to take legal action to protect the collective interests of the condominium unit owners². The Rules relating to the Condominium Law require the unit owners to pay various service fees and maintenance fund contributions, to be managed by the executive committee in accordance with the Condominium Rules' stipulations, including maintenance of proper records and accounts.³ This provides a legal framework to support the

¹ Rule 57 of the Rules relating to the Condominium Law, 2017.

² Rule 53 of the Rules relating to the Condominium Law, 2017.

³ Rule 54 of the Rules relating to the Condominium Law, 2017.

maintenance of the condominium as a whole, in an accountable and transparent manner.

According to Rule 14 of the Rules relating to the Condominium Law, the developer shall submit the Environmental Impact Assessment and Social Impact Assessment criteria, preparedness plan for natural disasters and security before starting the construction.¹ But, there is no such plan in the old condominiums that were built before the law. In the condominium building, the management system is mainly performed by the Executive Committee so that a condominium community could take the functions efficiently and handle day-to-day operations. Any condominium whether is built before or after 2016 needs to form the Executive Committee to manage the common property. In these factual issues, there is a well-known case in Myanmar

The Condominium case between Pearl Condominium in Bahan Township in Yangon and the City of Yangon Development Committee (YCDC) was occurred in 2012. In this case, the Asia Express Co. Ltd as the developer of Pearl Condominium made the contract with the City of Yangon Development Committee as a landowner on April 30, 1999. By this contract, the six buildings of A, B, C, D, E, F would be built on this land and two buildings of E, F would be transferred to the YCDC and the rest will be possessed by the Asia Express Co. Ltd. This building project was completed on December 7, 2002. Then the company sold the apartment of the Pearl Condominium and the buyers stayed in there.

The management committee was formed in 2007 for the interests of the apartment owner although the developer kept authorizing to manage the affairs such as elevators, water supply, electric equipment, security and other affairs of that condominium. The management committee including the apartment owners recognized that they have not ownership book for their unit. They knew that the ownership book use to support by the YCDC. Therefore, the management committee directly offers to YCDC to furnish the ownership book without asking to the developer. The disputes arose between the developer and the unit owners because the offer for ownership book of the YCDC made the company bad image. The real procedure for that ownership book which is certified by YCDC is to draw by the company itself but the

¹ Rule 14 (a) (12), of the Rules relating to the Condominium Law, 2017.

company must submit the list of apartment owners to YCDC. In this case, the apartment owners knew that the ownership book could not be supported by the fault of developer. Here, the problem for ownership was occurred whether the Pearl Condominium was owned by the YCDC or Asia Express Co. Ltd if the ownership book is furnished by the YCDC. It is because the ownership book by YCDC might become the buildings owned by YCDC not by the company.

In the condominium market of Myanmar, the ownership book is used to support by the developer not by the YCDC and the affairs of the condominium are totally managed by the developer. However, the apartment owners did not entitle to the rights of ownership book so they traced the contract between YCDC and Asia Express Co. Ltd. The reason why the YCDC did not draw the Building Completion Certificate (B.C.C) and the ownership book was that the developer did not erect the essential facilities in the common area such as swimming pool, car parking at every floor till three-storeyed level, emergency fire staircases. After completing the necessary building in 2012, YCDC drew the Building Completion Certificate which was really got before the sale contract since 2002. In 2012, the unit owner got this ownership book by YCDC which was signed by the head of the Engineering Department (Building) with the seal of YCDC. At that time, the disputes arise between the developer and unit owners are solved by the sale contract and the ownership book because the Condominium Law was not evolved.

Legal Issues

Even after passing the Condominium Law 2016, it is found that the problems such as foreign ownership and building insurance problems could not be solved additionally.

a. Foreign ownership

By the Condominium Law, foreigners are now legally able to purchase condominiums for the first time in Myanmar. Then, the Rules relating to the Condominium Law vest the rights to be co-developers to foreigners or foreign companies.¹ It seems allowed for joint venture or foreign investment but it

¹ Rule 2 (d) of the Rules relating to the Condominium Law, 2017.

needs with the permit of Myanmar Investment Commission (MIC).¹ However, there are some limitations. To qualify as a condominium suitable for foreign ownership under the Condominium Law, the condominium building requires a number of necessities. Additionally, total foreign ownership in any construction company is restricted to 40 per cent of the total space.

The Rules relating to the Condominium Law additionally stipulate that foreigners will have the same rights and obligations as Myanmar citizen condominium unit owners. There is however a certain ambiguity in that Rule 36 states that a foreigner may only be the owner of a condominium unit for the tenure of the condominium,² that condominium title must always be subject to any restrictions in underlying title and indeed such a restriction would in any case (and by operation of law) apply to all condominium owners regardless of nationality.

The foreigners own the units only within built-in expiry date. So, a foreigner who has purchased the unit is entitled to own unit for a term equivalent to the term of condominium. The big issue for foreigner is whether the condominium period ends itself or natural disaster. In any case, a foreigner risks losing his unit when the developer decides to reconstruct the condominium after dismantling it. It is not found in both law and rules that the right to get the Common Land Registration Certificate is not vested on foreigners.

b. Building insurance

Nowadays, the unit owners are interested to assure the building insurance because the condominiums shall involuntarily be terminated by the course of natural disaster. After natural disaster, the Unit Owners or Executive Committee can face the two proceeds; the proceeds of insurance and non-insurance. The Executive Committee has responsibility to perform for insurance on condominium building³ and the unit owners may assure their units themselves.⁴

¹ Rule 14 (b) of the Rules relating to the Condominium Law, 2017.

² Rule 36 of the Rules relating to the Condominium Law, 2017.

³ Rule 57 (e) of the Rules relating to the Condominium Law, 2017.

⁴ Rule 45 (b) of the Rules relating to the Condominium Law, 2017.

Building insurance is one of the most important matters for proper management and maintenance of condominiums due to uncertainty of future happenings and events. If the building is insured, the unit owners can rest assured that the condominium is protected from all natural calamities like an earthquakes, rain, floods, fire, tsunamis etc. Under the damage policy, the building will be covered by insurance in the event of fire, lightning, explosion or any other occurrence specified in the policy that destroys or damages the subdivided building. Generally, the insurance covers the rebuilding of the subdivided building; the repair or restoration of damage; the payment of expenses incurred in the removal of debris.¹

Although the Rule provides that the condominium building and unit apartments shall take insurance, there is no provision to set up the master insurance policy for coverage the loss and liability through condominium insurance. As the insurance is broad matter, the unit owners need to know about bare walls-in, all-in and association deductibles. It means that bare walls-in condo insurance master policies cover all real property from the exterior framing inward; all-in condo insurance master policies provide a greater level of interior coverage for condominium owners; and condo communities carry group master insurance policies featuring deductibles that are paid as a group by all owners. Although there is no problem to assure the unit by the unit owners, the problem is to assure for condominium building that has common element, common property. All of the unit owners have to agree which policy is suitable for all because the premium cost shall be bared by all of the unit owners.²

In this issue, all of the unit owners need to agree for insurance and to pay the premium fees depending on the ratios of unit possessions. If damage occurs to the building, numerous people who live in condominium will suffer. But, the problems are foreigners' ratios in the building and foreigner's ownership term. The Law allows the developer to sell 40% of units to the foreigners by Section 15 of the Law and the foreigners shall own the units only within the building existing term by Rule 36. Even though all of the local unit owners want to assure building insurance, the foreigners may not do so

¹ Warin Kliewpaisal, A Comparative Study of the Singapore and Thailand Condominium Acts, *Thammasat Business Law Journal*: Vol. 1, 2011, p-10

² <http://homeguides.sfgate.com/condo-insurance-master-policy-cover-56836.html>

because they don't have the same rights to reconstruct. Unless all of the units unanimously agree to do insurance, the unit owners would not get the insurance for fire and natural disasters, and general liability insurances. This issue is not yet solved by the laws. Therefore, it is found that the requirement of insurance is essentially need for condominium where numerous people are living.

Conclusion

This research paper identifies unsolved legal and factual issues affecting the rights of the unit owners, quality and proper living conditions of condominium-living, the building insurance policy, numerous disputes with condominium issues, and the insufficiency of management on mixed-use development, management of common property and the security of condominium living. The Condominium Law provides all condominium projects to be constructed on land that is collectively owned, being land of beneficial interest under prevailing law to all collective owners. The paper suggests that all of the stakeholders in the condominium market shall consider to solving the issues of land ownership whether the unit owners (both local and foreigners) can get the share proportion or not. As the Condominium Law is enacted just in 2016, the unit owners who were sold the high-storeyed building as the name of condominium before this Law are still facing the ownership and common property rights. It is a big issue whether or not those unit owners can enjoy the equal rights of the unit owners who buy the condominium after the enforcement of this Law. It is because Section 12 of the Law provides that the multi-level buildings which are still building or have been built before the enforcement of this Law shall be registered as condominium to the relevant committee by Section 9 and 10 and that committee can allow the registration or deny or direct to do something. In this case, there is a problem whether those buildings which have the characteristics of condominium shall compulsorily be registered or not. And then, the offence and penalty for non-registration of those buildings is not found in the Law. In this point, the developer can take easily as his option. Therefore, the old condominiums are needed to do registration as Condominium so that the unit owners could enjoy the rights which are allowed by the Condominium Law.

Next, the paper recommends that the Rule 36 of the Rules relating to the Condominium Law, 2017 should remove in order to solve the insurance issue.

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References

Bryan A. Garner, *Black's Law Dictionary*, Seventh Edition, 2000

Hla Than, an Engineer, Engineering Department (Building), the City of Yangon Development Committee, "Study on flats in Yangon"

Ken Harer, Heather McCormick and Kevin Britt, *Condominium Common Sense, A Handbook for Washington State Condominiums*, Condominium Law Group, PLLC, 2007

Myanmar National Building Code, Part 2, Architecture and Urban Design, Myanmar Engineering Society, 2012.

The 2014 Myanmar Population and Housing Census, The Union Report, Census Report Volume 2, Department of Population, Ministry of Immigration and Population, May 2015

The Alberta New Home Warranty Program, *The Way Home/ Your New Home Buying Condominium Guide*

The Condominium Law, 2016

The Constitution of the Republic of the Union of Myanmar, 2008

The Contract Act, 1872

The Myanmar Times, Volume-32, 10-16.8.2012

The Rules relating to the Condominium Law, 2017

The Transfer of Immovable Property (Restrictions) Law, 1987

The Transfer of Property Act, 1882

The Urban Rent Control Act, 1960

Warin Kliewpaisal, *A Comparative Study of the Singapore and Thailand Condominium Acts*, *Thammasat Business Law Journal*: Vol. 1, 2011

<http://www.fairlingtonvillages.com>

<http://homeguides.sfgate.com/condo-insurance-master-policy-cover-56836.html>

CULTURAL HERITAGE PROTECTION IN MYANMAR

Tin Myo Myo Swe^{*}

Abstract

Myanmar as a rich land of cultural heritage needs to be protected the loss and damage of artifacts which are the evidence of Myanmar cultural history. Some of cultural heritage and monuments are repaired and thus not in line with international standard. Ministry of Culture is taking the responsibility to implement in accordance with cultural heritage instruments. The main purpose of this paper is not only to take appropriate legal protection in accordance with Article 5 (d) and (e) of 1972 Convention Concerning the Protection of World Cultural and Natural Heritage but also to disseminate awareness about conservation standards, especially in Pyu Ancient Cities and Bagan. In Myanmar, preservation of national cultural heritage is one of top priorities in the programme for nation-building. Myanmar is participating in the regional cooperation in various fields including cultural heritage and have ratified the World Heritage Convention in April, 1994. Thus, the government has been enacted the Law Amending the Protection and Preservation of Cultural Heritage Regions Law in 2009. In early 2013, a National Cultural Central Committee was appointed in Myanmar under the auspices of the UNESCO. Pyu Ancient Cities (Sri Ksetra, Halin and Beikthano) could be categorized as criteria ii, iii and iv, (2),(3) and (4) global standard values, they were inscribed on the World Heritage List, in the 38th session of World Heritage Committee held on 22 June 2014. Nearly one thousand ancient monuments of Bagan archaeological area have repaired by the donation of public, institution, individual and Buddhists of foreign countries. Myanmar citizen should be participated in public awareness campaign and education for preservation of culture and natural heritage. This paper hopes to take some preventive measures to protect Myanmar cultural heritage, especially in Pyay and Bagan.

Keywords: Preservation of national Cultural Heritage, Pyu Ancient Cities, World Heritage List, UNESCO, NCCC.

Introduction

Cultural heritage is an increasingly critical element in the economy and society of developing countries because of its main role encompassing all levels and aspects of social life. The concept of cultural heritage has indeed

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largely broadened science the adoption of the 1964 Venice Charter for the Conservation and Restoration of Monuments and Sites, where it was first described as “the set of historical monuments, group of buildings, sites and town around the world” that are found evidence of a particular civilization, development or historic event, relevant for the unity of human value, and therefore worthy to be preserved for future generations.¹ Since the Second World War, UNESCO has supported a series of world heritage initiatives, starting with tangible, both immovable and movable, and expanding to natural heritage and most recently to intangible heritage. Today, cultural heritage is more commonly defined as the set of “cultural assets inherited from the past in all forms and aspects, being them tangible and intangible”. Myanmar people have their own culture, cultural properties, language, and literature since thousands of year ago.

Objectives of the Study

- To give knowledge cultural heritage in Myanmar in line with international conservation standards.
- To examine as a special reference to the protecting of cultural heritage especially in Pyu and Bagan Ancient Cities.
- To be aware of the improvement of Myanmar’s cultural heritage sites in line with “World Heritage Sites”.

International Instruments Relating to Tangible Cultural Heritage Protection

The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was enacted in 1954 which sought to strengthen protection for cultural property. Myanmar has ratified this convention on 10th Feb, 1956. A state party must either prosecute or extradite any person found in its territory who is deemed to have committed serious violations of the Hague rules².

¹ Stefano Facchinetti, “Cultural Heritage Management in Myanmar: A Gateway to Sustainable Development,” EIAS.

² Stefano Facchinetti, “Cultural Heritage Management in Myanmar: A Gateway to Sustainable Development,” EIAS.

UNESCO initiated with the help of the International Council on Monuments and Sites, the preparation of a draft convention on the protection of cultural heritage. The Convention Concerning the Protection of World Cultural and Natural Heritage is a successful global instrument for the protection of cultural and natural heritage. The World Heritage Convention was adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 16 November, 1972. The Convention aims to protect the most outstanding cultural and natural heritage places on Earth and came into force in 1975. Myanmar has also ratified UNESCO convention on 29 April, 1994. This Convention sets out the duties of States Parties in identifying potential sites and their role in protecting and preserving the cultural and natural heritage. Under Article 2 of the Convention, “natural heritage” includes three categories of natural features; geological and physiographical formations and natural site¹.

According to Article 5(d) and (e) of this Convention, the effective and active measures are taken for the protection, conservation and preservation of the cultural and natural heritage situated on its territory, each State party to this Convention shall take the appropriate legal, scientific, technical, administrative and financial measures necessary for the conservation of this heritage.

In Article 7, “International Cooperation” which provides that for international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international cooperation and assistance designed to support States Parties to the convention in their efforts to conserve and identify that heritage.

The General Convention defined the kind of natural or cultural heritage sites which can be considered for inscription on the World Heritage List and established the World Heritage Fund and the World Heritage Committee. The Convention sets out the obligation of States Parties to report regularly to the World Heritage Committee on the state of conservation of their properties included in the World Heritage List. This Convention

¹ Convention for the Protection of the World Cultural and Natural Heritage, 1972.

concerns tangible cultural heritage. This is the innovative measure of great originality of the UNESCO Convention 1972.

International Instruments Relating to Intangible Cultural Heritage Protection

The main Convention relating to intangible cultural heritage is Convention for the Safeguarding of the Intangible Cultural Heritage, 2003. Related international instruments relating to intangible cultural heritage are convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005, UNESCO Universal Declaration on Cultural Diversity, 2001, the Universal Declaration on Human Rights of 1966 and the International Covenant on Economic, Social and Cultural Rights of 1966.

In 1997, UNESCO launched the program of Proclamation of the Masterpieces of the Oral and Intangible Heritage of Humanity, intending to raise awareness of the importance of intangible cultural heritage. The General Conference adopted another instrument, Universal Declaration on Cultural Diversity, which also includes articles dealing with the preservation of “heritage in all forms”. This declaration and its Action Plan presented the basic idea of the coming convention and helped to develop it in 2001.

According to Article 2(1) of the Convention for the Safeguarding of the Intangible Cultural Heritage 2003, the “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills –as well as the instruments, objects, artifacts and cultural spaces associated therewith –the communities, groups and, in some cases, individuals recognize as part of their cultural heritage¹. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

¹ The Convention for the Safeguarding of the Intangible Cultural Heritage 2003.

UNESCO's 2003 Convention for the Safeguarding of the Intangible Cultural Heritage proposes five broad domains' in which intangible cultural heritage is manifested.

- (1) Oral traditions and expressions, including language as a vehicle of the intangible cultural heritage;
- (2) Performing arts;
- (3) Social practices, rituals and festive events;
- (4) Knowledge and practices concerning nature and the universe;
- (5) Traditional craftsmanship. To sum up, according to the UNESCO Convention, intangible cultural heritage is divided into five domains. However, intangible cultural heritages are divided into seven domains including traditional sports and traditional cuisine e.g. traditional sports in Thailand and traditional cuisine in the Republic of Korea.

At present, our cultural heritage is threatened every day; the pillage of archaeological sites and the theft of objects from museums are increasing on an unprecedented scale. Nowadays, no country is free from this danger.

Existing Laws Relating to Cultural Heritage Protection in Myanmar

A country's prestige depends on its culture and cultural heritage. Besides, they resemble the past and the present of a country. The culture of any country can bring about many positive changes in the country. Culture includes a number of things like traditional practices, religious activities, festivals, folk songs, dresses, dances, cultural activities, means of entertainment, etc. Cultural remains have not only physical value but they are determined as the linkage of human civilization that symbolizes nation property¹. Traditionally cultural heritage in Myanmar has been preserved by the family and the village community. In Myanmar, the legal framework enacted for the safeguarding of heritage has been insufficient. Before the coup and during the regime, only two core laws were established by the government. The first one is the 1957 Antiquities Act that regulated

¹ Dr. Khin Maung Nyunt, "An Anthology of Conference Papers", 2002.

conditions for excavation claims, land use, as well as for movement inside and outside the country, restoration and management of antiquities, and obligations to report discoveries of archaeological objects. According to Section 11(7) of this Act, ancient monument had existed before 1886. Another one is the 1998 Protection and Preservation of Cultural Heritage Regions Law. This Law mainly relates to protect and preserve cultural heritage, ancient monument and ancient site, precinct of ancient monument, ancient monumental zone, and ancient site zone. It does not contain any provisions relating to intangible cultural heritage. With regard to cultural heritage's protection and preservation elaborate in Sections 6 to 11 of Cultural Heritage Regions Law 1998, Myanmar¹. Under Section 5, the Ministry of Culture is given the power to the acquisition of any land within the cultural region, if necessary and to carry out in accordance with law. The Department of Archaeology is responsible for the implementation of this law including applying for permission, scrutinizing and issuing.

With regard to the offences and penalties, Sections 2, 24, 25 and 28 of 1998 Cultural Heritage Regions Law are substituted by the Law Amending the Protection and Preservation of Cultural Heritage Regions Law, 2009². With respect to national culture and cultural heritage shall be protected according to Sections 27 and 390 of 2008 Myanmar Constitution³.

The followings are the existing laws for protection and prevention of cultural heritage;

1. The Penal Code, 1861.
2. The Treasure Trove Act, 1878.
3. The Antiquities Act, 1957.
4. The Protection and Preservation of Cultural Heritage Regions Law, 1998.
5. The Control of Money Laundering Law, 2002.

¹ The Protection and Preservation of Cultural Heritage Regions Law, 1998 (The State Peace and Development Council Law No.9/98).

² The Law Amending the Protection and Preservation of Cultural Heritage Regions Law, 2009 (The State Peace and Development Council Law No.1/2009)

³ Constitution of the Republic of the Union of Myanmar, 2008.

6. The Convention for the Safeguarding of Intangible Cultural Heritage, 2003.
7. The Constitution of the Republic of the Union of Myanmar, 2008.
8. The Law Amending the Protection and Preservation of Cultural Heritage Regions Law, 2009.
9. The Protection and Preservation of Antique Objects Law, 2015.
10. The Protection and Preservation of Antique Objects Rule, 2016.
11. The Protection and Preservation of Ancient Monuments Law, 2015.
12. The Protection and Preservation of Ancient Monuments Rule, 2016.
13. Myanmar Tourism Law, 2018

According to Section 14 (b) of Myanmar Tourism Law 2018, Business in the Tourism Sector has the responsibility to safeguard traditions and culture, and conserve the natural environment of Myanmar¹. Hence, tourism can make an important contribution to economic development. Tourism also generates a variety of other impacts, both positive and negative. For example, it can help keep traditions alive and finance the protection of cultural and natural heritage, as well as increase visitor appreciation of that heritage. Conversely, tourism can damage heritage when not well managed.

Cultural Properties and Cultural Heritage in Pyay Township

The ancient city known as Thayay-Khittra (Sriksetra) was the capital city of “Pyu” people. It is an important archeological site located 8 km to the east of presentday Pyay City. The vast ancient city site and the villages within it can still be seen. Yangon- Pyay railroad is crossing the hub of the ancient city and spanning from the south-east to the north-west. The Pyay-Paukkaung motorway has been built along the northern city wall. The circular length of the city wall is 14 kilometres. Other Pyay attractions include Buddha statue with eye-glasses (Shwe Myat Hman), the gigantic sitting Buddha Image, Shwesandaw Pagoda Ahkaukaung, Be Be Lay Pagoda and Payama Pagoda.

¹ Pyidaungsu Hluttaw Law No.26/2018.

Pyu Ancient Cities as Nomination of World Heritage List

The three old city-states of Halin, Beikthano and Sriksetra, situated in the Dry Zone of the middle Irrawaddy and Chindwin river basins are tangible testimony of the so-called “Pyu Millennium” and of the Tibeto-Burman speaking Pyu minority among the earliest inhabitants of Myanmar¹. These ancient cities were inscribed on the World Heritage Lists in the 38th session of the World Heritage Committee held on 22 June 2014. The boundaries of the property encompass the entirety of the ancient walled city at each of the three sites, as well as areas outside the ancient city walls which contain significance character defining attributes of the property, including:

- (1) The standing monuments and exposed and consolidated remains of Stupak, monasteries and other architecture, as well as cemeteries and other ritual areas associated with the introduction of Buddhism.(Criterion ii)
- (2) The remaining features of the Pyu era agricultural landscape together with the elements of ancient landscape engineering, storage facilities, area of commodity manufacturing, goods associated with cyclic processes of celebration such as votive tablets, pottery, beads and silver coins as well as exotic trade goods demonstrating the exchange networks of the Pyu Ancient Cities.(Criterion iii)
- (3) The exposed and consolidated features showing the evolving and expanding urban morphology of the Pyu Ancient Cities over the 1000 years which the cities flourished. These include the planned elements of hydrological engineering such as moats, canals and tanks city wall and gates; the central palace-administrative complex at each site; public utilities, facilities and residential precincts. (Criterion iv)
- (4) The boundaries of the property also encompass areas of identified but still-buried archaeological potential protected for future research as well as a number of still-active Buddhist monasteries whose

¹ [https:// ich.unesco.org](https://ich.unesco.org).

foundations dates back to Pyu times and which continue to function as important centers of pilgrimage.(Criterion iv) ¹

The purpose of the Buffer zones of the respective sites is to effectively protect the property which includes the immediate setting of the property specifically the panoramic agricultural landscape as a support to the property and its protection. The Buffer zones also protect preserved features of the environment and landscape over successive historical periods, ancient water courses and watersheds, agricultural field systems and upland areas where the Pyu sourced the mineral raw materials for their gold, silver, stone and iron industries.

The proposed boundaries of the property and buffer zone of the Sriksetra Ancient City site has been defined to insure integral preservation of the ancient religious monuments and the remains of ancient structures defining the urban morphology at this site. Ancient ritual structures are found within an extended perimeter outside the city wall on all sides of the site and thus are included within the boundaries of the property. The boundaries also encompass an inclusive area from the northwest wall and Hmok-she Gate to Payagi stupa. On the south of the ancient city wall, the property boundaries include a number of signature Pyu community halls which are a significant element of the urban morphology of Pyu Ancient Cities. The irregular zigzag of the buffer zone on south and west along the crest of the Myinbahu Road and then continuing along the south through the low hills, forming a transition zone to the rice field beyond, follows well-established present-day cart tracts establishing a practical and managed boundary which can be explained easily to local population and monitored. On the east, the property zone is bordered by the property's largest water tank, while on the north and northeast the buffer zone border follows the Lawthauk creek which is a manageable natural boundary being of limit extent and clearly defined thus easy to explain to local farmers and to monitor.

¹ Pyu Ancient Cities: Halin, Beikthano, Sri Ksetra, Property Management Plan, vol-II” Myanmar.

Cases Relating to Cultural Heritage in Pyay Township

In “*U Soe Min V. Soe Thu Ya*”¹ case, in accused Soe Thu Ya was found guilty under Section 24 of the 2009 Amending the Protection and Preservation of Cultural Heritage Regions Law. The accused Soe Thu Ya was sentenced with kyats 50000 fine or with imprisonment for a term which may extend to six months. According to the investigation of Law Officer U Nyine Chan, Soe Thu Ya constructed two buildings which are regarded as world heritage region in Ancient Site (AZ). In this case, the accused, Soe Thu Ya constructed without prior permission. This matter will not grant according to Section 19 of the above law.

In “*U Soe Min V. Aung Myo Win*”² case, in accused Aung Myo Win was found guilty under Section 24 of the 2009 Amending the Protection and Preservation of Cultural Heritage Regions Law. The accused Aung Myo Win was sentenced with Kyats 30000 fine or with imprisonment for a term which may extend to three months. According to the investigation of Law Officer U Nyine Chan, Aung Myo Win constructed one building without prior permission that is regarded as World Heritage Region.

Cultural Heritage Conservation in Bagan

Myanmar ancient cities flourished from 1st Century A.D. to 19th century A.D. They are located in various parts of the country. Cultural heritage sites such as Beikthano, Hanlin, Thayekhittaya, Bagan, Pinya, Inwa, Nyaungyan, Toung-gu, Hanthawadi, Amarapura, Yatanapon are spread all across the country. Among these, Bagan is the most famous site where there are over 2300 ancient monuments located in an area of about 16 square kilometers. Bagan Archaeological Area and Monuments is included on the country’s Tentative List as the capital city of the first Myanmar Kingdom at 11th and 13th centuries³. Then, it is an important and valuable place for Myanmar people because it is a centre of Myanmar traditional arts, cultures,

¹ The Criminal Regular Trial No.4556 ,2017 , Pyay Township Court.

² The Criminal Regular Trial No.4235 , 2018 , Pyay Township Court.

³ Project Completion Report, “Capacity Building for Safeguarding Cultural Heritage in Myanmar”, Feb-2013.

architectures, literatures and religious belief. Most of the foundations of temples and pagodas in Bagan are square shape and it cubic is large and its capacity is to prevent the destruction of weather, earthquake, warfare and natural disaster.

The two developing urban areas of Nyaung Oo, Bagan Myothit and 13 villages are also included in this cultural heritage region. The inhabitants and community of urban and village in Bagan have respective temple and stupa in their nearest quarters for worshipping, donation ceremony, festival and ritual gathering. Most of Bagan temples and pagodas are unlike in their past, remaining lack of regular and particular worshipping and stand as just the ancient monuments. Shwezigone Pagoda is one of the oldest and most impressive monuments in Bagan. It is beautifully decorated by works of architecture, sculpture, stucco and several images. It can be seen that Bagan has not only Bagan period monuments but also later periods repaired and newly built constructions.

The almost people of Myanmar are still giving their admiration to Bagan as their golden past and the most important sacred Buddhist site. The role of Bagan Buddhist Heritage is unity of society with the nature of active, intelligent, peaceful and freedom under the patronage of Buddhism. This Buddhist unity stage has being practiced as common platform not in a single site of Bagan, Myanmar, but in all of ancient Buddhist kingdoms and contemporary society of Asia.

Bagan Heritage with Modernity

At present the tourism business speedily increased in the area hence Bagan is a major cultural tourist site in the country. Tourism development is coming to Bagan Heritage area by means of visible and invisible process, it can expose to countless problems and risks may lead to more or less destructions, abandonment or disappearance to cultural properties. On the other hand the modern population in a good percentage of the area is dependent on tourism business and institutional jobs; it should be considered their substantial works with harmony of cultural heritage. As existing as the living cultural heritage region, Bagan-Nyaung Oo Township needs a strict management plan and practices to protect **loosing of original Space**. The

famous temples of tourist visiting has different types of shops and hawkers e.g Shwezigon Pagoda, KyanzitthaUmin, Gubyaukgyi Temple, Alopyi Temple, Htilominlo Temple, Ananda Temple and many others. On the other hand, there has modern development structures issue as the loss of traditional architecture and archaeological landscape. e.g houses of village and urban within the zones, GSM and electrical power line, new roads and heavy vehicles, Bagan Airport and etc.

According to the State Policy , the Ministry of Culture takes the responsibility of Bagan Heritage Region and under the Ministry again, the department of Archaeology has being practically managed it with the legal frameworks of legislation, laws and order of heritage protection. Bagan heritage region is demarcated into three zones of (i) ancient monument zone (ii) archaeological zone and (iii) protection zone to be managed in protection by laws, registration of building, priority for technical conservation, preservation for cultural landscape, education of cultural heritage knowledge and publicity management and etc. Beyond the institutional administration and management by government employees collaborative departments, there are monk body, pagoda and temple trustees, social and environmental organizations are taking care of heritage region, ancient and living monuments¹.

Now, Bagan has been submitted to nomination of World Heritage List in January, 2018. Moreover, This nomination dossier will be decided at World Heritage Committee Meeting in June, 2019. The sustainability of integrity and authenticity of Bagan Cultural Heritage has being faced many of confrontations and hard works originated by internal institutions of departmental side, weak of obedience on legislations and ignorance on cultural heritage value. Hence, the stakeholders of Bagan Heritage region have to distribute public awareness, rules and regulations of heritage zones, cooperation projects amongst departmental institutions and exercises of laws and orders.

¹ U Win Kyaing (Principal), " Field School of Archaeology (Pyay), Bagan Cultural Heritage Conservation, 2015

Findings

Cultural heritage conservation would be beneficial for Myanmar's environmental development, to protect and enhance its unique natural diversity and resources. Good maintenance and management plans together with international conservation standards are nonetheless needed to avoid the uncontrolled economic exploitation of the site and prevent it from degradation.

Myanmar citizen should be participated in public awareness campaign and education for preservation of cultural heritage. To provide more effective laws and regulations is the necessary measure with regional and other international partners. In order to be systematic protection for cultural heritage; the rule of law, valuable respect of people, cooperation between the government, inhabitants and social organizations which are very important and essential factors.

Conclusion

Myanmar has full of cultural heritage images and the vast ancient city sites. In Myanmar, cultural heritage preservation and protection that is one of the top priorities in the programme for nation-building. The systematic protection and research on cultural heritage can be made as supported by the international experts.

The legal measures for conservation and restoration of ancient monuments, antiquities and cultural heritage zone should effectively restrict the construction in cultural heritage zone. If new construction such as hotels, motels, guest houses, restaurants that losing of original space because of tourist visiting in famous temples and settling and fencing in the restricted zones, these ancient cities could be taken off the World Heritage List. Similarly, relating to the Instruments of cultural property if strictly implemented in its purport and intent, the world can ensure that the cultural heritage which is a common property of mankind is protected. Member States, (167 Parties) of UNESCO are being conducted in order to be members of Memory of the World (MOW).

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References

Laws and Conventions

- Venice Charter for the Conservation and Restoration of Monuments and Sites, 1964.
 Convention Concerning the Republic of the World Cultural and Natural Heritage, 1972 (The World Heritage Convention)
 The Protection and Preservation of Cultural Heritage Regions Law, 1998 (The State Peace and Development Council Law No.9/98)
 Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.
 Constitution of the Republic of the Union of Myanmar, 2008.
 The Law Amending the Protection and Preservation of Cultural Heritage Regions Law, 2009 (The State Peace and Development Council Law No.1/2009)
 Myanmar Tourism Law, 2018 (Pyidaungsu Hluttaw Law No.26/2018)

Books and Articles

- Pyu Ancient Cities: Halin, Beikthano, Sri Ksetra, Property Management Plan, vol-II” Myanmar.
 Dr. Khin Maung Nyunt, “An Anthology of Conference Papers”, 2002.
 Stefano Facchinetti, “Cultural Heritage Management in Myanmar: A Gateway to Sustainable Development,” EIAS.
 Project Completion Report, “Capacity Building for Safeguarding Cultural Heritage in Myanmar”, Feb-2013.
 U Win Kyaing (Principal), " Field School of Archaeology (Pyay), Bagan Cultural Heritage Conservation, 2015.
 UNESCO 1999, 21; The Economist Magazine, 31 July 1999.
 UNESCO, Norwegian Ministry of Foreign Affairs, 01857-EN.

Internet Links

- [https:// ich.unesco.org](https://ich.unesco.org).
<http://culture360.asef.org>.
www.acu.or.jp.
www.ynheritagetrust.org.
www.president-officw.gov.

Cases

- U Soe Min vs Soe Thu Ya, 2017, Pyay Township Court.
 U Soe Min vs Aung Myo Win, 2018, Pyay Township Court.

LEGAL FRAMEWORK ON SUSTAINABLE USE OF RIVERS IN MYANMAR

Po Po Maung^{*}

Abstract

Rivers as natural resources of immense importance symbolize life on Earth and constitute the core component of the environment. The world faces formidable challenges to meet the increasing demand for water, failing water quality, environmental pollution and associated impacts, and international conflicts over transboundary watercourses. There are various factors individually and collectively responsible for river pollution such as domestic and industrial wastes, pesticides, agricultural runoff and contaminated groundwater which are some of the major sources of river pollution, while upstream withdrawal and diversion of flow, insufficient rainfall during winter and irrigation also have impacts. The quality and quantity of rivers is deteriorating due to over consumption and mismanagement. Pollution growth and increasing standards of quality of life have an impact in this regard. These situations greatly influence the sustainable management perspective of inland rivers. The proper utilization of rivers is an emerging issue that demands national and international concerns as they are important in safeguarding the quality of life and in promoting sustainable development.

Keywords: Rivers, Sustainable Use, Standards, Monitoring, Enforcement

Introduction

Sustainable development is related to water resources are particularly crucial to a developing country like Myanmar. The country is gifted in abundance with rain and river water, but is in a grave situation regarding the availability of pure and sufficient water for drinking, household purposes, agriculture and fisheries. The quality of water deterioration due to unsustainable management is one of the main reasons of river pollution, but more so due to multiple other sources. In overcoming the situation, an effective regulatory regime is necessary, which contributes to improve water management as well as the quality of water to maximize social, economic and environmental benefits.

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The research will strive to evaluate the application and shortcoming of the present regimes of river conservation in Myanmar and suggests ways to improve outcomes. Specifically, the thesis aims to analyze national laws and policies that address river conservation; examine the strengths and weakness of the statutory framework in relation to river conservation; explore the reason for inadequacies of Myanmar's current laws and regulations on river conservation; suggest a comprehensive approach for the solution of the problem based on an effective arrangement.

Material and Method

The research methodology used documentary research which will be into two parts: method of data collection and method of analysis. Library research is the main method of data collection. Information and statistical data are obtained from books, periodicals, newspapers, reports and other publications including government official website. Data collected on existing water quality standards, legislation and management will be compared with the international criteria. Different levels of compliance monitoring systems in river pollution according to the existing situation will be described.

Rivers in Myanmar

Myanmar is well endowed with natural river resources; of which Ayeyarwady, Chindwinn, Kaladan, Leimyo, Mayu, Thanlwin, Attaran, Gyaing, Sittaung and numerous small rivers. In lower area of Myanmar, the delta region is crisscrossed with many rivers and creeks. There are only few transboundary rivers, virtually all water resources are within the national borders. The north-south direction of the mountain ranged of Myanmar is reflected in course of major river system.¹ In fact, with the exception of the Thanlwin, all the others are within in Myanmar territory and can be considered nationally owned water assets.

The Mekong river is an international river which involving six riparian countries: China, Myanmar, Laos, Thailand, Cambodia and Vietnam. It is called the Lancang River in China. Then it becomes the border river of Myanmar and China with the name of Mekong near the Nam Ngo River. The length of Myanmar-China border stretch is 31 kilometer up to the Myanmar-

¹ Sein Tun, Myanmar River Reference, Ministry of Transport, 1996, p-1.

Laos border near the Nam La River. The river flows southward to the confluence of the Mong Sai River as Myanmar- Laos's border with the stretch of 234 kilometer. Thus, the length of Mekong River which falls into Myanmar is 265 kilometers. Throughout the course of the river from the Myanmar-China boundary, there are five main tributaries within the Myanmar territory. They are The Nam Loi River, the Nam Yawng River, the Nam Lin River, The Nam Mae Sai River and the Nam Mae Kok River.¹

Environmental Problems on Rivers in Myanmar

In Myanmar it is almost a custom to discharge all kinds of waste into the rivers. Besides, the gradual growth of industries, increased use of fertilizers and pesticides, urbanization and discharge of municipal waste are continuously polluting the river system. In rural areas, unprotected water bodies permit contamination by animal and human wastes. Moreover, the numerous rivers and their tributaries that crisscross the country carry pollutants of the whole catchment area including upstream areas.²

Mining, as an essential economic sector, is a major and growing source of water pollution. Since the opening up of the country to foreign investors, the Ministry of Mines has granted hundreds of official and unofficial mining concessions to both local and foreign investors. Jade, copper and gold mining activities have expanded rapidly. Mines are associated with water pollution problems from tailings. Gold mining is particularly rampant in Kachin State, in northern Myanmar, especially along the Ayeyarwady and Chindwin Rivers.³

Sedimentation is one of the major adverse effects of storage dams in the lower courses of rivers. Mining and deforestation along the upper reaches of river basins cause serious erosion problems. The Yangon River, the Bago River and the Sittaung River have been identified as the rivers with water quality problems of greatest concern in Myanmar.⁴

Deforestation in the northern parts of Myanmar has large impacts on the landslides and other water related issues in the country. Also, the

¹ Ibid, pp-92-121.

² Dr Kyaw Naing, National Report of Myanmar on the Coastal Pollution Loading and Water Quality Criteria, BOBLME Project, 2011, p-4.

³ Burma Environment: People, Problems, Policies, The Burma Environmental Working Group (BEWG), 2011, p-61.

⁴ Inter-Ministry Task Force on Water Resources, Ministry of Agriculture and Irrigation, Strategic plan on integrated water resources management in Myanmar, 2004.

deforestation of the mangroves in the Ayeyarwady delta is problematic, since mangroves are the only natural protection against floods. The Ayeyawady mangrove forest is a prominent example as it has been affected by serious deforestation and environmental consequences due to increasing population pressure and over exploitation of mangrove products including woodfuel and charcoal exporting to meet the demand of Yangon City¹.

Climate change-induced changes to hydrological cycles will deteriorate water quality, quantity, and accessibility. Flooding in the downstream area of rivers causes serious navigation problems. Riverine floods are the most common type of flood in Myanmar. In the Ayeyarwady and Chindwin Rivers, flooding occurs when intense rain persists for at least three days over the headwaters of the rivers in northern Myanmar. In the Sittaung and Thanlwin Rivers, floods are duly caused by rainfall associated with low pressure waves (the remnants of typhoons and tropical storms of the South China Sea) moving from east to west across the country.²

River bank erosion damages and threatens the stability of roads and other infrastructure. Rivers in Myanmar are naturally dynamic due to a highly variable monsoon climate and the high sediment levels. The Ayeyarwady delta experiences a floodplain type of flooding, with relatively low flood levels but over a large area. The combination of heavy rainfall, strong winds, high soil saturation, and unstable soils in hilly areas causes landslides that destroy houses, roads, bridges and other infrastructure.³

Myanmar's largely rural population relies heavily on rivers and streams for their livelihoods and culture. These are now under serious threat from dam development. Building dams inside Myanmar offers an opportunity to acquire cheap electricity for neighboring countries, while investors are not accountable for the negative economic, social and environmental impacts of the dam building. The dams will have a serious impact on food security and health vulnerability. The dams will also decrease food security through their negative impact on fisheries and river bank farms. An estimated 48 hydropower projects such as Myitsone Dam, Shwelee River Dams and Thanlwin River Dams are currently being planned, constructed or already

¹ Water in Myanmar, Embassy of the Kingdom of the Netherlands, Ministry of Foreign Affairs, 2006, p-3.

² Ministry of Transport, The Union of Myanmar, Myanmar National Adaption Plan of Action (NAPA) to Climate Change, 2012, p-34.

³ Government of the Guideline Flood Manual Union of Myanmar, Myanmar Post Disaster Needs Assessment of Floods and Landslides, 2015, p-7.

exist in Myanmar on major rivers including the Thanlwin, Ayeyarwady, Chindwin, and Sittaung, as well as their tributaries.¹

Policies and Strategies for River Conservation

Since water resources play an important role in Myanmar's socioeconomic development, the Myanmar National Water Resources Committee (NWRC) has drawn up a national Integrated Water Resources Management (IWRM) Strategy Plan. This plan includes the strategies and policies of the involved stakeholders in the water resources system. The overall objective was to assess the water resources on basin and local scale for the present and future situations for which the water allocation, water utilization, water availability, water demand, inter-linkages between sectors; and validation data, are used as support for the recommendation of IWRM process. The water demand and allocation assessments were done for the major river basins in Myanmar such as the Ayeyarwaddy, Thalwin, Sitaung, Bago and Myit Ma Hka Rivers.²

The implementation of an integrated approach needs to be started through no-regret projects. For such kinds of projects, “Learning by doing” with utmost care during the planning and selection process is the best way to develop IWRM for Myanmar and the associated human resources. These projects need to be carefully designed, with the “broader view”, and closely monitored to allow adaptive management. The projects can be implemented in different regions e.g. the Mountains, the Dry Zone, the Rivers, the Cities and the Delta as a preparatory work for development of a Myanmar IWRM Master Plan with measures for country-wide implementation. These projects are Integrated *Meiktila Lake Area Development*, *Bagan Multi-Purpose Pilot River Beautification*, *Pan Hlaing Control Sluice cum Navigation Lock*, *Feasibility Study Mandalay-Bagan navigability improvement*, *Sittaung-Bago Canal Integrated Water System Analysis*.³

¹ Burma Environment: People, Problems, Policies, The Burma Environmental Working Group (BEWG), 2011, p-53.

² R. (Rens) Hasman, Water Allocation Assessment to Support IWRM in the Major River Basins of Myanmar: Now and In the Future, Delft University of Technology, 2014, p-164.

³ A statement of declaration from the 23rd Aug 2014 meeting between Expert Group of the National Water Resources Committee (NWRC) and Dutch High Level Experts held at DWIR office in Yangon.

The Myanmar National Water Policy (MNWP) which is to be the first integrated water policy for the watersheds, rivers, lakes and reservoirs, groundwater aquifers and coastal and marine waters, was approved by the NWRC in March 2014. The MNWP stated the goal is to apply IWRM and develop, share and manage in a sustainable manner. The vision is that Myanmar will become a water efficient nation based on IWRM by the year 2020. The mission is to introduce the Water Policy to all the agencies of water the sector to further develop respective rules and regulations.

The MNWP should result in a framework for creating a system of laws and institutions and a plan of action including the Myanmar National Water Framework Directive (NWFD), 2014. This Myanmar NWFD is to be an umbrella statement of general principles governing the exercise of legislative and executive powers.¹ The goal is to apply IWRM for sustainable development. The policy covers two broad areas such as water resources management and water resources use. The objectives include the providing of national policy on use of transboundary water courses. One of main strategies is that the polluter pays principle should be enforced.

The Myanmar NWFD includes the following seven key principles;

- (1) Good status, i.e. clean and sufficiently stored, for all ground water and surface water (rivers, lakes, transitional waters, and coastal waters) in Myanmar.
- (2) National Water Budget; a National Water Budget must be estimated under the current hydrological and meteorological conditions taking into consideration climate change impacts already visible. The groundwater must achieve “good quantitative status” and “good chemical status” (i.e. not polluted) by 2020. Classification of groundwater bodies, "good" or "poor" according to the current status, should be examined.
- (3) The ecological and chemical status; the ecological and chemical status of surface waters should be assessed according to the following criteria: Biological quality (fish, benthic invertebrates, aquatic flora); Hydro-morphological quality such as status of river banks, river bank structures, river training works, river continuity or substrate of the

¹ Water in Myanmar, Embassy of the Kingdom of The Netherlands, Ministry of Foreign Affairs, 2016, p-2.

river bed; Physical-chemical quality such as temperature, oxygenation and nutrient conditions.

- (4) Cooperation between the Union Government and the States and Divisional Governments; the proposed Directive requires local governments (States and Divisional Governments) "to encourage the active involvement of interested parties" in the implementation of the Directive.
- (5) Spatial management of river basins; all major basins in Myanmar need River Basin Development Plans, which provide a clear indication of the way the objectives set for those river basins are to be reached within the required timescale. Local Governments have to cooperate and work together for the management of the river basin. River Basin Development Plans should be updated every ten years.
- (6) Transgressions; the River Water Transfer projects are very popular due to water scarcity around the world and heavily criticized as being contrary to the principles of Sustainable Water Resources Management of River Basins. Therefore, this topic should be addressed in a proper manner.
- (7) Restructuring Process; citizens of Myanmar expressed their concerns over water scarcity, safety and water pollution issues through media and various workshops as well as direct communication to the President's office.¹

Myanmar is one of the most highly vulnerable countries in the world to the adverse impacts of climate change facing threats from extreme weather events, sea level rise, flooding and drought. Ahead of the next United Nation Framework Convention on Climate Change (UNFCCC) Conference of the Parties in Paris (COP21) in December 2015, governments are preparing their Intended Nationally Determined Contributions (INDCs). INDCs are a key input to the negotiations of a new international climate agreement that will be finalized at COP21 and come into effect in 2020. Myanmar is determined to play its role in the global effort and to crystallize this will into Myanmar INDC. Myanmar desires to undertake a series of actions to demonstrate its commitment to climate change mitigation and highlight options for

¹ Ingrid Nesheim, Bente M. Wathne, Bo Ni and Zaw Lwin Tun, Myanmar: Pilot introducing the National Water Framework Directive, 2016, p-23.

adaptation. Myanmar is therefore actively engaged in designing and implementing the required policies, governance, financial and programming instruments to address climate change.¹

According to planning and implementation of INDC, the policy area of forest management aims to realize the co-benefits of the policy such as reducing soil erosion, thereby decreasing the risk of floods and landslides that may occur near rivers. According to the specific elements of forest policy, in the catchment areas of rivers, streams, lakes and dams, forest plantations, agroforestry practice, community forestry have been done and also to reduce soil erosion, contour bunds, sediment trapping dams, conserving natural springs and bioengineering measures are being done. In the forestry sector, projects example includes the *Mangrove Rehabilitation Plan for the Enhancement of Disaster Prevention in Coastal and Delta Areas*.²

Laws Relating to River Conservation

Myanmar has not only a direct law but also a number of sectoral laws that are related to protection and conservation of rivers and control of pollution. The Republic of the Union of Myanmar Constitution, 2008 provides that the union shall protect and conserve the natural environment.³ It also provides that every citizen has the duty to assist the union in carrying out environmental conservation. However, there is no provision of constitutional rights to a clean and healthy environment and instead citizens have a duty to assist the Union Government in environmental conservation.⁴ Under the Constitution, the national Parliament can enact environmental and other protective laws.⁵

In Myanmar, the Environmental Conservation Law, 2012 is a National Framework Law which contains certain provisions with respect to the protection of environment matters. The objectives of the Environmental Conservation Law include the systematic integration of environmental conservation in the sustainable development process, a healthy and clean environment and the conservation of natural and cultural heritage for the benefit of present and future generations.⁶

¹ Ministry of Environmental Conservation and Forestry, Myanmar's Intended Nationally Determined Contribution INDC, The Republic of the Union of Myanmar, 2015, p-1.

² Ibid, p-7.

³ Section 45, The Republic of the Union of Myanmar Constitution, 2008.

⁴ Section-390 (b), The Republic of the Union of Myanmar Constitution, 2008.

⁵ Schedule 1, Section 6(b), Ibid.

⁶ Section-3, Environmental Conservation Law, 2012.

The Environmental Conservation law is based on the "polluter-pays principle" with compensation for environmental impacts to be paid to a fund to be set up by the Ministry of Natural Resources and Environmental Conservation.¹

The Environmental Conservation Law provides the responsibilities of a project proponent/ business owner for reducing environmental impacts as follows;

- 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.
- The owner or occupier of any 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.²

The Environmental Conservation Law mentions the possibility that certain categories of companies, whose activities can impact on the environment, may be obligated to request authorization from the Ministry. In addition, the Law requires that any business that requires prior permission must have insurance cover for impacts on the environment. The Law provides for criminal penalties, if these apply to business entities, and payment of compensation for damages. According to this Law, any person without the prior permission, who operates a business, work-site or factory or 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.

According to the Environmental Conservation Rules, 2014, the Ministry shall determine the categories of projects, businesses; services or activities with regards to whether or not shall conduct an Initial Environmental Examination (IEE) or Environmental Impact Assessment (EIA) study to conduct such projects. Moreover, the Environmental

¹ Section-7 (o), Ibid.

² Section-13 (d,e,f), Ibid.

Conservation Rules stipulate the basic policy and concept of EIA application for the development of project: to prepare the environment impact assessment system and submit to the Ministry; and to implement and carry out environmental management plan within the time stipulated by the Ministry and submit the performance situation to the Ministry.

Under the Environmental Impact Assessment Procedure, 2015, a project proponent or qualified third party must conduct an IEE or EIA report and prepare an Environmental Management Plan (EMP).

For making investments in the energy sector such as dam projects and hydropower generation and mining activities in Myanmar Rivers, the project proponent must submit the project proposal to the Ministry of Natural Resources and Environmental Conservation under the Environmental Impact Assessment Procedure.¹ The Environmental Conservation Department (ECD) has the power for screening the desired project proposal. After that ECD will decide whether IEE or EIA is needed for the desired project or not.² If the project does not need to do an IEE or EIA, the desired project can proceed to receive the license from the Myanmar Investment Commission, (MIC). If the desired project is required to do an IEE or EIA, the desired project will arrange to submit an IEE³ or EIA report⁴ and prepare an EMP⁵ before receiving the Environmental Compliance Certificate (ECC).⁶ After screening the IEE or EIA report of the relevant project, the Ministry issues the ECC to the project proponent.⁷ After receiving the ECC, the project proponent shall apply to the MIC in order to acquire a license for carrying out the desired project.⁸

Water resources and river conservation works are being managed according to the laws and regulations of the State. The Conservation of Water Resources and Rivers Law, 2006 is the direct law relating to inland river conservation. This law aims to conserve and protect the water resources and rivers system for beneficial utilization by the public; to smooth and safe

¹ Article-23 (a), Environmental Impact Assessment Procedure, 2015.

² Article-23(c), Ibid.

³ Articles-37-38, Ibid.

⁴ Articles-64-66, Ibid.

⁵ Articles-76 and 77, Ibid.

⁶ Article-83, Ibid.

⁷ Articles-41 and 70, Ibid.

⁸ Articles-86 and 87, Environmental Impact Assessment Procedure, 2015.

waterways navigation along rivers and creeks; to contribute to the development of State economy through improving water resources and river systems; and to prevent serious environmental impacts.¹ However, this Law is under the jurisdiction of the Ministry of Transport and Communications. This Law focuses on transportation safety and its development. This law includes the general prohibition on polluting water courses on rivers. Moreover, this Law provides not only criminal penalty² but also compensation for the relevant offence.³ If the said compensation is not paid, it shall be recovered as as a fine under Section 386 of the Code of Criminal Procedure.⁴ Whoever attempts or conspires or abets in the commission of an offence under this law shall be punished with the punishment provided for such offence in this law.⁵

The followings sectoral laws are indirect laws related to river conservation. They have specific descriptions relating to the discharge of wastewater and water quality control in rivers.

- The Penal Code, 1861
- The Obstructions in Fairways Acts, 1881
- The Yangon Waterworks Act, 1885
- The Defile Traffic Act, 1907
- The Ports Act, 1908
- The Yangon Municipal Act, 1922
- The Water Power Act, 1927
- The Emergency Provisions Act, 1950
- The Factories Act, 1951 (amendment in 2016)
- The Union of Myanmar Public Health Law, 1972
- The Forest Law, 1992
- The Forest Rules, 1995
- The Protection of Wild Life, Wild Plants and Conservation of Natural Areas Law, 1994

¹ Section-3, The Conservation of Water Resources and Rivers Law, 2006.

² Sections-25, 26 and 27, Ibid.

³ Section-28, Ibid.

⁴ Section- 28, Ibid.

⁵ Section-29, Ibid.

- Myanmar Mines Law, 1994
- Myanmar Mines Rules, 1996
- The Water and Air Pollution Control Plan, 1995
- The City of Yangon Municipal Law, 2013
- The Nay Pyi Taw Development Law, 2009
- The Inland Water Vessel Law, 2015
- The Myanmar Port Authority Law, 2015
- The Environmental Impact Assessment Procedure, 2015
- The Canal Act, 2017
- The Embankment Law, 2017

Water Quality Standards and Guidelines

Control of the disposal of wastewater from residential buildings, office buildings and factories is the responsibility of the Ministry of Natural Resources and Environmental Conservation. The Environmental Conservation Law, 2012 provides that the Ministry may, with the approval of the Union Government and the Committee, stipulate environmental quality standards regarding river conservation as follows;

- (a) suitable surface water quality standards in the usage in rivers, streams, canals, springs, marshes, swamps, lakes, reservoirs and other inland water sources of the public;
- (b) effluents standards; and
- (c) Other environmental quality standards stipulated by the Union Government.

According to the Environmental Conservation Law, the Ministry issued the National Environmental Quality (Emission) Guidelines, on December, 2015. The Guidelines aim to prevent pollution for purposes of protection and ecosystem health.¹

For inland water quality control, “water quality criteria” are set as the benchmarks for water quality conservation under the National Environmental Quality (Emission) Guidelines. If there is no other provision, these Guidelines

¹ Article-1, The National Environmental Quality Guidelines, 2015.

refer to emissions sources, and are intended to prevent or minimize adverse impacts to environmental quality or human health by ensuring that pollutant concentrations do not reach or exceed ambient guidelines and standards.¹

The emission guidelines shall apply to any project subject to EIA procedure, as adopted by the Ministry. Moreover, the emission guidelines specifically apply to all project types listed in the EIA procedure.² These guidelines shall be reflected in investment projects of EMP and ECC.³

The National Environmental Quality (Emission) Guidelines include general guidelines; industrial specific guidelines; guidelines for agriculture, livestock and forestry development; guidelines for manufacturing; guidelines for waste management; guideline for water supply; guidelines for infrastructure and service development and guidelines for mining. These guidelines include the standards (criteria) of water quality which are uniform among the country.

In the absence of any other provisions, the National Environmental (Emission) Guidelines will apply to all the types of projects listed in the EIA procedure that have either direct or indirect discharge of process water, wastewater from utility operations or storm water to the environment without any treatment.

Before the Myanmar National Environmental Quality Guidelines of 2015, the Ministry of Industry-1 (MOI-1) issued the Water and Air Pollution Control Plan in the year 1995. This Plan was drawn up for the uniform adoption of the preparatory prevention measures. The order aims to prevent pollution and damage to the natural environment by waste discharged from factories; and to develop the programme by laying emphasis on the control of the wastes, reduction of wastes and elimination of wastes. Moreover, the order intends that control should be carried out by exercising the “Cleaner Production Programme” adopted by United Nations Environmental Programmes (UNEP).

This order prohibits wastewater from factories being directly discharged into rivers. The order also designates the effluent quality standards, but these standards are temporary and apply only until the national effluent quality standards are officially designated.⁴ The water pollution control system, under the order of MOI-1, requires that the type of discharge of wastewater from factories shall be measured and data recorded using 16

¹ Article-4, Ibid.

² Article-5, Ibid.

³ Article-6, Ibid.

⁴ Article-3, The Water and Air Pollution Control Plan, 1995.

parameters¹ for analytical data of the liquid effluent. Wastewater from factories, having conditions of high acidity, alkalinity, high temperature and the presence of toxic chemical such as arsenic, mercury and cadmium is prohibited from being directly discharge into public water areas such as river, creek, lake and pond.²

According to this order, factories are required to complete the implementation of wastewater treatment facilities within their own specified time-frame, outside of which the direct discharge of wastewater into public water areas without pre-treatment is prohibited.³ By the requirement of this order, the factories shall check and record the condition of the treated effluent after treatment.⁴ The factories shall specify the quality standards of the wastewater discharged into public water areas according to the types and nature of the factories under their management,⁵ and these standards must be inconformity with 26 parameters⁶ specified by order of MOI-1 until the national quality standards are promulgated by the State.⁷

However, this plan of MOI-1 concerns only state-owned economic enterprises under the jurisdiction of MOI-1. Therefore, this plan is not absolutely effective to control discharge of wastewater from all factories in Myanmar.

Institutional Arrangements on River Conservation

In Myanmar, several government agencies and departments under different ministries are engaged independently both in surface and ground water use but the extent and type of water use are different from one another.

There are different government organizations which are responsible for water environmental management within respective sectors such as health, irrigation, mining, transport, and industry. Myanmar has 21 Ministries under the Office of the Presidents as of May 2016. The leading Ministries in charge of environment and social considerations are the Environmental Conservation Department of the Ministry of Natural Resources and Environmental

¹ Annexure(B), Ibid.

² Article-7, Ibid.

³ Article-9, Ibid.

⁴ Article-11, Ibid.

⁵ Article-12, Ibid.

⁶ Annexure (C), Ibid.

⁷ Article-9, Ibid

Conservation. This Ministry is responsible for the implementation of the Environmental Conservation Law. However, clarification of the responsibility of different ministries may remain an issue in the promotion of environmental protection in the country, including water pollution control.¹ The nine Governmental Ministries identified as having some responsibility for water issues in rivers number around 18 institutions.

Concerning river monitoring, there are no specific regular monitoring programmes for ambient water quality in the country. Similarly, water quality monitoring is also conducted by different governmental agencies in line with their own respective purposes. To ensure appropriate and efficient monitoring and reporting, it is advisable to use existing mechanisms in the following ways.

- (a) The Department of Methodology and Hydrology (DMH) under the Ministry of Transport and Communications will be responsible for (i) monitoring and reporting water quality, (ii) developing indicators for watershed quality, (iii) surveying and collecting meteorological and hydrological data of the main river systems, and (iv) disseminating and sharing of water resources data with other water sector agencies;
- (b) The Irrigation Department (ID) under the Ministry of Agriculture, Livestock and Irrigation will be responsible for managing the exploitation, development and use of water and water resources in agriculture, reclamation and drainage. It will also be responsible for preventing and controlling flooding in protected areas, the collection of hydro-meteorological and water quality data on a project-oriented basis, and disseminating and sharing data with other water sector agencies;
- (c) The Department of Hydroelectric Power (DHP) under the Ministry of Electricity and Energy It will also be responsible for collecting and disseminating hydrological data and hydrographical survey data

¹ National Performance Assessment and Sub-regional Strategic Environment Framework in the Greater Mekong Sub region, “Myanmar National Environmental Performance Assessment (EPA) Report” prepared by NCEA and UNEP Regional Resource Center for Asia and Pacific, 2006, p-96.

together with generated firm power for past, present and future projects;

- (d) The Department of Tourism under the Ministry of Hotels and Tourism will be responsible for the management, exploitation, development and use of water and water resources in the tourism sector;
- (e) The Ministry of Industry will be responsible for the management, exploitation, development and use of water and water resources in industry and mining as well as water quality from industrial waste;
- (f) The Department of Health (DoH) under the Ministry of Health will be responsible for the management, exploitation, development and use of water for health care purposes;
- (g) The Ministry of Border Affairs will be responsible for the rural water supply and domestic consumption. It will also be responsible for water supply in rural and urban areas, water quality and urban drainage;
- (h) The Water Resources Utilization Department (WRUD) under Ministry of Agriculture, Livestock and Irrigation will be responsible for implementation, development and use of water pumping from rivers and groundwater to be used to irrigate farmland;
- (i) The Directorate of Water Resources and Improvement of River Systems (DWIR) under the Ministry of Transport and Communications will be responsible for the implementation, management, development and use of water and water resources in transportation, the protection of river banks and river systems as well as the collection of hydrological data and hydrographical surveys for navigation;
- (j) The Forest Department (FD) under the Ministry of Natural Resources and Environmental Conservation will be responsible for conservation management, development and use of forests in a sustainable manner. It will also be responsible for the reforestation programme and for monitoring deforestation and forest cover reduction in critical areas;
- (k) The Environmental Conservation Committee (ECC) under the Ministry of Natural Resources and Environmental Conservation will be responsible for coordinating with the ministries and for supporting and presenting proposals, with recommendations, put forward by the

task forces to the Government; prohibiting the relevant Government departments and organizations if the environmental damages arise or situations for damage arise; and laying down and carrying out the Myanmar national environmental policies for conservation and enhancement of environment.

- (l) The National Water Resources Commission (NWRC) under the Ministry of Transport and Communications will be responsible for coordinating the various line agencies in carrying out studies and formulating policies, drafting laws, strategies and action plans for the planning, management, use and protection of water and water resources. It will also be responsible for reporting the results of implementing activities related to water and water resources, including watershed quality indicators, to the Government;
- (m) The National Planning Department under the Ministry of National Planning and Finance will be a mechanism for monitoring financial resources allocation and utilization for the water sector. It will also be responsible for compiling resources allocation to the water sector and for providing advice or strategies to increase resource mobilization and utilization; and
- (n) The Ministry of Foreign Affairs will be responsible for setting up and monitoring a programme for reducing the number of conflicts with neighbouring countries that are against international laws concerning utilization of water and water resources from trans-boundary rivers. It will also be responsible for keeping track of, and compiling information on, conflicts and violations and for preparing a report together with recommendations for improving/resolving such conflicts.¹

Findings

Although Myanmar has Conservation of Water Resources and River Law, this law is not covering all aspects of water resources. Supplement any legislation on degrees for water pollution control is necessary to fill the gaps

¹ Working Group of WACDEP Myanmar, Report of Assessment on Integration Water Security and Climate Resilience Aspects to Myanmar National Water Policy.

in the river conservation laws and to provide practical guidelines and criteria to the enforcement agencies. Myanmar rivers conservation embraces several functions such as water quality management, legislation and regulation for river utilization, standard setting and collection and treatment of domestic and industrial wastewater. Each function needs an appropriate institutional arrangement in order to make the whole system work effectively. However, Myanmar's river conservation system is scattered among the different ministries and the designations of responsibility lack an ad hoc character. No central institution has been designated for coordinating the activities of these various stakeholders. This is required in order to organize and collocate existing data on water quality to ensure its satisfactory analysis and interpretation.

Conclusion

River conservation must be based on principles of ecological sustainability and social justice. To ensure sustainable development in Myanmar, social impact assessments need to be developed in the primary stage of the decision-making process for national development planning, to develop environmentally; sector wide, region wide and nationwide. In order to take steps towards ecologically and socially responsible development in the context of inland river conservation since affected communities-upstream and downstream need to be protected. Myanmar must have a sound policy framework for environmental protection and sustainable development that enables citizens to take part in decision making about their own development, and ensures responsible private sector investment.

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References

Laws

Myanmar Mines Law, 2018
Myanmar Port Authority Law, 2015
The Canal Act, 2017
The City of Yangon Municipal Law, 2013
The Defile Traffic Act, 1907
The Embankment Law, 2017
The Emergency Provisions Act, 1950
The Factories Act, 1951
The Forest Law, 2018
The Inland Water Vessel Law, 2015
The Nay Pyi Taw Development Law, 2009
The Obstructions in Fairways Acts, 1881
The Penal Code, 1861
The Protection of Wild Life, Wild Plants and Conservation of Natural Areas Law, 1994
The Ports Act, 1908
The Union of Myanmar Public Health Law, 1972
The Water Power Act, 1927
The Yangon Waterworks Act, 1885
The Yangon Municipal Act, 1922

Rules and Regulations

Myanmar Mines Rules, 1996
The Forest Rules, 1995
The Water and Air Pollution Control Plan, 1995
The Environmental Impact Assessment Procedure, 2015
The Environmental Water Quality Guidelines, 2015

Articles

Resources Committee (NWRC) and Dutch High-Level Experts held at DWIR office in Yangon
Burma Environment: People, Problems, Policies, The Burma Environmental Working Group (BEWG), 2011
Dr Kyaw Naing, National Report of Myanmar on the Coastal Pollution Loading and Water Quality Criteria, BOBLME Project, 2011
Government of the Guideline Flood Manual Union of Myanmar, Myanmar Post Disaster Needs Assessment of Floods and Landslides, 2015
Inter-Ministry Task Force on Water Resources, Ministry of Agriculture and Irrigation, Strategic plan on integrated water resources management in Myanmar, 2004
Ingrid Nesheim, Bente M. Wathne, Bo Ni and Zaw Lwin Tun, Myanmar: Pilot introducing the National Water Framework Directive, 2016

- Ministry of Forestry, National Action Programme of Myanmar To Combat Desertification in the Context of United Nations Convention to Combat Desertification (UNCCD), 2005
- Ministry of Natural Resources and Environment, National Water Resources Strategy towards The Year 2020, Ministry of Natural Resources and Environment, Vietnam, 2006
- Ministry of Environmental Conservation and Forestry, Myanmar's Intended Nationally Determined Contribution INDC, The Republic of the Union of Myanmar, 2015
- Ministry of Natural Resources and Environment, the World Bank, and the Danish International Development Agency (DANIDA), The River Basin in Vietnam, The Vietnam Environmental Monitors, 2006
- Ministry of Transport, The Union of Myanmar, Myanmar National Adaption Plan of Action (NAPA) to Climate Change, 2012
- National Performance Assessment and Sub-regional Strategic Environment Framework in the Greater Mekong Sub region, "Myanmar National Environmental Performance Assessment (EPA) Report" prepared by NCEA and UNEP Regional Resource Center for Asia and Pacific, 2006
- Water in Myanmar, Embassy of the Kingdom of The Netherlands, Ministry of Foreign Affairs, 2016
- Water Management in the Netherlands, Joint Publication of Water management in the Netherlands and Ministry of Infrastructure and Environment, 2011
- Working Group of WACDEP Myanmar, Report of Assessment on Integration Water Security and Climate Resilience Aspects to Myanmar National Water Policy
- R. (Rens) Hasman, Water Allocation Assessment to Support IWRM in the Major River Basins of Myanmar: Now and In the Future, Delft University of Technology, 2014

THE PROTECTION RIGHT OF FOREIGN INVESTOR IN MYANMAR

NLam Roi Ja¹

Abstract

Most developed and developing countries are adopting the market oriented economic system and those countries with a surplus in the balance of trade are prospering. The protection and promotion of investment is important for investors, and the host country can increase economic development from the investments of citizens and foreigners. Every country has unique rules regarding investment, with some regulations more restrictive than others. Each national economy has a specific framework that foreigners must abide by in order to regulate domestic investment laws. The Myanmar Investment Law allows the investor the use of land rights depending on the category of business and the volume of investment. In order to promote investment, the protection of intellectual property rights should be considered as a necessary component. A foreign investor's property cannot be taken over by nationalization act or decree of State without payment of adequate compensation. This situation is an emerging issue in that under Myanmar Local Law foreign investors are not entitled to the same protection of person and property as Myanmar nationals.

Keywords: Foreign Investor, Protection, Property Rights, Compensation

Introduction

A foreign investor investing in Myanmar has the option of incorporating a subsidiary or registering a branch of a company incorporated outside Myanmar. A subsidiary incorporated in Myanmar may be wholly foreign owned or may be a joint venture including Myanmar shareholders. The incorporation of a foreign Myanmar company and registration of a Myanmar branch of a foreign company are subject to the procedures and requirements set out in the Myanmar Companies Law (2017) and by instructions of the Directorate of Investment and Company Administration (DICA). The Myanmar Investment Law also contains provisions that address the rights and privileges of foreign investors and the measure that may be taken for their protection.

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Material and Methods

In the presentation of the international framework as well as the international, regional instruments for the protection of foreign investors together with some case-law. A descriptive, comparative and an analytic method are applied in this paper. The materials used for the purpose of the research are books, articles (including articles on the Internet), treaties, agreements, recommendations and case-law.

Economic System and Background

In Myanmar, as a period, economy had unquestionably been the most disastrous in the history. An obsession with maintaining control led to contact with the outside world being reduced to a bare minimum. Not only foreign, but also domestic wholesale and even retail trade were all nationalized. However it was terminated in 1988/1989 within the context of the socialist economic system, consequent to the changes in the political and economic system. After 1988, Myanmar adopted the market economic system with plenty changes of national laws. However many old laws that were enacted prior to 1988 are still alive today.

Socialism was abandoned and a new era of openness to market forces and to the international economy declared. But the government retained a battery of controls over all aspects of the economy. The openness is highly selective, and in effect or applies to enterprises in which the military regime participates either directly or indirectly. Collaboration with foreign governments and enterprise is compartmentalized and far from transparent. Myanmar government had been undertaking a far-researching program of economic reform marked by the introduction of an "open door policy" designed to transform a market-oriented system. Principal among the changes were policies aimed at encouraging foreign and local investment, introduction private banking and allowing the retention and trading of foreign exchange¹. Currently Myanmar economy is growing faster than before in Asian region and more welcome investors by stimulating investment promotion policies.

¹ ESCAP, Myanmar; Trade and Investment Potential in Asia, 1996, p – xvii.

The Rights of Investors

Property or the ownership of a specific subject is a legal status which is created by the municipal law of each State. The definition of the property was said to include all movable and immovable property, whether tangible or intangible, including industrial, literary and artistic property as well as rights and interests in any property.¹ Foreigners, like citizens, have the right of leasing houses, apartments, offices, etc., for dwelling or business purposes.

Generally, land in Myanmar is owned by the State. Foreigners are prohibited from owning immovable property and accordingly should not be subject to property tax. Land administration is assigned to various government departments. According to the Transfer of Immoveable Property Restriction Act, 1987, Section 5, No person shall grant a lease of immovable property, for a term exceeding one year:

- (a) To a foreigner or foreigner owned company.
- (b) No foreigner or foreigner owned company shall receive a lease of immovable property, for a term exceeding one year.²

Foreigners and foreign companies are not allowed to buy land in Myanmar or lease land for a term exceeding one year unless specially permitted by the government according to the Transfer of Immoveable Property Restriction Law of 1987. Under this law, transfer of immovable property by any person to a foreigner or a company owned by a foreigner by way of sale, purchase, gift, acceptance of a gift, mortgage, acceptance of a mortgage, exchange or transfer and acceptance of a transfer by any other means are expressly prohibited. A company approved under the Myanmar Investment Law is allowed to sign a long-term lease of land, and such long-term lease can be stamped and registered at the Deed Registration Office to secure the foreign investors' rights. The lease can be extended if the project is mutually beneficial to the investor and the State. A foreigner or foreign company is required to apply to MIC with the land lease agreement or other documents that evidence the agreement to lease from the person who has the right to lease. The land lease agreement is concluded upon receiving the approval

¹ Shaw N. Malcolm, *International Law*, 6th Edition, 2008, p- 830.

² Section 5 of the Transfer of Immoveable Property Restriction Act, 1987

from MIC and shall be sent back to MIC. While a foreign investor may not own land, land use right can be obtained in either one of the following two ways:

- obtaining land use right under a lease, from either the government or private citizens, approved by the government; or
- land use rights are contributed to a joint venture by a government agency.¹

Foreign investors may invest in property development on a build, operate and transfer (BOT) basis. The Government recently enacted the Condominium Law on 29th January 2016. Foreigners were allowed to buy Condominiums under the Condominium Law. Collectively owned properties managed for the purpose of being used by co-owners are also included.² The law does not mention local investors, but mentions the right of a foreigner or foreign investor to own part of Condominium which means that the developer can sell not more than 40% of apartments in a condominium to foreigners according to this law. Section 50 of the Myanmar Investment Law 2016, relates to the investor's rights to use land as follows,

(b) Foreign investors may lease land or buildings either from the government or government organizations or from owners of private land or buildings commencing from the date of receipt of the permit or endorsement of the Commission up to an initial period of (50) years in accordance with the stipulation.

(c) After the expiry of the term of the right to use land or building or the period of right to lease of land or building permitted under subsection (b), a consecutive period of (10) years and a further consecutive period of (10) years extension to such period of lease of land or building may be obtained with the approval of the Commission.³ Any Investor who has been issued a Permit or an Endorsement, or who is in the process of applying for a Permit or

¹ <http://www.myanmarlegalservices.com/wp-content/uploads/pdf/Doing-Business-in-Myanmar>

² Section 2 of the Condominium Law, 2016.

³ Section 50 (b) (c) of the Myanmar Investment Law, 2016.

Endorsement, in relation to the Investment may apply for a Land Rights Authorization¹.

The following investors shall not be required to obtain Land Rights Authorization from the Commission through submission in connection with section 50 of the Law:

- (a) Myanmar Citizen Investors: or
- (b) an Investor who has been granted under the laws to make Investment in a company that retains its status as a Myanmar Company after dealing with foreign investors:²

The Investor proposes to sub-lease land or buildings from other Investor who:

- (a) has been previously authorized to use land and buildings;
- (b) has complied with the conditions of land rights authorization; and
- (c) has the right to sub-lease land or buildings under the approval of the Authority who has interests in such land or buildings; to implement as a part of the Investment, it shall not be required to apply for separate Land Rights authorization. In the case, the Investor must notify the Commission in the prescribed form and after that can lease land or buildings for long term according to section 50 of the Law and must comply with registration obligations and other applicable laws³.

Investment Law the "Restricted List",

1. Investment activities allowed to carry out by Government only
2. Investment activities restricted to foreign investors
3. Investment activities permitted with the recommendation of the relevant ministries.⁴

Under the Myanmar Investment Law, Section 47 deals with the protection of investors:

¹ Rule 116 of the Myanmar Investment Rules, 2017.

² Rule 134 of the Myanmar Investment Rules, 2017.

³ Rule 135 of the Myanmar Investment Rules, 2017.

⁴ MIC Notification No.15/2017

- (a) the government shall accord to foreign investors and their direct investments, treatment no less favourable than it accords to Myanmar citizen investors in respect of the expansion, management, operation, and sale or other disposition of direct investments according to this law except any way stipulated in laws, rules and notifications;
- (b) the government shall accord, in liked circumstances, to foreign investors and their direct investments from one country, treatment no less favourable than that it accords to investors of any other country and their direct investments in respect of establishment, acquisition, expansion, management, operation, and the sale or other disposition of direct investments;
- (c) the provision of subsection (b) shall not be construed so as to oblige foreign investors with any treatment, preferences or privileges resulting from the following matters:
 - (i) Custom Union, Free Trade Area, Economic Union resulting from Custom Union, Free Trade Area and Economic Union and international agreements;
 - (ii) More favourable treatments to be accorded to investors and their investments included in international agreements, bilateral or regional or international treaties, agreements or arrangements between regional countries, treaties, agreements or arrangements with other countries, or arrangements relating wholly or partially to taxation.¹

In section 48, the government guarantees to the foreign investors fair and equitable treatment in respect of the following;

- (a) the right to obtain the relevant information on any measures or decision which has a significant impact for an investor and their direct investment;
- (b) the right to due process of law and the right to appeal on similar measures, including any change to the terms and conditions under any license or permit and endorsement granted by the government to the investor and their direct investment.²

¹ Section 47 of the Myanmar Investment Law, 2016.

² Section 48 of the Myanmar Investment Law, 2016.

Exemptions and Reliefs for Investors

Under Myanmar Investment Law 2016, investors are entitled to exemptions and relief for their investment. In section 74, the Commission shall, for the purpose of supporting the development of the Union by allowing investment in sectors which need to be developed, and for the proportionate development of Regions and States, scrutinize and may grant one or more tax exemption or relief if the investor applies for such exemptions or reliefs.¹ Tax incentives for investors are available under the MIL, with respect to income tax exemptions which are stipulated according to the region of the investment.

The less developed regions are designated as Zone (1), the moderate developed regions as Zone (2), and the adequately developed regions as Zone (3), the Commission shall, with the approval of the Government, issue a notification and may grant income tax exemption to investment businesses in Zone (1) for a period of 7 consecutive years including the year of commencement of commercial operation, investment business in Zone (2) for a period of 5 consecutive years including the commencement of commercial operation and investment business in Zone (3) for a period of 3 consecutive years including the year of commencement of commercial operation.²

In addition, the relating to treatment of investors in Section 76 provides that the government may undertake subsidies, funding, capacity building and training to Myanmar citizen investors and citizen-owned small and medium-sized enterprises. The government may also allow exemptions and reliefs for the locations where Myanmar citizen-owned businesses are operated or other economic activities.³

If the investor continues to do the business, in Myanmar as noted above, the Government will grant him relief from income tax. Moreover, the MIC may grant exemptions or reliefs from customs duty or other internal taxes or both on machineries, equipment, instruments, machinery components, spare parts, construction material unavailable locally, and material used in the business, which are imported as they are actually required, during the

¹ Section 74 of the Myanmar Investment Law, 2016.

² Section 75 of the Myanmar Investment Law, 2016.

³ Section 76 of the Myanmar Investment Law, 2016.

construction period or during the preparation period of the investment business, exemptions or reliefs from the customs duty or other internal taxes or both on imported raw materials and partially manufactured goods which are used to manufacture products for export and if the volume of investment is increased with the approval of the Commission and the original investment business is expanded during the permitted period of investment, exemption or relief from the customs duty or other internal taxes or both on machineries, equipment, instruments, machinery components, spare parts, materials used in the business, and construction materials unavailable locally, which are imported as they are actually required for use in the business which is being expanded as such.¹

Under section 78 of the Myanmar Investment Law, the Commission may scrutinize and grant the following exemptions and relief, as required, to the investor if applied:

- (a) exemption or relief from income tax if the profit obtained from the investment business that has obtained a permit or an endorsement is reinvested in such investment business or in any similar types of investment business within one year;
- (b) right to depreciation for the purpose of income tax assessment, after computing such depreciation from the year of commencement of commercial operation based on a depreciation rate which is less than the stipulated lifetime of the machinery, equipment, building or capital assets used in the investment;
- (c) right to deduct expenses which are incurred for research and development relating to the investment businesses carried out within the Union and actually required for the economic development of the Union, from the assessable income.

The foreign investors have to pay income tax on their income at the rates applicable to the citizens residing within the Union. This is an equal right for investors. The tax incentives are offered to foreign investors in Myanmar to attract foreign investments which are vital for the economic development a country and also form important investment promotional measures in country.

¹ Section 77 (a) (b) (c) (d) of Myanmar Investment Law, 2016.

Guarantees for Investment

Private ownership rights must be protected by law. Citizens and foreigners must be assured that their legally obtained possessions will not be arbitrarily seized, and that they can obtain a legal remedy before a neutral, independent judiciary if the government disregards this law. The government cannot nationalize businesses or seize private property except in rare circumstances where the public good is at risk and where adequate compensation is paid. The foreign investors' properties are protected under the guarantees.

Under the Myanmar Investment Law, MIL guarantees that no foreign company shall be nationalized during the permitted period of investment.¹

Section 52 of Myanmar Investment Law 2016, pertaining to investors' property, provide that the government guarantees not to nationalize any investment carried out in accordance with the law. Except under the following conditions, the government guarantees not to take any measures which expropriate or indirectly expropriate or is likely to effect a result in the termination of an investment:

- (a) actually necessary for the interests of the Union or its citizens;
- (b) non-discriminatory manner;
- (c) measures in accordance with the applicable laws;
- (d) prompt, fair and adequate payment of compensation;²

In Section 53 a fair and adequate compensation shall be designated as an equivalent to the market value prevailing at the time of expropriation of the investment. However, that designation shall be based on fair consideration of public interests well as the interests of the private investor, and shall take into account the present and past conditions of investment, the reason for expropriation of the business or property, the fair market value of the investment, the purpose of expropriating the business or property, the profits acquired by the investor during the term of investment, and also the duration

¹ <http://www.myanmarlegalservices.com/wp-content/uploads/pdf/Doing-Business-in-Myanmar>

² Section 52 of the Myanmar Investment Law, 2016.

of the investment.¹ According to Section 55 of Myanmar Investment Law, if an investor asserts that a measure undertaken under Section 52 are inconsistent with the provisions of such section and amount to an indirect expropriation, the government shall conduct a case by case and fact-based inquiry that take into consideration the following factors:

- (a) whether the measure creates an intentional adverse effect on the economic value of an investment or not;
- (b) whether the measure breaches the prior binding written commitment of the government, contract, license, or other legal documents issued in favor of the investor or not;
- (c) whether the measures of government, including the objective contained in Section 52 (a), are consistent with the public interest or not.²

In Myanmar Investment Law 2016 it is mentioned that before any investment dispute between the investor and the Union or between the investors is brought to any court or arbitral tribunal, all parties involved in the dispute shall make appropriate attempts to settle the disputes amicably.³ The penalties for non-compliance are the same as those under Foreign Investment Law 2012. The Commission may-

- (a) impose one or more of the following administrative penalties against an investor which violates any of the rules, regulations, procedure, notifications, orders, directives, or terms and conditions contained in the permit or endorsement:
 - (i) censure;
 - (ii) temporary suspension of business;
 - (iii) temporary suspension of tax exemption and reliefs;
 - (iv) revocation of the permit or endorsement;
 - (v) adding the business to a blacklist for which no permit or endorsement shall be issued in the future;

¹ Section 53 of the Myanmar Investment Law, 2016.

² Section 55 of the Myanmar Investment Law, 2016.

³ Section 83 of the Myanmar Investment Law, 2016.

- (b) shall inform a prior notice in respect of the administrative penalties to the investor before imposing the administrative penalties according to subsection (a), and the investor has the right to question in writing upon the administrative penalties;
- (c) shall describe the reason for imposing an administrative penalty together with the decision imposing the administrative penalty under subsection (a).¹

In addition, Myanmar Investment Law provides that an investor dissatisfied with any decision made by the Commission under Section 85 shall have the right to apply for an appeal to the government within 60 days from the date of the decision in accordance with the stipulation.² If an investor fails to comply with or violate any provisions of this Law, including the performance of the prohibited investment business under Section 41, he shall be prosecuted under this Law and, if required, any existing Laws.³

In one of the famous case relating to investment in Myanmar, *the Myanmar Foodstuff Industry of the Ministry of Industry No.(1) (Government Company) v Yaung Chi Oo Trading Pet Ltd (Joint Venture Company)*,⁴ the two companies would work together to operate the Mandalay Brewery by joint venture which was approved by the Myanmar Investment Commission on 26 November 1993. On 29 November 1993, the Singapore Company and Government signed a Joint Venture Agreement, which provided the terms under which the company would operate. The Joint Venture Company commenced operation on 1 October 1994.

Over the first four-year period of operations, the Joint Venture Company earned US\$3.2 million in profits and, at the end of the 1997-98 term, it paid US\$0.58 million in taxes to the State. The Joint Venture Agreement would last for five years with an option to renew for an additional 5-years period.

¹ Section 85(a), (b), (c) of the Myanmar Investment Law, 2016.

² Section 86(a) of the Myanmar Investment Law, 2016.

³ Section 88 of the Myanmar Investment Law, 2016.

⁴ 1999.

On 5 August 1998, the Managing Director of the Singapore Company, sent an application to the Myanmar Investment Commission to renew the registration of the Joint Venture Company for another 5-year period. On 11 November 1998, the military took over the Joint Venture Company for the second time. After this take over, the managing Director could not withdraw or transfer money in accounts under her name. The government takeover violated the Joint Venture Agreement and that the Joint Venture Company could not be terminated without the consent of the Singapore Company. On 29 September 1999, the Managing Director of the Government Company, submitted an application to the Yangon Divisional Court to liquidate the Joint Venture Company. On 24 December 1999, the Yangon Divisional Civil Court issued its Judgment in the Myanmar Yaung Chi Oo Company case, ruling in favor of the Government Company. The Court based its authority to terminate the Joint Venture Company on Section 162 (iv) of the Burma Companies Act, which allows a court to wind up a company if it is of the opinion that it is just and equitable to do so.

That is a leading case in Myanmar. In the past government organizations have nationalized a number of foreign companies and foreign properties. The new Myanmar Investment Law however, guarantees not to nationalize foreign properties. This is an important provision since the State needs to invite ever greater numbers of foreign investors and foreign companies to invest in Myanmar. In fact recently, Myanmar concluded bilateral investment treaties with China, India, Japan, Laos, the Philippines, Thailand, Vietnam, the Republic of Korea, Kuwait, Israel and the United States of American.

Myanmar investment has not yet had to deal with the settlement of disputes relating to the Foreign Investment Law 2012 and the Myanmar Investment Law 2016. Most of the cases of disputes which are have been relatively minor and settled out of court. There are, therefore, no reported cases. In practice at the present time, although some disputes between the investors in Myanmar are settled as stipulated in their relevant agreements, that is the investors are brought to court or an arbitral tribunal, they mostly settle their disputes amicably now. When a dispute arises and if the problem is related to the 2016 MIL, it can be settled by the Myanmar Investment

Commission which, in fact, is planning to form an arbitral tribunal, not just in the near future.

Bilateral Investment of Treaty (BITs)

The main goal of developing countries signing BITs or negotiating BITs is to attract foreign investment as a means of fostering economic growth and development. On the other hand, the purpose of BITs for the developed countries is to obtain legal protection for investment and preclude non-commercial risks facing foreign investors in host countries.¹ Indeed, BITs' original name is agreement signed between two countries concerning the reciprocal promotion and protection of investment. It must be noted that most BITs do not explain which contracting party is the source of the investment or which is the recipient². Thus, the promotion and the protection of investment are reciprocal.

However, every positive aspect of foreign investment has a negative aspect as well. In this regard, new issues in BITs are (i) Environmental Concerns (e.g, pollution, harm to natural resources), (ii) Human Rights (e.g, Violations of human rights), (iii) Economic development (e.g, hazardous technology bring about costs to the host state), (iv) International Concerns (e.g, Choice of Arbitral Tribunals), (v) Regulatory space and bilateral treaties (e.g, the right to control investment by the host state).³

As negative aspects, Myanmar recently faces the violations of Human Rights and environment concerns in Lat Pan Daung Copper Project with China Wan Paung Co., Ltd. Both parties resolve and negotiate these issues by regulating conditions under Investigation Commission which may be carried out and compensation awarded. Bilateralism is more appropriate to resolve investment issues than to trade issues.

¹ Dolzer Rudolf & Stevens Margrete, *Bilateral Investment Treaties*, Martinus Nijhoff Publisher, 1995, P-12

² Siquerios Jose Luis, *Bilateral Treaties on the Reciprocal Protection of Foreign Investment*, California Western International Law Journal, Spring 1994, P-257.

³ M.Sornarajah. *The International Law on Foreign Law on Foreign Investment* 2nd Edition, Cambridge University Press, 2004, P-265.

Another example of Economic cooperation between China and Myanmar, Myintsone Dan Project, was approved by Myanmar government in March 2009 when China and Myanmar concluded "The Framework Agreement on Cooperation in Developing Hydroelectric Resources in Myanmar", and also obtained all necessary approvals from Myanmar Government before construction. However, in September 2011, Myanmar government unilaterally suspended the undergoing Myintsone Dan project due to domestic political pressure arising from the local inhabitants, resulting in huge damages to Chinese investors.¹ It has been noted that it is necessary for government to adopt all means of protection mechanisms to protect investment through consultation and diplomatic channel and to conclude BITs with effective dispute resolution approach by protecting the legitimate rights and interests from expropriation or any other hazard treatments by the host states.

BITs have substantive and procedural rules that secure foreign investment. Although every BIT covers the same issues, there are many exceptions and reservations. Most of the investment disputes are related with expropriation, national treatment issues and most favourite nation treatment principle which are essential substantive rules of the BITs. Most BITs include a clause on expropriation and compensation in order to protect investors against the risk of unlawful expropriation.

Findings

Investment plays significant roles to develop economic both domestic and foreign investment. Myanmar has currently a well-defined vision and framework for implementing policies under the current situation but transparent, clear, legal and predictable regulatory framework for investment is still weak to determine and make decision for the benefit of their investment contribution. The government does not control the real estate market. But, the real estate is restored by crony capitalism and the real estate broker. So, private investors have to pay price higher than the normal market price.

¹ Report on Development and cooperation of China's Outward Investment and Economic Cooperation, 2011-2012, P-100.

Conclusion

With regard to the protection of foreign-owned property, in Myanmar, the Myanmar Investment Law, 2016 contains provisions relating to the investor's right to use to land and guarantees that no foreign company shall be nationalized during the permitted period of investment. Most disputes are settled amicably, out of the court.

Therefore, governments cannot nationalize businesses or seize private property except in rare circumstances where the public good is at risk and where adequate compensation is paid. States must treat their foreign investors in a manner consistent with international standards of human respect and civil rights. Since almost all States nowadays practice a market-economy foreign direct investment has been greatly increased, as more and more foreign investors and foreign companies have taken part in commercial transactions in many States.

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References

Laws

Condominium Law, 2016

Myanmar Investment Commission Notification No. 15/2017

Myanmar Investment Law, 2016

Myanmar Investment Rules, 2017

Transfer of Immoveable Property Restriction Act, 1987

Report on Development and cooperation of China's Outward Investment and Economic Cooperation, 2011-2012

Reference Books

Dolzer Rudolf & Stevens Margrete, *Bilateral Investment Treaties*, MartinusNijhoff Publisher, 1995

ESCAP, Myanmar; *Trade and Investment Potential in Asia*, 1996

M.Sornarajah. *The International Law on Foreign Law on Foreign Investment* 2nd Edition, Cambridge University Press, 2004

Shaw N. Malcolm, *International Law*, 6th Edition, 2008

Siquerious Jose Luis, *Bilateral Treaties on the Reciprocal Protection of Foreign Investment*, California Western International Law Journal, 1994

Sources from Internet

<http://www.myanmarlegalservices.com/wp-content/uploads/pdf/Doing-Business-in-Myanmar>

Case

Myanmar Foodstuff Industry of the Ministry of Industry No.(1) (Government Company) v Yang Chi Oo Trading Pet Ltd (Joint Venture Company), 1999

SPECIFIC PERFORMANCE OF INTERNATIONAL SALE CONTRACT: ENGLISH LAW, MYANMAR LAW AND CISG

Khin Hninn Wint Kyaw^{*}

Abstract

Specific performance means the execution of a contract according to the precise terms agreed upon. Specific performance is an order of a court which requires a party to perform a specific act according to the agreed contract terms instead of paying damages. Under English Law, in the case of a sales contract, if the goods are unique and impossible to obtain elsewhere and the term of specific performance is granted as an exceptional remedy and is granted by the discretion of the court in very limited circumstances. Under the United Nations Convention on Contracts for the International Sale of Goods (hereinafter the CISG), specific performance is the primary remedy rather than damages, which intends to keep the contract continued. It appears that the remedies which are available for the buyer for breach of contract are different from form to form. However, under the English sale law there remedies are very limited such as termination and damages. Under Myanmar Sale of Goods Act 1930, in order to claim a specific performance subject to the provisions of Chapter II of the Specific Relief Act. These remedies to be more elaborated in the Vienna Convention 1980 on Contract for the International Sale of Goods (CISG) compared with English Sale of Goods Act 1979 and Myanmar Sale of Goods Act 1930. This will be followed by identifying which system of law contains the more appropriate rules to be applied to international sales of commodities and international sales of manufactured goods.

Keywords: Specific Performance, Sales Contract, Breach, Inadequate Damages, Remedies

Introduction

Remedies being an important issue in contracts and specific performance being the remedy that has raised much controversy, it is interesting to examine this remedy. In order to reach a unified rule the divergence of the rules regulating specific performance in legal systems should be examined and reasons for this difference be clarified.

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The general purpose of all contract remedies is to place the aggrieved party in as good a position as he would have enjoyed had the other party performed his obligations arising from the contract. This means that all contract remedies seek to protect one's contractual rights. Specific performance is one of those remedies available to the aggrieved party, the purpose of which is to help the creditor obtain--as much as possible--the actual subject matter of his bargain. Specific performance means the execution of a contract according to the precise terms agreed upon. But granting specific performance is not kept of restrictions in all legal systems. Common Law and Civil Law have different approaches to this matter, a fact that rendered agreement on specific performance rules in the Convention a difficult matter.

This paper examines the provisions regarding specific performance in the Convention in attempt to reveal the divergence of approaches between Common Law and Civil Law by means of a comparative study of the two systems. The purpose is to assess the extent to which uniformity is achieved in the Convention.

The study shows that the solution adopted regarding specific performance was a compromise that threatens uniformity to a certain degree. The purpose is to highlight the differences between English Law, Myanmar Law and CISG in order to mess whether a unified rule was reached in this regard and propose certain amendments that help achieve better the purpose of unification.

Material and Methods

In the presentation of comparative study on different remedies as well as international convention, English law and Myanmar law. A comparative methods are applied in this paper. The materials are books, articles (including on the internet), conventions, treaties and case-law.

Right to Specific Performance

The primary remedy for non – delivery, and in general non – performance, under CISG is not damages. The Convention recognizes the remedy of specific performance. This is provided in article 46 of the Convention where “the buyer may require performance by the seller of his

obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.”¹ Therefore, the buyer has a right to require the seller to perform his obligations regarding delivery of the goods or documents if the seller has not yet delivered them.

Unlike the Sale of Goods Act, the Convention also provides a right in favor of the seller. Furthermore, specific performance under the Convention is an option available to the buyer to require a defaulting seller to perform his obligations. It is not, like under the provisions of English law, a discretionary remedy granted by the courts. An aggrieved buyer thus, is not required to resort to a court to enforce performance of the contract by the other party.

The availability of such performance-oriented buyers’ remedies, however, is limited by Article 28, which provides that, in enforcing a party’s right to require performance under the CISG, “a court is not bound to enter a judgment for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.”²

In one very recent decision, a buyer had placed equipment orders that were marked “urgent” and the seller had delivered the equipment between two and four months after the orders were placed. When the buyer claimed damages for late delivery, the court noted that the buyer had not made a demand for performance as provided in Article 46(1) (nor, the court noted, had the buyer fixed an additional period of time for delivery under Article 47(1)); as a result, the court held, the buyer had failed to establish that the seller’s deliveries were late. Perhaps the decision illustrates a point made in the UNCITRAL Case Digest, based upon suggestions found in the Secretariat Commentary to the Draft Convention: “under Article 46(1), a clear declaration that the buyer requests the performance of a contractual obligation is needed.” But even if such a demand for performance is required before a buyer can assert a right to performance under Article 46(1), the buyer in the

¹ Article 46(1) of the CISG, 1980.

² Harry M. Flechtner, Professor, University of Pittsburgh School of Law. A.B. 1973, Harvard College; A.M. 1975, Harvard University; J.D. 1981, Harvard University School of Law, *Buyer’s Remedies in General and Buyer’s Performance-Oriented Remedies*, p-342.

case was not asserting such a right - rather, it was seeking damages for late delivery.¹

Thus, the buyer usually should not bring its action for specific performance in a common law court. The CISG provision gives the buyer the right to seek specific performance, rather than damages, but does not require it to do so. Thus, any preference for this remedy must arise from buyer's perspective, not from the courts. Even in civil law jurisdictions, buyers will often prefer to recover damages and purchase substitute goods, because of the expense and delays inherent in litigation. Even if a court should prefer specific performance, buyers can terminate this option by declaring the contract 'avoided', which is an inconsistent remedy. If specific performance is sought in a civil law court, it will usually apply CISG Article 46 and order the seller to perform its obligations.

In English Sales Law, traditionally, the main application of the rules of specific performance was in land disputes. Specific performance of contracts between vendors and purchasers of real estate was specifically assigned to the Chancery Division. However, English courts have extended the remedy to cases of sale of goods in Section 52 of the Sale of Goods Act 1979.²

Specific performance of the terms of a contract is an extraordinary remedy, granted in very limited circumstances.

Generally, Section 52(1) of the Act, "in any action for breach of contract to deliver specific or ascertained goods the court may, if it thinks fit, on the plaintiff's application, declare by its judgment or decree that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages."³ The relief is limited to actions brought with respect to delivery of 'specific' or 'ascertained goods'. The discretion provided for the courts, to award specific enforcement of the

¹ Harry M. Flechtner, Professor, University of Pittsburgh School of Law. A.B. 1973, Harvard College; A.M. 1975, Harvard University; J.D. 1981, Harvard University School of Law, *Buyer's Remedies in General and Buyer's Performance-Oriented Remedies*, p-345.

² Kouros Majdzadeh Khandani, *Does the CISG, compared to English law, put too much emphasis on promoting performance of the contract despite a breach by the seller?*, *Manchester Law Review*, Vol.,1:98, p-102.

³ Section 52(1) of the Sale of Goods Act, 1979.

contract, would be available as a remedy to the aggrieved buyer only if the court thinks it is appropriate. Thus, the court is not simply bound to grant such an order – per se. For this reason, the remedy is generally granted based on the requirements.

Under Section 52(1); it will be appreciated that the remedy of specific performance is discretionary and will only be granted where damages would be insufficient. Thus in *Behnke v Bede Shipping Co* [1927] 1 KB 649 a ship owner agreed to buy a ship called *The City* which he required immediately and which satisfied all relevant shipping regulations in terms of equipment. There was only one other ship available. An order for specific performance was made since damages would not have been an adequate remedy in this case.¹

Moreover, Section 52(1) limits specific performance to those circumstances involving "specific" or "ascertained" goods. In other words, it applies to goods "identified and agreed on at the time a contract of sale is made" or "identified in accordance with the agreement after the time a contract of sale is made." It is meant to apply in limited circumstances involving limited types of goods. However, the mere fact that specific or ascertained goods are involved is no guarantee that the court will exercise its discretion and order specific performance, including instances where the buyer was put to significant hardship in obtaining any sort of replacement good, such as custom machinery or a ship.

The court will not normally grant specific performance of a contract for the sale of unidentified goods, but its power to grant an injunction may have much the same effect. The following case illustrates; *Sky Petroleum v VIP Petroleum*². In March 1970 the plaintiffs agreed to buy from the defendants all the petrol they required at their filling stations. The agreement was for ten years. In December 1973, when the petrol crisis was at its height, the defendants said they would terminate the agreement on the grounds that the plaintiffs were in breach of contract, having exceeded the credit provisions. This would have meant that the plaintiffs would lose their only

¹ Denis Keenan, Smith & Keenan's Advanced Business Law, 10th Edition, Pitman, 1997, p-316.

² [1974] 1 All ER 954

source of petrol supplies and they applied for an injunction to restrain the defendants from withholding the supply. It was held by Goulding J that the injunction would be granted, even though in this case it had the same effect as specific performance. Thus, the court will order this if it thinks fit to do so.

Based on these decisions, English case law is unsettled on this point. The precise scope of when a court might have the power or discretion to grant specific performance is therefore unclear. Any new regime to be implemented in the CISG or other sales laws would have the opportunity to clarify English law on this point.

Under Myanmar Sale of Goods Act, 1930 where a contract has been broken, the innocent party can claim damages or specific performance if he treats the contract still subsists. If he claims specific performance, cases comes within one of the clauses of Section12 of Specific Relief Act, 1877. Even though a portion of subject-matter of the contract has been ceased at the time of performing the contract, a decree for specific performance may be enforced under Section13 of Specific Relief Act. If the unperformed part is small, the parties have to obey the provisions of Section 14. If the unperformed part is large, they may have to follow the provisions of Section 15. If the contract can be separated, specific performance may be awarded separately under Section16. When the purchaser has faced the problem of imperfect title of vendor, they should apply the case under Section 18. The court may award compensation in substitution of specific performance if it thinks fit under Section 19. Moreover when damages are stipulated in certain contract, it cannot be precluded the passing the decree for specific performance under Section 20. Cases which may be enforced specific performance of contract is stated in Section 12 of the Specific Relief Act.

Conditions Required by CISG

CISG gives to the buyer who has not received the agreed performance from the seller a specifically enforceable right to ‘require performance’ by the seller. The reference to the seller’s “obligations” is not limited, and so include court compulsion to provide goods of the agreed description quantity, quality,

and title (including intellectual property rights), as well as adhering to the agreed time, place & manner of delivery.¹

The provision permits the buyer to seek specific performance but *does not require* it to do so. The buyer may still elect between seeking performance and seeking damages. But by seeking a performance the claimant does not lose any right to claim damages since Article 45(2) states that ‘the buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies’. Equally, the seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement under Article 62. The seller like the buyer also does not lose the right to claim damages under Article 61(2).² Under English law, however, the buyer is not prohibited from claiming damages when he has already resorted to specific performance.

In either case, the buyer must first notify the seller that the goods are non-conforming with notice required by Article 39 or within a reasonable time thereafter and, if he is asking substitute goods, the non-conformity must amount to a fundamental breach. Also, the buyer cannot have avoided the contract or resorted to some other inconsistent remedy.³ The seller’s remedies are also set out together with the buyer’s in the CISG and generally do not discriminate between types of breaches by the buyer.

A buyer’s right to demand a remedy is set forth in Article 46, which authorizes several options to the buyer. A buyer can demand specific performance when the seller has failed to perform, unless he or she has resorted to an inconsistent remedy. In the event the seller has performed, but the goods fail to conform, a buyer can demand re-delivery provided certain requirements are met and for the buyer to request the seller to cure a non-conforming delivery by repair.

¹ Ralph H. Folsom, Michael W. Gordon, John A. Spanogle, JR, Principles of International Business Transactions, Trade & Economic Relations, Consise Hornbooks, Thomson*West,2005, p-62.

² Indira Carr, International Trade Law, 3rd Edition, Cavendish, 2005, p-87-88.

³ Ray August, Don Mayer, Michael Bixby, International Business Law (Text, Cases, and Readings), 6th Edition, Pearson, 2013, p- 600.

The right to require delivery of substitute goods depends on the nature of breach. Substitute goods may only be requested in case of a fundamental breach.

“If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under Article 39 or within a reasonable time thereafter.”¹

“In any event, the buyer loses the right to rely on lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless the time-limit is inconsistent with a contractual period of guarantee.”²

If the seller delivers substitute goods, the question arises as to whether the buyer may claim damages for the extra costs of reparation carried out by itself, or shall the buyer offer to the seller the opportunity to carry these works out.

Therefore, the buyer may require delivery of substitute goods in case of non-conformity amounting to a fundamental breach in the case of non-unique goods. The remedy is not parallel in the common law.

The seller can require the payment of the purchase price under Article 62 CISG and has a legally enforceable remedy. In regard to the purchase price claim under Article 62 CISG two issues may arise: first, it is controversial whether the limitation in claiming specific performance under Article 28 CISG is also applicable in regard to the payment of the purchase price. That the limitation of specific performance was only to be applicable in regard to the buyer’s remedies and the seller’s right to require the taking of the delivery.³

¹ Article 46(2) of the CISG, 1980.

² Article 39(2) of the CISG, 1980.

³ Peter Schlechtriem, Petra Butler, *UN Law on International Sales, The UN Convention on the International Sale of Goods*, Springer, 2009, p-173.

The second issue is whether the buyer can hold the seller's duty to mitigate loss in its entirety or in parts against the seller. Cases where it is anticipated in which the buyer notifies the seller early that he or she will not be able to take delivery of the ordered goods which still has to be manufactured by the seller and the seller nonetheless produces the goods and tries to enforce the contract with an action for specific performance of the purchase price.¹

In some cases, the seller may claim payment of the price even where the goods have not been delivered. So, in a case where the buyer clearly refused to take delivery of the goods, the seller has insisted in obtaining payment for the goods that were ready for shipment at its premises, and the court has accepted such a claim.²

The seller can require the acceptance of the goods. The duty to accept the goods has the same weight as the duty to apply the purchase price. Courts in common law countries do not need to impose specific performance in form of acceptance if the courts would not do it under their domestic law- Article 28 CISG is unquestionably applicable.³

Therefore, under the CISG, the buyer has the right to request redelivery of substitute goods only if the lack of conformity constitutes a fundamental breach. In such a case, he needs first to give the seller notice of the non-conformity within a period of two years from the date on which the goods were delivered to him. Otherwise, he loses his right to claim non-conformity. Unlike the common law, delivery of substitute goods may also be requested for non-conforming non-unique goods.

Specific performance in the consumer sales contract is granted under Section 23 of the Consumer Protection Act, 2015. The UK Sale of Goods Act 1979 does not permit either repair or replacement as a proper remedy of the buyer. However, the Consumer which has a right to repair or replacement in

¹ Peter Schlechtriem, Petra Butler, UN Law on International Sales, The UN Convention on the International Sale of Goods, Springer, 2009, p-173.

² Fabio Bortolotti, Professor of International Commercial Law, University of Turin, Remedies Available to the Seller and Seller's Right to Require Specific Performance, p-338.

³ Peter Schlechtriem, Petra Butler, UN Law on International Sales, The UN Convention on the International Sale of Goods, Springer, 2009, p-174.

the case of consumer sales was provided in the Consumers Protection Act, 2015.

The question then arises as to whether the buyer can recover the damages if it repaired the goods itself. Therefore, the seller shall be notified in due time on the defects of the product and require reparation by the seller. The buyer is entitled to undertake reparation and claim damages only where it timely notifies the seller of the defect and the seller does not repair (or refuses to repair) the goods. Thus, if the demand is made, failure of the seller to repair may result in future avoidance of the contract. However, only after the time for remedying has passed in accordance with Article 47, can a buyer seek the right of avoidance of the contract.

The seller can also make a cover sale and claim damages, instead of acceptance. In some circumstances the seller might have to make a cover sale to mitigate loss. However, a damages claim then excludes a claim for specific performance.¹

The obvious difference between Section 52 and Article 46 is the difference in emphasis on who may pursue the remedy. Specific performance under the SGA is a remedy granted by the court, in its discretion; yet under the CISG, it is the option of the buyer to require specific performance on the part of the seller, without any requirement of resorting to a court. Applicable under Articles 46(2) and (3): Article 46 (2) restricts a buyer's right to demand that the seller deliver goods in substitution for a non-conforming delivery to cases where the lack of conformity in the original goods constitutes a fundamental breach of contract; Article 46 (3) limits a buyer's right to demand that the seller repair non-conforming goods to situations where such repair is not "unreasonable in the circumstances." There is no counterpart in common law.

Conditions Provided by the Act

In English sales law, specific performance is usually a remedy sought only by a buyer, since specific performance for the seller is usually receipt of the purchase price, which can almost always be compensated for by damages

¹ Peter Schlechtriem, Petra Butler, *UN Law on International Sales, The UN Convention on the International Sale of Goods*, Springer, 2009, p-174.

or by an action for payment of the purchase price under Section 49 of the SGA.

In some circumstances, a seller would prefer to force the buyer to take delivery of the goods rather than trying to sell the goods elsewhere and trying to recover any losses through an award of damages. A seller could have contracted to supply all of the requirements of the buyer's manufacturing business over an extended period of time (therefore the goods are neither specific nor necessarily ascertained) for a contracted price. The seller may have made a significant initial investment and the market price might vary in such a way as to make any damage award speculative.¹

Under these circumstances, the seller has some justification to seek specific performance, while the actual position under English law is unclear on whether a court would have the ability to make such a decree.

For the purpose of granting an order to compel a defaulting seller to perform his undertaking to deliver the goods, the subject matter of the contract of sale must be specific or ascertained.

Section 61(1) of the SGA, 1979 defines specific goods mean 'goods identified and agreed on at the time of contract of sale is made'. By the agreement of the parties, specific goods are allocated as the unique goods which have to be delivered by the seller in discharging his obligations under the contract of sale. Therefore, the goods are likely to become specific by means of express descriptions in the contract of sale.

Moreover, these types of goods are presumed as specific goods, for the purpose of application of Section 52. As far as ascertained goods are concerned, no statutory definition is provided. However, the expression 'ascertained goods' is defined by case law. In *In Re Wait*, Atkin LJ stated that 'ascertained probably means identified in accordance with the agreement after the time a contract of sale is made. In the case of goods forming part of a bulk,

¹ Peter A. Piliounis, Cambridge University, 12 Pace International Law Review, 2000, The Remedies of Specific Performance, Price Reduction and Additional Time under CISG: Are these worthwhile changes or additions to English Sales Law?, p- 8.

the ascertainment would not be done unless that part is actually separated from the bulk.¹

Another important aspect of specific performance under English law is the discretionary nature of the order. In addition to the equitable remedy of specific performance, this element is also provided in Section 52 of the Act which uses the following formulation: if the court thinks fit, as indicated by case law, the remedy of specific performance is not a right for the aggrieved party to seek. In fact, it is an equitable discretion vested in courts when they enforce performance of a contract. This power is limited by the fact that the decision of the court. Indeed, specific performance will only be granted if it is just and equitable to do so.²

Basically, it is established that damages are the most adequate remedy when there is a contract for sale of goods which are readily available in the market. Generally, there is no specific rule to identify what damages would be an adequate remedy. The case often cited as an example is the case of the contract for sale of unique goods.

Section 52 of the Act does not express the condition that the goods should be unique, but review of case law indicates that the courts have exercised the test of uniqueness for years. In this respect, as Swinfen Eady MR stated in *Whiteley Ltd v Hill*³, the power granted to the courts to order the delivery of a particular chattel is discretionary, and should not be exercised 'when the chattel is an ordinary article of commerce and of no special value or interest.'⁴

As in *Falcke v Gray*⁴ which involved a contract for sale of two china jars, the court refused to order specific performance on the merits of the case. Thus, in terms of contract for sale of goods, the remedy would not be awarded where the goods are not unique. It means that the goods must be irreplaceable and not to be available on the market. In this way, the chattels such as an

¹ Kouros Majdzadeh Khandani, Does the CISG, compared to English law, put too much emphasis on promoting performance of the contract despite a breach by the seller?, *Manchester Law Review*, Vol.,1:98, p-103.

² *Ibid*, Kouros Majdzadeh Khandani, p-107.

³ [1918] 2 KB 808, 819.

⁴ [1859] 4 Drew 651.

Adam door, a stone from Westminster Bridge, or a particular painting or an article are deemed to be unique.

Occasionally, there are cases in which the chattel is not an ordinary article of commerce, but the court refuses to order specific performance on the basis that the chattel can be obtained from another manufacturer, therefore it is not unique.

Generally, the courts, in exercise of their discretion, consider several factors such as: circumstances of the case, conduct of the parties, the undue hardship that may be inflicted on the defendant, impossibility, unfairness, inadequacy of consideration and other elements. English courts grant the specific enforcement of a contract in cases where any of the mentioned factors are involved.¹

To summarize, the availability of specific performance must depend on the appropriateness of that remedy in relation to circumstances of each case. On one hand, the aggrieved party has to exercise his right to mitigate the loss, and on the other hand, he should be reasonably compensated by the most appropriate remedy, if the breaching party had performed his obligations. So, when damages would not be an adequate remedy, the courts will readily exercise discretion and order specific performance of a contract.

The specific performance remedy is further extended under Article 48 and 37 of the CISG. This remedy is referred to as 'the seller's right to cure'. The exercise of this right is subject to its not causing the buyer unreasonable inconvenience or unreasonable expense.

Where a non-conforming tender is made before the contract date of delivery, the seller has the right to remedy any lack of conformity, 'provided the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense'. The cure may be repair, replacement or making up

¹ Kourosh Majdzadeh Khandani, Does the CISG, compared to English law, put too much emphasis on promoting performance of the contract despite a breach by the seller?, *Manchester Law Review*, Vol.,1:98, p-110.

a shortage in quantity. If the seller cures the non-conformity, it is still liable to the buyer for any damages caused by the defects.¹

Under English law, there is no such concept. The circumstances in which avoidance will be precluded differ under the CISG and under English law. The seller's right to cure under the SGA is not expressly provided for, as it is under the CISG.

It would seem that the seller's right to cure is, limited under the SGA. However, despite the absence of any clear right to cure in English law, cure is 'common enough in countless unlitigated examples of contracting parties settling their differences'. Hence, it is also arguable on this basis that the seller's right to cure would represent a meaningful addition to English sales law.

The concepts of specific performance and right to cure are in fact two sides of the same coin, in the sense that English courts are likely to give priority to the remedy of damages. In the case of non-delivery, that an aggrieved buyer be compensated by means of damages rather than requiring his seller to deliver the goods despite all the difficulties. Provided that the existence of the right to cure is recognized, damages would be practically more helpful where the buyer demands that the seller substitutes or repairs the defective goods.²

In brief, specific performance under the CISG is an option available to the buyer to require a defaulting seller to perform his obligations. Under the common law, it is a discretionary remedy granted by the courts. In other words, it would be available to an aggrieved buyer only if the court thinks it is appropriate. In the case of non-conforming goods which amount to a fundamental breach of contract under the CISG, the buyer may require the seller to deliver substitute goods, but if the breach is not fundamental, the remedy available is repair. Under the Sale and Supply of Goods Act, the

¹ Ralph H. Folsom, Michael W. Gordon, John A. Spanogle, JR, *Principles of International Business Transactions, Trade & Economic Relations*, Consise Hornbooks, Thomson*West, 2005, p-45.

² Kouros Majdzadeh Khandani, *Does the CISG, compared to English law, put too much emphasis on promoting performance of the contract despite a breach by the seller?*, *Manchester Law Review*, Vol.,1:98, p-114.

buyer has the right to require the seller to repair or replace (substitute) the goods but only if it is possible to do so and is not disproportionate in comparison to other remedies. Substitution of goods may be demanded by the buyer only when the lack of conformity of the goods constitutes a fundamental breach. Under the CISG, the buyer may issue a notice to the seller fixing an additional, reasonable period of time, called the *Nachfrist* principles for the seller to deliver the goods. Failure of the seller to deliver within this additional time gives the buyer the option to repudiate the contract. No such notice is required under English law. When a delivery is delayed, the contract may be repudiated without giving any notice to the seller.

Findings

The specific performance is the primary remedy rather than damages, which intends to keep the contract continued. The Convention gives the right to require specific performance to both the seller and the buyer. Under the UK Sale of Goods Act, provides that in a contract for the sale of specific or ascertained goods, the court may order specific performance by the seller instead of requiring him to pay damages.

Therefore, specific performance is the primary remedy preferred by civil law jurisdictions. Thus, it is clear that CISG provisions on this class of remedy are likely to be interpreted in favour of civil law countries. Also noted, is that English law rules on specific performance are more restrictive than CISG provisions in that specific performance is limited to specified circumstances, while on the other hand, the Convention has established the remedy of specific performance as a right for the injured buyer, thus the scope of its application is broader than under English law. Hence, it can be said that specific performance is established on the limitations imposed by English law; and on the other hand, on the permissive attitude of the CISG.

Conclusion

In conclusion, there are many differences between the UK legislation encompassed by the Sales of Good Act and that provided for in the Convention. Such differences are often seen to be irreconcilable in many events given that there are different approaches in the UK towards certain

concepts. Certainly, the CISG seems to be much more geared towards civil law concepts of contract law and its associated provisions than it is towards the common law and the provisions of the Sales of Goods Act. Furthermore, there are many provisions, most importantly those governing the validity of a contract that are covered by the Sales of Good Act but not covered by the Convention. However, the fact is that the globalised nature of the world means that increased harmonization must be called for. The fact that the UK is not part of the Convention is often a much-quoted fact detracting from the importance of the Convention, as it is important to try and harmonize laws to encourage further trade in the process. Nevertheless it is difficult to see how the UK with its rich history of legislation in the Sales of Goods Act and case law could adopt the Vienna Convention without some difficulty.

In light of the current trends of globalization and liberalization of international trade, countries which have not yet ratified the CISG, including Myanmar, should seriously consider including such a move in their future plans and policies. One of the advantages to be gained from such a move would be that in trading with other CISG members, the issue of conflicts of law would not arise and the need for negotiation over terms would be eliminated as the law is uniform. This is a factor which would have a positive impact on the country's trade with foreign countries, since parties where the CISG is used have a preference to conduct business with other partners who are based in countries where the CISG is recognized. Given this, it is recommended that Myanmar should ratify the CISG and adopt an implementing statute that makes the CISG part of Myanmar law, for example, The Myanmar Sale of Goods (United Nations Convention) Act. (Incidentally, the Sale of Goods (United Nations Convention) Act has been in use in Singapore since its ratification of the CISG) Meanwhile, Myanmar needs to update the Myanmar Sale of Goods Act, 1930 in order to bring it in line with current international law. Given that the Act is derived from the UK Sale of Goods Act, this could be achieved through following the UK example and supplementing the Myanmar Sale of Goods Act, with further legislation addressing such matters as the supply of services which is an important element of international commerce today.

Therefore, as a result of the paper, the sales contracts are most essential in international business transactions and have to amend the Myanmar Sales of Goods inclusive with other related laws or in line with international sales contract by comparing with UK and CISG contracting States.

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References

Laws and Convention

Myanmar Contract Act, 1872
Myanmar Sale of Goods Act, 1930
Specific Relief Act, 1877
UK Consumer Protection Act, 2015
UK Sale and Supply of Goods Act, 1994
UK Sale of Goods Act, 1979
UK Supply of Goods and Services Act, 1982
Unfair Contract Terms Act, 1977
United Nations Convention on Contracts for the International Sale of Goods, 1980
United Nations Commission on International Trade Law, 1986.

Books

Dennis Keenan & Sarah Riches, *Business Law*, Pitman Publishing, 4th Edition, 1996.
Indira Carr, *International Trade Law*, 3rd Edition, 2005.
Peter Schlechtriem, Petra Bulter, *UN Law on International Sales*, 2009.
Ralph H Folsom Michael Wallace Gordon John A Spanogle, *International Business Transactions*, 2005
Ray August, Don Mayer, *International Business Law (Text, Cases & Readings)*, Pearson, 6th Edition, 2013

Review, Journal & Articles

Fabio Bortolotti, Professor of International Commercial Law, University of Turin, Remedies Available to the Seller and Seller's Right to Require Specific Performance,

Harry M. Flechtner, Professor, University of Pittsburgh School of Law. A.B. 1973, Harvard College; A.M. 1975, Harvard University; J.D. 1981, Harvard University School of Law, Buyer's Remedies in General and Buyer's Performance-Oriented Remedies

Kourosh Majdzadeh Khandani, Does the CISG, compared to English law, put too much emphasis on promoting performance of the contract despite a breach by the seller?, *Manchester Law Review*, Vol.,1:98.

Peter A. Piliounis, Cambridge University, 12 *Pace International Law Review*, 2000, The Remedies of Specific Performance, Price Reduction and Additional Time under CISG: Are these worthwhile changes or additions to English Sales Law?

Links

<http://cisgw3.law.pace.edu/cisg/biblio/bulter6.html>

<http://www.uncitral.org>

<http://www.en.wikipedia.org/wiki/cisg>

<http://cisgw3.law.pace.edu>

<http://www.fullertonlaw.com/uniform-commercial-code>

<http://www.e-lawresouces.co.uk>

PROTECTION OF PRODUCT DESIGNS: TRADE DRESS APPROACH

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Abstract

Product designs can play a very important role in consumer choices as it affects this first encounter. Product design can be considered to be a subclass of Industrial design. It can be easily imitated because its nature is ornamental or aesthetic aspects of the article and display the public. So, it is needed to protect for the benefit of creators and consumer. The laws provide overlapping protection for non-functional or ornamental product designs but the nature and extent of such protections have led to some confusion among practitioners and scholars. Product designs can be protected by way of industrial design rights and/or trade dress rights. When trade dress is distinctive of the products of a particular manufacturer or merchant, it may be protected as a three dimensional mark or trade dress. The main purpose of trade dress protection of product design is to protect the consumer from accidentally purchasing products that are designed to imitate other products. The scope of the research is protection of industrial design under trademark law and unfair competition law. This paper clarifies the nature and extent of protection product design under trademark law and the appropriateness of this protection for lack of specific industrial design law.

Key Terms: Industrial Design, Product Design, Secondary Meaning, Trade Dress, Inherent Distinctiveness and Acquired Distinctiveness.

Introduction

New products are appearing on the market daily. Products play a very important role for the enjoyment of our lives. Mostly, consumers will choose to buy based in part on a good overall impression, a good brand and an attractive product design or product shape. So, product design is also a major tool for building brand personalities and for creating product and company images. As a result of continuous growth of competing products in several businesses, the role and impact of product design becomes a means of product communication. Product design can build favourable consumer associations.

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So, product differentiation is a very important method for companies that operate in competitive environments.

Product design can be considered to be a subclass of industrial design. In legal sense, the industrial design of a product contributes to its appeal and can be a major factor in the commercial success of a product. In the early days, some characteristic of industrial design may be protected under patent law, that is called design patent. Sometime, the product design or packaging composed original artistic aspects or work of applied art, it can be protected by copyright law. The industrial design of a product or its packaging may be protected under trademark law; it can be called product design or trade dress or three-dimensional mark.

The main legal system for the protection of a product design is industrial design law. In addition to the protection of industrial design approach, the ornamental or aesthetic nature of the some products, having to meet the legal requirements for protection, can be protected by registering a three-dimensional trademark or get-up or trade dress under the respective trademark law. Trade dress is one of the categories of trademark and includes the shape and design of the product itself. This paper will analyze protection of product designs by way of trade dress protection under trademark law.

This research paper will begin with the concept of product design. It will then describe the product designs protection under trademark approach including the advantages and disadvantages of that system. The purpose of this research is to analysis the way of protection of product designs under trademark system of other countries and to focus the approach of product design protection in Myanmar based on the current practice of trademark protection. Because, our country is a developing country and cannot expend the effort to create the other industrial design categories such as hull design, car design. The individual creator and SMEs of our country face difficulty to protect product design under industrial design approach.

Material and Methods

A descriptive, comparative and an analytic method are applied in this paper. The materials used for the purpose of the research are books, articles

and internet sources. Some data collected from interviewing with individual creator of industrial design.

Concept of Product Designs

Product design is the visual appearance and can be one of the key parts of the successful of products. In legal sense, there is no separate definition of product design in international conventions but product design can be considered to be a subclass of industrial design. The simple legal definition of an “industrial design” as defined by the World Intellectual Property Organization is that “an industrial design generally constitutes the ornamental or aesthetic aspects of various articles, such as the three dimensional features (e.g., shapes) or two dimensional features (e.g., patterns, lines or colors) of packages, containers, furniture, household goods, lighting equipment, jewelry, electronic devices, and textiles.” Industrial designs may also be relevant to graphic symbols, graphical user interfaces (GUI), and logos.¹ Industrial design is also important in relation to packaging, containers and “get-up” of products.²

The concept of protection of product design provides the model law of WIPO. Article 2(1) of Industrial Design Law provides “industrial design right shall protect the three-dimensional or two-dimensional design of the whole or a part of a product to the extent that it fulfils the requirements as to novelty and individual character”. Article 2(2) states that “the term design shall mean the appearance (outer look) of a product, or the part thereof, characterised by its visible features, in particular: shape, contours, colour composition, texture, lines, motives, or a combination of these features”. According to Article 2(3), “for the purpose of this Law the term product shall mean any article manufactured by industry or handicraft”.³

The purpose is to protect the imitation of innovative product appearances design. Basically, the legal protection of product design is done the same way as industrial design. The scope of industrial design protection is

¹ www.wipo.int/designs/en/.

² Looking Good: An introduction to Industrial Designs for Small and Medium-sized Enterprises. WIPO publication No.498, p 3.

³ https://www.wto.org/english/thewto_e/acc_e/hrv_e/WTACCHRV57_LEG_7.pdf.

so wide. So, this research paper will limit the scope of product design protection under trademark law.

Industrial designs have been granted protecting the shapes such as; automobiles, computers and bottles, silverware engraving, and lamp characteristics. Since product design became an integral part of the manufacturing process during the industrial revolution, the protection of industrial design has been recurring topic among industrial designers and intellectual property scholars. The functions of the product may be protected by a registered patent, provided that the patentability requirements are fulfilled. If the product design or packaging composed artistic aspects and original works of authorship, they may be capable of copyright protection. The design of a product or its packaging may be protected under trademark law, given that the requirements are fulfilled.¹

Relationship between Product Designs and Trade Dress

In another jurisdiction, trademark laws also may be applied to protect 3-D marks, including trade dress, if they are distinctive signs capable of distinguishing goods with respect to the origin of the goods to avoid from deceiving consumers. In some jurisdictions, laws of unfair competition, including the common law of passing off, would also apply to industrial designs.²

The role of product design plays in reinforcing brand power. So, protection of product design can also be found under trademark law. A trademark is a word, phrase, symbol, or design, or combination of the same, which identifies the source of the goods or service. If the form, design or packaging of a given product is or becomes a distinctive feature of the product

¹ Regan E. Keebaugh, *Intellectual Property and the Protection of Industrial Design: Are Sui Generis Protection Measures the Answer to Vocal Opponents and a Reluctant Congress?*, *Journal of Intellectual Property Law*, Volume 13, Issue 1, Article 8, October 2005, University of Georgia School of Law, p.256.

² Jay Dratler, Jr, "Trademark Protection for Industrial Designs", *University of Illinois Law Review* No. 887, 1998, p 17.

in question, then in some countries it may be protectable as a three-dimensional trademark or as trade dress under the trademark law.¹

Article 6(1) of the Paris Convention states in respect of trademarks that: “The conditions for the filing and registration of trademarks shall be determined in each country of the Union by its domestic legislation”. Article 15.1 of the TRIPs Agreement states that a trademark should be defined as: “any sign capable of distinguishing the goods or services of one person from those of other persons”. In this provision, the three-dimensional sign or trade dress can be protected under trademark regime.

Protection of trademarks is not limited to words or symbols, but can be extended to encompass almost anything that would tend to be associated or be capable of being associated with a single source. Trademark protection is only conferred if the shape or design is distinctive enough to function as a badge of origin. A trademark as applied to product design is commonly referred to as “trade dress.”²The unique shape of a bottle of Coca-Cola and the peculiar triangular shape of the Tobler one chocolate bar are examples of three-dimensional marks or trade dress. The shape of the bottle of Coca-Cola was initially an industrial design and only later it was registered as a trademark in many countries.³

Trade dress is defined as "the overall appearance and image in the marketplace of a product or a commercial enterprise". Trade dress encompasses many characteristics of a product including color, size, weight, texture, shape, and graphics, or a combination of these characteristics. And then, the design and shape of a product which has distinctive feature, is also qualified to be protected as a trade dress. The primary purpose of a trademark or trade dress is to indicate the owner or producer of the commodity and to distinguish it from like articles manufactured by others. Trade dress may also refer to the manner in which a product is packaged, wrapped, labeled,

¹ http://www.wipo.int/edocs/mdocs/sme/en/wipo_ip_bak_03/wipo_ip_bak_03_www_34147.pdf.

² <https://martensenwright.com/en/trade-dress-product-design/>.

³ www.wipo.int/export/sites/www/sme/en/.../pdf/ip_panorama.

presented, promoted, or advertised, including the use of distinctive graphics, configurations, and marketing strategies.¹

In some countries, an industrial design functions as a trademark in the market place, then it may be protected as a three-dimensional mark, this may be the case of when the shape of the product or its packaging are considered to be distinctive.² Trade dress law can sometimes protect the design configuration and shape of the product itself, although in some cases obtaining an industrial design protection may be more appropriate than using trade dress protection.

Acquisition of Industrial Design Rights on Product Designs

If the company develops new designs, the owner should think carefully about how to best protect them. In most countries, a product design needs to be registered in order to be protected under industrial design law as a “registered design”. In some countries, industrial designs are protected under patent law as “design patents”. In other countries, industrial design law grant without registration, called “unregistered industrial designs”, but the time and scope are limited.³

The international conventions, WIPO administers treaties, together with national and regional laws make up the international legal framework for industrial designs. Under the Paris Convention for the Protection of Industrial Property 1883, industrial designs must be protected in each Contracting State, and protection may not be forfeited on the ground that articles incorporating the design are not manufactured in that State.⁴

As some products are manufactured and sold internationally, the obtaining of an industrial design right in multiple countries is needed.

¹ Jay Dratler, Jr, “Trademark Protection for Industrial Designs”, University of Illionis Law Review No. 887, 1998, p 21.

² B.W. Gray, K. Murphy, E. Bouzalas, Industrial Design Rights: An International Perspective, 2016, Kluwer Law International, p.33.

³ Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), 2002, Industrial Designs and Their Relation with Works of Applied Art and Three Dimensional Marks, WIPO SCT 9/6, p.3.

⁴ Article 5*quatuor* of the Paris Convention of Industrial Property, 1967 refers to the Stockholm Act dated 14 July 1967 of the original Paris Convention for the Protection of the Industrial Property 1883.

However, such obtaining of protection can become costly and complex. For example, the Hague System for the International Registration of Industrial Designs 1925 can provide a more cost effective and simple approach for the attainment of industrial design registration in multiple countries.¹

The Locarno Agreement Establishing an International Classification for Industrial Designs (1968) establishes a classification for industrial designs (Locarno Classification). The competent offices of the Contracting States must indicate in official documents reflecting the deposit or registration of industrial designs the numbers of the classes and subclasses of the classification of which the goods incorporating the designs belong.²

To ensure better coexistence and consistency of the systems of design protection in individual EU countries, the EU adopted Directive 98/71/EC on the legal protection of designs in 1998. The objective of the Design Directive is to ensure that registered design rights give the right holder equivalent protection in all EU countries.³

Unlike the US, Australia and Japan, unregistered designs are protected through the unregistered community design route in the EU. In the US, Australia and Japan unregistered designs may only be protected through trademark and copyright law. Unregistered community designs are suitable mainly for small companies or freelancers to protect their products for a short period, for example, fashion since the registration process is costly and time consuming.⁴

The protection of unregistered designs is basically aimed at protection against imitation and fraud. If it is recognized that such designs must be protected for a period longer than 3 years, such design protection can be transferred to long-term protection as a registered design within 12 months from the start of marketing.⁵

¹ http://www.wipo.int/treaties/en/registration/hague/summary_hague.html.

² http://www.wipo.int/treaties/en/classification/locarno/summary_locarno.html.

³ https://ec.europa.eu/growth/industry/intellectual-property/industrial-design/protection_en.

⁴ Sharifa Sayma Rahman, Industrial Design in Different Jurisdictions: A Comparison of Laws, 2014, Journal of Intellectual Property Rights, Vol 19.

⁵ Mr. Riichi Ushiki, Legal Protection of Industrial Designs, Patent Attorney USHIKI International Patent Office, 2001, Japan Patent Office.

Acquisition of Trade Dress Rights on Product Designs

Besides industrial design right, the product design that relates to the appearance of the product or shape of packaging may be also protectable as trade dress under trademark law or under unfair competition law.

When trade dress is distinctive of the products of a particular manufacturer or merchant, it may be protected as a trademark. Thus, a trademark is a form of trade dress that serves to distinguish the goods or services of one undertaking from those of another.¹

The purpose of both trademark and unfair competition law is to protect the public, as well as the source of goods identified by the trademark. The test for determining infringement in both cases is the likelihood of confusion. A trademark is a word, name, symbol, device, or any combination thereof, which serves to indicate the source of the product with which it is used. The specific source need not be known to the purchasers of the trademarked product. Instead, it is sufficient that a single entity exists which controls use of the trademark. The ability of a mark to indicate the source, and to distinguish that source from the source of goods made or distributed by others, is called distinctiveness.²

Trade dress can be protected through common law rights. Prior to 1964, some configurations of goods were protected under unfair competition laws. Although some of those designs may have been so arbitrary that distinctiveness was not an issue, in most cases, secondary meaning was the test used to determine whether the design performed as a mark to indicate the source of the goods. This test was analogous to the test for determining whether trademark rights had developed in a descriptive word or group of words, such that they qualified as "not merely" descriptive. Functional designs, like generic words, were not protected but were free for all to use. The test for infringement was likelihood of confusion.³

¹ Judy Winegar Gons, *Intellectual Property Principles and Practice*, 2014, Nathan Associates Inc, p.248.

² Pegram, John B., *The Scope of Industrial Design Protection under Trademark and Unfair Competition Laws*, 1989, *University of Baltimore Law Review* : Vol. 19: Iss.1, Article 16.

³ *Ibid*

Generally, an application to register trade dress must include all the same content as a trademark application. The recognition and protection of trade dress rights can search under International Provisions relating to Trademark. “Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark.”¹ Such signs, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for protect as trademarks.

Trade dress must be both distinctive and nonfunctional. Most trade dress is protected without registration. Trade dress that is not inherently distinctive can be registered. If an owner can show secondary meaning, it can be registered. In United States, the trade dress can be registered on the United States Principal Register. And then, it follows that if trade dress is not registered, it is still protectable under the Lanham Act, as long as the trade dress owner can show distinctiveness and that it is non-functional.²

In the United States, similar to trademarks, a product's trade dress is legally protected on the United States Principal Register by the Lanham Act³. The Lanham Act is the Federal Statute that regulates and protects trademarks and trade dress. And then, it follows that if trade dress is not registered, it is still protectable under the Lanham Act, as long as the trade dress owner can show distinctiveness and that it is non-functional. So, some of the well-known marks which creates new product design, can enjoy an unregistered trademark rights.⁴

Protectability of Product Design as Trade Dress

A product design is protectable as "trade dress" when it functions as a trademark, i.e., when the configuration serves to identify the source of the

¹ Article 15(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement 1994)

² <https://www.justia.com/intellectual-property/trademarks/trade-dress/>.

³ The Lanham Act, also known as the Trademark Act of 1946, is codified at 15 U.S.C. §1051 et seq.

⁴ <https://corporate.findlaw.com/intellectual-property/trade-dress-the-forgotten-trademark-right.html>

product. In order to be trade dress rights, the design must be distinctiveness and non-functional.¹

1. Inherently Distinctiveness

The trade dress must be distinctive (i.e, unusual and memorable) so that it can serve primarily as the designator of origin of the product or service. The same distinctiveness principles apply in the context of trade dress, although selection is from designs and configurations, not words. Since the categories of distinctiveness apply equally to trade dress as to trademarks and since many courts discuss distinctiveness in terms of marks. However, trade dress is not inherently distinctive and can acquire distinctiveness only if it has developed secondary meaning.²

In order to determine whether a particular trade dress has attained this requisite level of distinctiveness, the courts classify the distinctiveness of the trade dress into one of the following four categories of increasing distinctiveness: (1) generic; (2) descriptive; (3) suggestive; or (4) arbitrary or fanciful.³

In the case of *Duraco Products Inc. v. Joy Plastic Enterprises Ltd.*,⁴ in order to be considered the trade dress right, there must be inherently distinctive. One court has required that it “must be unusual and memorable, conceptually separable from the product, and likely to serve primarily as a designator of origin of the product.”

However, *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*,⁵ the U.S. Supreme Court ruled that product designs such as the appearance of a line of children’s clothing are not inherently distinctive and can only be protected if they acquire distinctiveness through sales or advertising.

¹ Intellectual Property Practice Group, Protection of Product Configurations: Supreme Court To Review Samara Brothers Intellectual Property Practice Group Newsletter - Volume 3, Issue 3, Winter 2000.

² Ibid

³ Joel W. Reese, Defining the Elements of Trade Dress Infringement under Section 43(A) Of The Lanham Act, Texas Intellectual Property Law Journal, 1994, p.108.

⁴ 40 F.3d 1431 (3d Cir. 1994).

⁵ 529 U.S. 205 (2000).

In China, trade dress protection provides exclusive rights over a certain product get-up that acts as an indicator of origin. In order to qualify for protection, a trade dress must have a unique quality, rather than being common or generic, so that it can be distinguished from the get-up of other products in the market. The trade dress and associated products must also have acquired a substantial level of reputation, so that the relevant public would recognize the product get-up as originating from a certain source.

Acquired Distinctiveness or Secondary Meaning

If the trade dress has not inherently distinctiveness, the owner must prove that it has acquired distinctiveness or secondary meaning. Public disclosure can be helpful to establishing trade dress rights because shape of the product is distinctive. It means that it has developed a “secondary meaning” in the minds of consumers. This means that consumers have come to associate the design with the source of the product.

Secondary meaning exists when a term that otherwise describes a product has become so affiliated with a specific product’s maker that it has taken on a second meaning. Secondary meaning requires only that customers associate the word or symbol with a single, albeit anonymous, commercial source. The more descriptive and the less inherently distinctive the word, symbol, or trade dress, the greater the quantity and quality of evidence of secondary meaning must be to prove that level of distinctiveness necessary to achieve trademark, service mark, or trade dress status.¹

In the case of *United Distilleries vs. Jagdish Joshi*² dealt with the issue of copying trade dress on different goods. In the case, the plaintiff the owner of trade mark JOHNNIE WALKER for Scotch Whisky objected to the use of a similar trade dress being used on Gutka (Chewing Tobacco). The defendant adopted the “device of striding figure and the slanting label” for their products “Gutka”. The High Court of Delhi found that was imitation of the trade dress and explanation of having adopted the trade mark based on Hindi film personality was not accepted in view of the overall similarity between the trade dresses of the marks of the plaintiff and defendant.

¹ Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, 4th edition, 2003.

² 2000 PTC 502 (Del).

2. Non-functionality

To be protectable for trade dress protection for product designs, it must be non-functional. Ornamentation that is subject to an industrial design cannot be a functional aspect of the invention. The feature is functional if it is essential to the use or purpose of the article. For example, the shape and color combinations used in cellular phones are often not essential to the article's purpose or use, it is essential for transmitting information. If the mobile phone's exterior housing were deemed to be a creative invention, the inventor would be entitled to an industrial design rights.

Non-functionality, along with distinctiveness, determines whether a particular trade dress is entitled to protection. If the trade dress has acquired the requisite level of distinctiveness and is nonfunctional, then the trade dress is entitled to protection. The absence of either distinctiveness or non-functionality causes the trade dress to be ineligible for protection, because consumers, as a matter of law, do not associate the trade dress with a particular source.¹

Infringement of Trade Dress Right

Trade dress encompasses the total image and impression created by a product. Trade dress infringement occurs when one company uses trade dress similar enough to another's to cause a "likelihood of confusion" in an ordinary buyer's mind.² While trademark prevents others from copying the name of the good or service, trade dress prevents copying the appearance. To sue for infringement of trade dress, the owner must be able to articulate and prove that the trade dress is inherently distinctive, or has acquired secondary meaning, and that the junior use is likely to cause consumer confusion. Trade dress can be protected only if the owner of the trade dress can show the average consumer would be confused as to the origin of a product if another product appears in the same or similar packaging.³

¹ <https://corporate.findlaw.com/.../trade-dress-the-forgotten-trademark-right.html>.

² <https://www.upcounsel.com/trade-dress-infringement>.

³ Jeffrey S. Edelstein and Cathy L. Lueders, Recent Developments In Trade Dress Infringement Law, 2000, IDEA: The Journal of Law and Technology, p.7.

These same factors are normally considered in deciding the issue of likelihood of confusion in other trademark infringement cases as well as trade dress infringement cases.¹ In US, the Circuit Courts use a number of factors as a guideline for determination of whether there is likelihood of confusion or not. The courts generally consider: strength of the plaintiff's trade dress; proximity of goods; similarity of the plaintiff's trade dress and the defendant's trade dress; level of purchaser care; marketing channels utilized by both parties; evidence of actual confusion; defendant's intent in adopting the trade dress and likelihood of expansion of product lines.²

Advantages of Trade Dress Protection on Product Designs

The advantages of trade dress protection for product designs is that it can be perpetual as long as the mark continues to be used in commerce and can be renewed any number of times. In some circumstances, the two types of protection can exist simultaneously. Firstly, product design can make to secure industrial design protection. And then, the owner can develop the trade dress rights during a half before the industrial design expires. A company can start with industrial design protection and finish with trade dress protection. Trade dress helps the illiterate people who cannot read the trademark on the product as well as the manufacturers to reach the people easily.

Enforcement of Product Design Rights

Product design rights are usually enforced in the Registration Office or Intellectual Property Court, generally on the initiative of the owner of the rights, as provided for by the applicable law. The remedies and penalties vary from country to country and could be civil (injunctions to desist from an infringement, payment of damages, etc.), criminal or administrative.

1. Injunction

. When a court issues an injunction in a trade dress case, it stops the defendant company with a court order from continuing to use the trade dress in question. Courts can limit the use of trade dress through an injunction. In

¹ <http://www.thefashionlaw.com/learn/trade-dress>.

² INTA, *The Trademark Reporter*, Annual Review, Vol 97, March-April, 2007, No 2, p.126.

Hamdard National Foundation vs. Abdul Jalil,¹ the issue of trade dress and dilution of trade mark in relation to dissimilar goods was in issue under Section 29(4) of the India Trade Marks Act, 1999. It is to be pointed out that the dilution of trade mark is a concept unrelated with confusing similarity or imitation of trademarks or similarity of trade dress. Even if confusing similarity is not proved, still the rights holders may desire an injunction for which dilution of the trade mark is alleged.

2. Monetary Relief

A court might also award a plaintiff with money damages in the form of actual losses suffered by the plaintiff due to the trade dress infringement, and/or recovery of the defendant's profits that resulted from the infringement.²

3. Attorneys' Fees

In rare cases, the winning party in an infringement suit might be entitled to recover the cost of their legal fees.

Trade Dress Protection of Product Designs in Myanmar

Myanmar needs to build a fair market competition system and to create a safe and secure environment for the consumers by preventing the flow of counterfeit marks and products. In Myanmar, industrial design systems are still in the developing stage and there is no specific law for the protection of industrial design rights. In the early days, there has been the statute law for industrial design protection that was Design and Patents Act 1945. And then, the Patents and Designs (Emergency provisions) Act, 1946 came into force in Myanmar when the Patents & Design Act of 1945 was repealed in 1993. This Act was not legally effective until then because Section 2 of the Act stipulates that it would not enter into force until the Myanmar Patents and Designs Act of 1945 was repealed.

There is no substantive law in operation on industrial designs. But, there was a trade dress protection in Myanmar. In *U Tin Latt (a) U Sai Latt and one other v U Kyaw Nyein*³ case, the judges described that “a trademark

¹ 2008 (38) PTC 109 (Del).

² <https://www.upcounsel.com/trade-dress-infringement>.

³ Special Appellate Civil Case No. 23, 2000.

includes a device, brand, heading etc. and any combination thereof.” This case is arisen out of the “Taung Gyi Mauk Mai,” medicated Thanetkhar which is used as cosmetics and the different name “Shan Mauk Mai” but similar trademark, get-up, size of plastic container and instruction cause the passing off action. Although the names are different, similar trademark, get-up, size of plastic container and instruction cause likelihood of confusion and it cause the passing off action. In an infringement action of trade dress, the plaintiff has to prove is that he is the true owner and that the defendant is using a get-up which is either the same or similar to his trade dress. The desicions is temporary injunction in favour of the owner of Taung Gyi Mauk Mai.

Form September 1, 2017, the registration of industrial design was not allowed. In Myanmar, the individual product designer or the SMEs still faced difficulty to protect the design of their products. With the interviewing of some owners of product design, they have need IP awareness how to protect their product design in local and aboard.

Although there is no separate trademark registration legislation in Myanmar, a traditional practice of trademark is more develop than other categories of intellectual property. Trademark system and practice in Myanmar is more familiar than industrial design protection. The owner of product design can use the same process for trademark registration, purporting to be the trade dress right.

The declaration must be made by the trademark owner and must include a description of the goods and services and a copy of the trademark. So, they can protect their product as three-dimensional sign or trade dress which have qualified the require standard. If there is an infringement, the civil or criminal litigation process can be used. In addition, if a product design is branded, it can generally be protected by a well-known trademark right instead of a design right. If there is infringement of the product design, the brand will be diluted.

Although there is no trademark registration legislation in Myanmar, a traditional practice has developed. The owner of product design purporting to be the trade dress right can make a Declaration of Ownership and register the

declaration with the office of the Registrar of Deeds and Assurances. The individual product designer or the SMEs still faced difficulty to protect the design of their products. The declaration must be made by the trademark owner and must include a description of the goods and services and a copy of the trademark. So, they can protect their product as three-dimensional sign or trade dress which have qualified the require standard. They can use the same process for trademark registration. If there is an infringement, the civil or criminal litigation process can be applied.

Findings and Discussions

Product designs are business assets that can increase the commercial value of a company and its products. The more successful a design, the higher is its value to the company and its brands. Myanmar needs to protect trade dress rights in line with current economic system. In Myanmar, conducting a search for registered or product configuration trade dress marks may be difficult and the detail trademark and trade dress search system is essential. A review of the results as well as the associated file histories can provide further suggestions for the best approach to take to successfully register a specific product configuration trade dress. There is necessary the formality or substantive examination, opposition or publication in a gazette. There should establish separate intellectual property office for industrial design registration, trademark and trade dress registration in order to harmonize international practice.

Myanmar is a member of WTO, WIPO, and ASEAN. In accordance with the TRIPs Agreement, Myanmar is required to implement and comply with Articles 1-12, Article 19 of the Paris Convention and the terms of TRIPs by no later than 1st July 2021. In Industrial Design Law (Draft)¹, industrial design means “the lines, sketches, colour, shape, configuration, pattern, features or ornament applied to a product or external features of a whole or part of the product resulting from features and ornament, by any industrial or manual process”. And then, that draft law defines “product means any product

¹ Industrial Design Law (Draft), published at the date of 8th, 9th, 10th August, 2017 in the Mirror Newspaper.

made by any industrial or manual process”. This expression is not adequate enough and it should define more clearly.

The Industrial Design Law (Draft)¹ describes that in order for a design to be registrable, the design must be novel, sufficiently distinctive and must be not disclosed to the public. The requirement of distinctiveness is a new introduction under the draft law and requires that the design must not be identical with, or similar to, known designs while at the same time requiring the design to be “significantly distinct”. However, there should add the factors which are for determination of distinctiveness. And then, there should define the requisite degree of similarity.

The Trademark Law (Draft)² provides a broad definition of trademark that “signs capable of distinguishing the goods and services”. It is consistent with Article 15(1) of TRIPs Agreement. Under this definition, the product design can be protected as a trademark, if the design is distinctive. The expression “shape of a product” should be explicitly mentioned in the definition of a mark. In order to encourage producers to invest in product designs in Myanmar, there should be accessible, modern and effective legal protection.

Conclusion

Intellectual property rights should be considered as a critical safeguard in protecting a business’s investment in their product design. For a corporate marketing strategy, the brand and design should be developed to attract customer’s attention and should be legally protected. When protecting innovative three-dimensional designs, many often consider two distinct possibilities of protection: industrial design or trade dress. Many companies have tried to establish trademark rights in their unique design elements, called trade dress. Despite some popular misconceptions, these protections are not mutually exclusive; in fact they can be complementary. But, there are the differences as well as the advantages of each. The combination of industrial

¹ Industrial Design Law (Draft), published at the date of 8th, 9th, 10th August, 2017 in the Mirror Newspaper.

² Trademark Law (Draft), published at the date of 8th, 9th, 10th August, 2017 in the Mirror Newspaper.

design and trademark protection provides a broader level of investment protection than either property right alone could provide. By designing products with built-in industrial design and trademark protection, businesses can extend property and investment protection indefinitely.

And then, courts are familiar with trademarks and thus laws for enforcing trademark rights are more developed for the laws for design rights. So, registration and protection process of trademark rights is more possible than registration and protection industrial design rights. Armed with trade dress rights, a firm may prevent competitors from marketing products with similar designs. Providing strong protection for industrial design is the first step in encouraging growth in the design industry. The current level of protection for industrial design in Myanmar is simply too weak to accomplish the goal of building a strong design industry in Myanmar. Although industrial design can be protected through design patents, copyright, and trade dress, all of these methods of protection have limits and difficulties that render them inadequate for the protection needs of industrial designers.

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References

Conventions and Agreements

Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPs Agreement).

Paris Convention for the Protection of the Industrial Property (1883).

The Hague Agreement Concerning the International Deposit of Industrial Designs, 1925.

The Locarno Agreement Establishing an International Classification for Industrial Designs, 1968.

Books

- B. W. GRAY, K. MURPHY, E. BOUZALAS, 2016, *Industrial Design Rights: An International Perspective*, Kluwer Law International.
- Budi Suratno, *Industrial Design Protection in Indonesia: A Comparative Study of the Law on Industrial Design Protection between Japan and Indonesia*.
- Hugh Griffiths, 1993, *Overview of Developments in Europe on Industrial Design Protection* *Fordham Intellectual Property, Media and Entertainment Law Journal*, Volume 4, Issue 1, Article 25.
- Intellectual Property Practice Group, 2000, *Protection of Product Configurations: Supreme Court To Review Samara Brothers Intellectual Property Practice Group Newsletter - Volume 3, Issue 3*.
- Jay Dratler, Jr, *Trademark Protection for Industrial Designs*, *University of Illinois Law Review* No. 887, 1998.
- Joel W. Reese, *Defining The Elements of Trade Dress Infringement Under Section 43(A) Of The Lanham Act*, *Texas Intellectual Property Law Journal*, 1994.
- Judy Winegar Gons, 2014, *Intellectual Property Principles and Practice*, Nathan Associates Inc.
- Looking Good: An Introduction to Industrial Designs for Small and Medium-sized Enterprises*, 2005, WIPO publicationNo.498.
- Max Ng Chee Weng, Daniel Lim Ying Sin and Adrian Loke Weng Hong, 2002, *Law for Business Series Intellectual Property*, LexisNexis.
- Mr. Riichi Ushiki, 2001, *Legal Protection of Industrial Designs*, Patent Attorney USHIKI International Patent Office, Japan Patent Office.
- Regan E. Keebaugh, 2005, *Intellectual Property and the Protection of Industrial Design: Are Sui Generis Protection Measures the Answer to Vocal Opponents and a Reluctant Congress?*, *Journal of Intellectual Property Law*, Volume 13, Issue 1, Article 8, University of Georgia School of Law.
- Sharifa Sayma Rahman, 2014, *Industrial Design in Different Jurisdictions: A Comparison of Laws*, *Journal of Intellectual Property Rights*, Vol 19.
- Susanna Monseau, 2012, *The Challenge of Protecting Industrial Design in a Global Economy*, *Texas Intellectual Property Law Journal*, Vol.20, No.3.
- Thomas McCarthy, 2003, *McCarthy on Trademarks and Unfair Competition*, 4th edition.
- WIPO Magazine, November 2012.

Cases

Duraco Products Inc. v. Joy Plastic Enterprises Ltd., 40 F.3d 1431 (3d Cir. 1994).

Hamdard National Foundation vs. Abdul Jalil, 2008 (38) PTC 109 (Del).

U Tin Latt (a) U Sai Latt and one other v U Kyaw Nyein, Special Appellate Civil Case No. 23, 2000.

United Distilleries vs. Jagdish Joshi, 2000 PTC 502 (Del).

Wal-Mart Stores, Inc. v. Samara Brothers, Inc., 529 U.S. 205 (2000)

Internet Sources

http://www.wipo.int/designs/en/faq_industrialdesigns.html.

http://www.wipo.int/treaties/en/classification/locarno/summary_locarno.html.

http://www.wipo.int/treaties/en/ip/paris/summary_paris.html.

http://www.wipo.int/treaties/en/registration/hague/summary_hague.html.

<https://corporate.findlaw.com/intellectual-property/trade-dress-the-forgotten-trademark-right.html>.

https://ec.europa.eu/growth/industry/intellectual-property/industrial-design/protection_en

<https://www.justia.com/intellectual-property/trademarks/trade-dress/>

<https://www.upcounsel.com/trade-dress-infringe>

GENERAL EXCEPTIONS RELATING TO THE ACT DONE BY A PERSON BOUND BY LAW

Myint Swe *

Abstract

Anyone at any country must obey the relevant country's criminal law. If his every act or omission contrary to the provisions of criminal law, he shall be liable to punish under this law. The English criminal law that a crime is not committed if the mind of the person doing the act in question is innocent. General exceptions relating to the act done by a person bound by law may be categorized into two forms: they are exceptions of executive acts and judicial acts. Exceptions of executive and judicial acts are described in Sections 76 to 79 of the Myanmar, Indian, Malaysia and Singapore Penal Codes. Mention should also be made of judicial acts are provided in Sections 77 and 78 which are specific exceptions to the general rule that mistake of law is not a defence. Some kinds of public servants such as the police and military personnel have an important role to play in maintaining law and order or pursuing justice in a civil society. Generally speaking, the special protection afforded to public servants against criminal liability was the result of the law and order. The facts of exceptions are relevant with not only Criminal Law but also Special or Local Law. Relating with exempted acts provided in Myanmar Penal Code are different from those provisions stipulated in Criminal Laws of other countries.

Keywords: General Exceptions, Criminal Law Executive Act, Judicial Act, Mistake of Law, Mistake of Fact

Introduction

Criminal Law makes universal in its application to all parts of countries. Every person shall be liable to be punished under criminal law and not otherwise for every act or omission contrary to the provisions of criminal law of which he shall be guilty within and without of the said territories. Myanmar Penal Code, the provisions in dealing with the general exceptions are laid down in Sections 76 to 106, wherein acts which otherwise would constitute offence, cease to be so under certain circumstances set out in this chapter. Sections 76 to 79 recognises that public servants and judges are fallible and affords them protection from criminal liability arising from the discharge of their functions.

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Materials & Methods

Analytical study on the executive acts and judicial acts in dealing with the general exceptions. Literature survey and study on exceptions of executive and judicial acts of the Myanmar, Indian, Malaysia, Singapore, Swedish and Australia Criminal Laws.

Discussion

The criminal law has been variously defined as prohibiting conduct which is of inherently evil or heinous nature, immoral, or harmful. However, none of these attempts to explain what it is that renders certain conduct criminal is universally applicable or entirely satisfactory.¹

Evolution of the criminal law in the common law jurisdictions has taken place over several centuries. It is the branch of law which has often been said to represent society's strongest form of condemnation and to that extent it should be concerned only with serious harms. However, clearly this is not always the case, the criminal law is often used against minor harm-for example, licensing procedures, road traffic regulations, commercial and financial regulations, etc. For discussion of the fact that the criminal label is determined not only by the seriousness of the offence but also by a range of social, economic, political and historical factors.²

The conventional explanation of the elements of criminal liability is that a crime consists of two main parts, both of which must be proven before a person can be convicted of having committed the offence. It is usually said that it is a 'general principle' of the criminal law that a person cannot be convicted of a crime unless the person: (1) engages in conduct that is forbidden by the criminal law, and (2) does so with a guilty state of mind.³

The criminal law was drafted upon the assumption that all exceptional circumstances are absent. Instead of adding the limitations or exceptions to every offence, the makers of the criminal law made a separate chapter which is applicable to the entire criminal law. Therefore, to identify the exceptional circumstances by which a person can escape criminal liability.

¹ Murugason, Mc Namara, *Outline of Criminal Law*, 8th edition, 1997, P.1.

² *Ibid*, P.4.

³ *Ibid*, P.18.

Myanmar Penal Code, the provisions in dealing with the general exceptions are laid down in Sections 76 to 106, wherein acts which otherwise would constitute offence, cease to be so under certain circumstances set out in this chapter. Although the accused caused guilt any offence, if any matter has been permitted by law, he is exempted from the punishment. The facts of exceptions are relevant with not only Criminal Law but also Special or Local Law.

In addition, every time a crime is created, the Penal Code automatically extends the coverage of that criminalized behaviour to attempt and abetment of that crime. Part and parcel of the definition of every offence are the general exceptions, and for murder, the special exceptions. These are conditions under which responsibility is either extinguished or mitigated because of, for example, intoxication or provocation.

General exceptions relating to the act done by a person bound by law may be grouped together as follows;

(1) Executive Acts

- (a) Act of a person bound or who believes himself to be bound by law to do a certain thing (Section. 76).
- (b) Act of person justified by law (Section. 79).

(2) Judicial Acts

- (a) Act of a Judge acting judicially (Section. 77).
- (b) Act done in pursuance to an order or judgment of a Court of Law (Section. 78).

Exceptions of Executive Act are found in Chapter IV of the Myanmar, Indian, Malaysia and Singapore Penal Codes, Sections 76 and 79 they apply to offences within and without the Code unless excluded by statute. For this area of the law, it is vital to fully appreciate the particular way by which Sections 76 and 79 exculpates an accused of criminal responsibility.

Section 76 of the Penal Codes mention as follows; Nothing is an offence which is done by a person who is, or who by reason of a mistake of

fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.¹

Illustrations are as follow:

- (a) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.
- (b) A, an officer of Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

Some kinds of public servants such as the police and military personnel have an important role to play in maintaining law and order or pursuing justice in a civil society. The law imposes certain duties on these public servants which, along with the powers which go with them, are not normally accorded to ordinary civilians. There will invariably be occasions when, in the discharge of these duties, the public servant causes harm which will constitute an offence. There will also be circumstances when public servants will be met with physical resistance when performing their duties. Mindful that both these types of occasions involve public servants discharging their duties, the Penal Code has devised provisions to protect them. Generally speaking, the special protection afforded to public servants against criminal liability was the result of the law and order.

There are two forms of mistake considered by the criminal law—mistake of fact and mistake of law. The primary Myanmar Penal Code provisions on mistake are Sections 76 and 79. These sections are virtually identical except that section 76 concerns a situation where a person under a mistake of fact believes he or she was bound by law to do an act, whilst section 79 concerns a person who, under a mistake of fact believes he or she was justified by law to do it. The term "bound by law" under section 76 involves the actor in some legal duty to undertake conduct, whilst the term "justified by law" under section 79 only requires the actor's conduct to have been lawful.²

¹ Section 76 of the Myanmar, Indian, Malaysia and Singapore Penal Codes, 1861, 1860, 1870, 1870.

² Chan Wing Cheong & Michael Hor & Mark McBride & Neil Morgan and Stanley Yeo, *Criminal Law in Myanmar*, 1st Edition, 2016, P.99.

Mistake of Law means mistake or ignorance as to existence or otherwise of any law regarding a particular subject or the mistake as to what the law is. A mistake of law happens when a party having full knowledge of the facts comes to an erroneous conclusion as to their legal effect.¹

Section 79 of the Penal Codes provide as follows; Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it.²

As for example; A sees Z commit what appears to A to be murder. A in the exercise, to the best of his judgment, exerted in good faith of the power which the law gives to all persons of apprehending murderers in the act, seizes Z in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

The provisions say that 'nothing is an offence which is done by a person who by reason of a mistake of fact in good faith believes himself to be bound or justified by law in doing the act. The basis for exculpation is that the accused reasonably, albeit mistakenly, believed that he and she was bound or justified in doing the act complained of: it is not simply that the accused took reasonable care when mistakenly performing the act. Neither is it that the accused lacked the fault for the particular offence.³

If a party bonafide believes that he is acting in pursuance of a statute, he is entitled to the special protection which the legislature intended for him although he has done an illegal act. To entitle a person to claim the benefit of Section 76, it is necessary to show the existence of a state of facts which would justify the belief in good faith, interpreting the latter expression with reference to Section 52, that the person to whom the order was given, was bound by law to obey it.⁴

¹ Ratanlal and Dhirajlal, Law of Crimes, Vol. 1. 24nd Edition, 1997, P.250.

² Section 79 of the Myanmar, Indian, Malaysia and Singapore Penal Codes, 1861, 1860, 1870, 1870.

³ Chan Wing Cheong & Michael Hor & Mark McBride & Neil Morgan and Stanley Yeo, Criminal Law in Myanmar, 1st Edition, 2016, P.101.

⁴ Ratanlal and Dhirajlal, Law of Crimes, Vol. 1. 24nd Edition, 1997, P.239,240.

The Singapore case of *Tan Khee Wan Iris V. Public Prosecutor*.¹ The appellant was convicted by the trial court of the offence of providing public entertainment without a licence in the early hours of 1 January 1994. The appellant had in fact applied for a licence for the full duration of the performance up to 6 am on 1 January 1994, but owing to an oversight by the licensing officer, one part of the licence stated that it was only valid till 31 December 1993. The Singapore High Court held that the Prosecution had to prove that the appellant had provided public entertainment, but the appellant could rely on the defence of mistake under Section 79 of the Penal Code. In other words, she needed to show, on the balance of probabilities, that she had acted under a mistake of fact made in good faith that she had a valid licence for the relevant period. However, the court held that even though it was clear that the appellant had made a mistake, and even though it was an 'easy' mistake and 'a natural one -- which reasonable persons often make', the appellant could not show that she had exercised due care and attention as required. The conviction was therefore upheld.

It is observed that Sections 76 and 79 provide for two types of defences, namely, superior orders and mistake, and they can be further divided into four specific defences-being bound by law, being justified by law, mistakenly believing to be bound by law, and mistakenly believing to be justified by law. This chapter is concerned only with the defences involving mistake.²

In the case of *U San Win V. U Hla*,³ a notice to effect some repairs in a tenanted building was served on the owner of the property under Section 120 of the Burma Municipal Act under which such notice could be served either on the owner or the occupier. Failure to carry out the requirement of the notice was punishable under Section 206 (b) of the Burma Municipal Act. It was contented that in view of the provisions of Sections 76 and 79 of the Penal Code the accused were not guilty. HELD: That Section 76 applies to an act committed by reason of mistake of fact and not a mistake of law by a person, who in good faith believes that he is bound by law to do it. Section 79 applies

¹ 1995, 1 S.L.R @ 723.

² Chan Wing Cheong & Michael Hor & Mark McBride & Neil Morgan and Stanley Yeo, Criminal Law in Myanmar, 1st Edition, 2016, P.100.

³ AIR (1931) Ran. 83.

to an act done by a person who, by reason of a mistake of fact (not by mistake of law) in good faith believes himself justified by law in doing it. The distinction between Sections 76 and 79 is that in the former the person bona fide believes himself to be bound to do it and in the latter justified by law in doing it. The distinction is between the real or supposed legal obligation and real or supposed justification in doing a particular act.

In the Bombay High Court case of *Emperor v Gopalia Kallaiya*,¹ the accused was a police officer who had a warrant to arrest a particular person. He arrested the complainant whom he mistakenly believed, despite making reasonable inquiries, to be the person mentioned in the warrant. The charge against him of wrongful confinement was dismissed on the basis of Section 76.

The defence of mistake of fact under Sections 76 and 79 requires the accused to prove on a balance of probabilities the following elements:

- (1) the or she had been induced by a mistake to commit the criminal act in questions;
- (2) the mistake was one of fact and not of law;
- (3) the accused mistakenly believed that he or she was bound or justified by law in doing the criminal act; and
- (4) the mistake was believed by him or her in good faith.²

Furthermore, it has been held that a mistake of law will not reduce a charge of murder to culpable homicide not amounting to murder. However, mistake of law can be recognised as a mitigating factor in sentencing.³

The express command of a Magistrate or officer will exonerate an inferior officer or soldier, unless the command be to do something plainly illegal, or beyond his know duty. If through gross ignorance, or neglect, or design, a Judge or Magistrate pronounces an unlawful sentence. If the order or warrant was plainly illegal, as, for example, to strangle a prisoner in jail, or to poison him, or the like, certainly the mere possession of such a warrant will

¹ (1923) 26 Bom LR 138.

² Chan Wing Cheong & Michael Hor & Mark McBride & Neil Morgan and Stanley Yeo, *Criminal Law in Myanmar*, 1st Edition, 2016, P.103,104.

³ *Ibid*, P.113.

not prevent the officer who wickedly yields it obedience from being held art and part in the legal murder, and suffering for its commission.¹

Section 132 of the Myanmar Criminal Procedure Code protects Magistrate, Soldier, police officer and inferior officer against prosecution for any act done in obedience to any order they are bound to obey. Every person is bound to assist a Magistrate or police office under Section 42 of the Myanmar Criminal Procedure Code. A police officer having a warrant to arrest a person, after reasonable inquires arrested the complainant believing in good faith that he was the person to be arrested. It was held that the police officer was protected by this section and was guilty of no offence.²

The powers and duties of police officers are prescribed in Sections 16 to 22 in Chapter III of the Police Act, 1945. Section 16 states that police – officer enrolled under this Act shall not exercise any authority except the authority provided for a police-officer under this Act and any other law for the time being in force.³ Moreover the special provisions for additional police and disturbed areas are described in Sections 23 to 30 in Chapter IV of this Act. Furthermore, maintenance of law and order are provided in sections 31 to 41 in Chapter V of this Act.

The Rangoon High Court case of *Maung Myat Tha V Queen Empress*,⁴ A first class constable verbally ordered two police constables to arrest bad characters on a road and to fire if resisted. The accused challenged two men and then fired as one of them did not stop, and killed one man. Held, that the accused acted unlawfully and should not have been acquitted on a charge of culpable homicide not amounting to murder. A police-officer who commits a wrongful act under the orders of his superior officer is liable to punishment as his mistake of law in supposing himself authorized cannot be accepted as a good defence, though it may be a ground for mitigation of punishment.

"Bound or justified by law", for Section 76 to succeed, the accused must have mistakenly believed that he or she was bound by law to do the criminal act. Being 'bound by law' denotes having a legal duty or obligation to

¹ Ratanlal and Dhirajlal, Law of Crimes, Vol. 1. 24nd Edition, 1997, P.240.

² Section 42 and 132 of the Myanmar Criminal Procedure Code, 1898.

³ Section 16 of the Police Act, 1945.

⁴ Queen-Empress V. Maung Myat Tha and one, S.J.L.B. 164.

perform the conduct complained of. Section 43 of the Penal Code offers the following definition: 'a person is said to be "legally bound to do" whatever it is illegal in him to omit'.¹

For Section 79 to succeed, the accused must have mistakenly believed that he or she was justified by law to do the criminal act. There being no Code definition of what 'justified by law' means in relation to Section 79, the courts have held that an act which is not prohibited by law is justified by law.²

These sections, there must be excuse a person who has done what by law is an offence, under a misconception of facts, leading him to believe in good faith that he was commanded by law to do it. It is based on the maxim "ignorance of law is no excuse.

On general grounds for exemption from criminal responsibility are prescribed in Chapter 24 of the Swedish Penal Code 1962. Section 2 describes that if a person who is an inmate of a prison, is remanded in custody or is under arrest or otherwise deprived of liberty, escapes, or by violence or threat of violence offers resistance, or offers resistance in some other way to someone who is in charge of him and is responsible for seeing that he behaves, such force as is justifiable in view of the circumstances may be used to prevent the escape or to maintain order. This also applies if, in cases referred to in this paragraph, resistance is offered by someone other than those previously mentioned. The right of a policeman and certain other personnel to use force is otherwise dealt with by provisions in the Police Act (1984:387).³ (Law 1994:458)

Section 3 of the Swedish Penal Code states that with mutiny or during combat, and also on occasions when a crime against military discipline results in a special danger, a military superior may, vis-à-vis a subordinate who is insubordinate, use the force necessary to secure obedience.⁴(Law 1994:458)

¹ Chan Wing Cheong & Michael Hor & Mark McBride & Neil Morgan and Stanley Yeo, *Criminal Law in Myanmar*, 1st Edition, 2016, P.106.

² *Ibid*, P.107.

³ Section 2 of the Swedish Penal Code 1962.

⁴ Section 3 of the Swedish Penal Code 1962

Circumstances in which there is no criminal responsibility are provided in Chapter 2, Part 2.3 of the Australia Criminal Code Act 1995. Mistake or ignorance of fact (fault elements other than negligence) is provided in Section 9.1 of the Australia Criminal Code Act mentions as follows;

- (1) A person is not criminally responsible for an offence that has a physical element for which there is a fault element other than negligence if:
 - (a) at the time of the conduct constituting the physical element, the person is under a mistaken belief about, or is ignorant of, facts; and
 - (b) the existence of that mistaken belief or ignorance negates any fault element applying to that physical element.
- (2) In determining whether a person was under a mistaken belief about, or was ignorant of, facts, the tribunal of fact may consider whether the mistaken belief or ignorance was reasonable in the circumstances.¹

Mistake of fact (strict liability) is prescribed in section 9.2 of the Australia Criminal Code Act mentions as follows:

- (1) A person is not criminally responsible for an offence that has a physical element for which there is no fault element if:
 - (a) at or before the time of the conduct constituting the physical element, the person considered whether or not facts existed, and is under a mistaken but reasonable belief about those facts; and
 - (b) had those facts existed, the conduct would not have constituted an offence.
- (2) A person may be regarded as having considered whether or not facts existed if:
 - (a) he or she had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and

¹ Section 9.1 of the Australia Criminal Code Act 1995.

- (b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.¹

According to Section 9.3 of the Australia Criminal Code Act 1995, mistake or ignorance of statute law are as follows;

- (1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, he or she is mistaken about, or ignorant of, the existence or content of an Act that directly or indirectly creates the offence or directly or indirectly affects the scope or operation of the offence.
- (2) Subsection (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if the Act is expressly to the contrary effect.²

Section 10.5 of the Australia Criminal Code Act lawful authority deals with "A person is not criminally responsible for an offence if the conduct constituting the offence is justified or excused by or under a law".³

A similar finding occurred in the Madras High Court case of *Queen Empress v Subba Naik*.⁴ A police party escorting some prisoners had arrived at a village and demanded food and water. Thinking that the villagers had not given them proper attention, the Head Constable of the police party struck a villager. This resulted in several villagers assembling and an argument started between them and the police. The Head Constable commanded the accused, one of the constables, to shoot at the villagers. After repeated orders, the accused fired and wounded a villager. The court rejected the accused's plea of superior orders for the following reason: The command of the Head constable cannot of itself justify his subordinate in firing if the command was illegal, for he and the Head Constable had the same opportunity of observing what the danger was, and judging what action the necessities of the case required. We

¹ Section 9.2 of the Australia Criminal Code Act 1995

² Section 9.3 of the Australia Criminal Code Act 1995.

³ Ibid, Section 10.5.

⁴ 1898, I.L.R. 21, Mad 249.

are of the opinion that the order the accused obeyed was manifestly illegal, and the accused must suffer the consequence of his illegal act.

These competing arguments by using two methods. The first is the entirely non-controversial one that police and military personnel are protected from criminal liability if they were obeying a *lawful* order. Hence, a soldier will not be criminally liable for obeying the order of his or her commanding officer who is legally authorised to make the order and has exercised that authority lawfully.

The second method relates to cases where the order was unlawful. The subordinate of such an officer a defence to a criminal charge if they had, by reason of a mistake of fact, in good faith believed themselves to be bound by law to obey the order. In effect, therefore, promotes the stance that subordinates must comply with the orders of their commanding officers but that they should desist from doing so if the factual circumstances were such that they knew, or ought to have known, that the order was unlawful.

Mention should also be made of judicial acts are provided in Sections 77 and 78 of the Myanmar, Indian, Malaysia and Singapore Penal Codes which are specific exceptions to the general rule that mistake of law is not a defence. Section 77 recognises that judges are fallible and affords them protection from criminal liability arising from the discharge of their functions. Acts done by judicial officers are provided in Sections 77 and 78 of the Penal Code. For this area of the law, it is vital to fully appreciate the particular way by which Sections 77 and 78 exculpates on accused of criminal responsibility.

Section 77 of the Penal Codes which provide that nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.¹

The closing words of the section clearly envisage a judge making a mistake of law. Judges will be exculpated of any criminal liability for such mistakes if they reasonably believed they were acting legally. Conversely, the protection afforded by Section 77 is unavailable where the judge's belief was so irrational as to impute malice or corruption. Section 78 is a corollary of Section 77 and extends the protection against criminal liability to persons

¹ Section 77 of the Myanmar, Indian, Malaysia and Singapore Penal Codes, 1861, 1860, 1870, 1870.

acting under a judgment or order of a court. Section 78 is wider than Section 77 in that, while the latter requires the judge to have acted within his or her jurisdiction, section 78 protected a persons carrying out an order of a court which may have had no jurisdiction at all to issue the order.¹

Section 78 of the Penal Codes show that nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.²

In the case of *U Tun Aye and two V. The Union of Myanmar*,³ as a judge, he will get exception from Section 77 in the exercise of any power which is, or which in good faith he believes to be, given to him by Law. Knowing exactly, the action done without entitlement and which is unable to defend for truth cannot be protected by this section. As the court itself knowing being able to grant exemption to the disposal of tenancies committees but did not give it and take action in criminal case, this sort of action of township administrative officer cannot be exempted by this section.

Another possible instance of a judicial exception to the general exclusionary rule occurred in the Privy Council decision in *Lim Chin Aik v R*,⁴ an appeal from Singapore. The accused was charged with an offence under the Immigration Ordinance 1952 of unlawfully remaining in Singapore. The relevant Minister had made a prohibition order in respect of the accused. The accused was unaware of the order as it had not been published. The Prosecution contended that the issue of knowledge was irrelevant because fault was not an element of the offence. Also, since the ministerial order was part of the law of Singapore, the accused's ignorance of that order could not provide a defence. On appeal to the Privy Council against his conviction, the Judicial Committee rejected both arguments of the Prosecution. First, it held

¹ Chan Wing Cheong & Michael Hor & Mark McBride & Neil Morgan and Stanley Yeo, *Criminal Law in Myanmar*, 1st Edition, 2016, P.116.

² Section 78 of the Myanmar, Indian, Malaysia and Singapore Penal Codes, 1861, 1860, 1870, 1870.

³ 1966, B.L.R (S.C.C.A.C) 27.

⁴ 1963, AC, 160.

that the presumption of mens rea was not rebutted, with the result that the Prosecution had to prove that the accused knowingly violated the prohibition order. As for the second argument, Lord Evershed said:

The maxim of "ignorance of the law is no excuse" cannot apply to such a case as the present where it appears that there is in the State of Singapore no provision ... for the publication in any form of an order of the kind made in the present case or any other provision designed to enable a man by appropriate inquiry to find out what "the law" is.

According to the best of his judgment, upon a matter within his jurisdiction, has been firmly established and uniformly maintained. One who serves in a judicial capacity is required to exercise a judgment of his own and as his duty obliges him to decide all questions of law and fact which are submitted for his judgment, he is not punishable for error or mistake whether of fact or of law. This large exemption is conferred on him when acting judicially, not only in those cases in which he proceeds irregularly in exercise of a power which the law gives to him but also in cases where he, in good faith exceeds his jurisdiction and has no lawful powers.¹

Section 77 protects Judges from criminal process just as the 'Judicial Officers Protection Act'² saves them from civil suits. Section 1 of that Act says: "No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of."³

There is also Exception C to Section 299(2) which reduces murder to culpable homicide not amounting to murder in the case of a public servant who exceeds the powers given to him or her by law and causes death by doing

¹ Ratanlal and Dhirajlal, Law of Crimes, Vol. 1. 24nd Edition, 1997, P.243.

² Act XVIII of 1865, section 1.

³ Ratanlal and Dhirajlal, Law of Crimes, Vol. 1. 24nd Edition, 1997, P.242.

an act which he or she, in good faith, believes to be lawful and necessary for the due discharge of his or her duty as a public servant.¹

In the case of *Maung Pu and one v. King-Emperor*,² A was arrested under Section 478 of the Civil Procedure Code. On his being brought before the Court the Judge orally ordered the bailiff to keep him in custody. The bailiff in turn orally ordered a process-server to take charge of him, and this was done. The bailiff and process-server were subsequently prosecuted and convicted of wrongful confinement, under Section 344 of the Indian Penal Code. Held, that Section 78 of the Indian Penal Code does not extend to the oral orders of a Judge; that as Section 481 of the Civil Procedure Code only authorizes a Judge to commit persons to jail, the mistake of the bailiff and the process server, in believing that their oral orders justified their action, was purely a mistake of law and not of fact, and that therefore they rightly convicted.

The exceptions in Sections 77 and 78 are in favour of a Judge and officer of Court of Justice: whereas the Judicial Officers' Protection Act protects every "Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially." Mistake of Law can be pleaded as defence under Section 78.

Findings

That the person to whom the order was given, was bound by law to obey it. Thus in the case of a soldier, the Penal Code does not recognize the mere duty of blind obedience to the commands of a superior as sufficient to protect him from the penal consequences of his act. Difficult as the position may appear to be, the law requires that the soldier should exercise his own judgment, and unless the actual circumstances are of such a character that he may have reasonably entertained the belief that the order was one which he was bound to obey, he will be responsible like any other sane person for his act, although he may have committed it under the erroneous supposition that his superior was by law authorized to issue the order.

¹ Chan Wing Cheong & Michael Hor & Mark McBride & Neil Morgan and Stanley Yeo, Criminal Law in Myanmar, 1st Edition, 2016, P.113,114.

² 4 L.B.R – 253.

The defence of superior orders under Section 76 reflects two competing public policy considerations. The first is that the police and military depend on strict discipline and immediate obedience to orders for their efficient operation. The harms from which the police and military are duty bound to protect society will occur if subordinates are permitted to debate whether or not to comply with an order of their superiors. It follows that the law needs to promote obedience to superior orders by protecting from criminal liability those who have acted in compliance with those orders. As against this is the view that those who harm innocent people should not be allowed to hide behind a superior order. If a defence of superior orders were recognised, very perpetrator of wrongful conduct across the whole chain of command will be able to claim that they were merely acting under orders. To protect innocent lives against atrocities carried out under superior orders, the criminal law should send a clear signal to the police and military personnel that there is no defence of superior orders.

Section 77 excludes a judge from criminal liability when he exercises his power given to him by law in good faith. Section 78 supplements Section 77 and protects the ministerial staff of the "Courts of Justice" when they ensure that the judicial orders and directions given are carried out effectively. The aim of the section is to give immunity to the judges when they act in their judicial capacity to ensure independence of the judiciary and enable them to discharge their function without fear of consequences. Section 77 aims at protecting acts of judge.

Conclusion

This paper will discuss three forms of protection accorded to public servants. The first is what is conventionally described as the defence of superior orders where the public servant seeks to be exculpated of a criminal charge on the ground that he or she was merely obeying a command of his or her superior officer. The second is the partial defence to murder which is available to a public servant who has killed while exceeding his or her public power. The third is the protection given to public servants who are confronted with force when performing their duties. Public servants are also given

additional protection in the sense that higher penalties apply to people who harm public servants when they are carrying out their role as public servants.

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References

Laws

- Indian Penal Code (Act XLV of 1860).
- The Code of Criminal Procedure, 1898 (India Act V, 1898).
- The Penal Code (Myanmar), 1861 (India Act XLV. 1860).
- The Police Act, 1945 (Burma Act VI, 1945).

Books

- Chan Wing Cheong & Michael Hor & Mark McBride & Neil Morgan and Stanley Yeo, (2016), *Criminal Law in Myanmar*, 1st Edition, Lexis Nexis, Printed in Malaysia by Sincere Service Centre Sdn Bhd.
- Murugason, McNamara, (1997), *Outline of Criminal Law*, 8th Edition, Australia by Alken Press Pty Ltd.
- Ratanlal & Dhirajlal, (1997), *The Law of Crimes*, 24th Edition, Printed in Bharat Law House, New Delhi.
- Stanley Yeo & Neil Morgan & Chan Wing Cheong, (2012), *Criminal Law in Malaysia and Singapore*, 2nd Edition, Lexis Nexis, Printed by C.O.S Printers Pte Ltd, Singapore.
- The Myanmar Code (Burma Code), 1957, Volume VIII, Government Press.

Websites

<https://www.legislation.gov.au/Details>. Australia Criminal Code Act 1995-Federal Register of legislation

Singapore Statutes Online-224-Penal Code. statutes.agc.gov.sg/aol/display/view

www.google.com age.gov. Malaysia Penal Code. Pdf (Act 574)

www.government.se/judicial-system>t----- The Swedish Penal Code (1962:700)

Cited Cases

Tan Khee Wan Iris Vs Public Prosecutor, (1995), 1 SLR, 723.

U San Win Vs U Hla, AIR, (1931), Ran. 83.

Emperor Vs Gopalia Kallaiya, (1923), 26 Bom LR 138.

Queen-Empress Vs Subba Naik, (1898), ILR, 21 Mad 249.

U Tun Aye and two Vs The Union of Myanmar, (1966), B.L.R (S.C.C.A.C) 27.

Lim Chin Aik Vs R, (1963), A.C, 160.

Maung Pu and one Vs King-Emperor, 4. L.B.R. 253.

COPYRIGHT EXCEPTION FOR LIBRARIANS

Khine Wai Lin*

Abstract

This paper describes how to apply copyright exceptions for librarians in academic life and how librarians can help teachers, students and researchers. Researchers, copyright exceptions and librarians are related to be an excellent research. Research is an essential tool to develop a country. To be a good research, teachers and students need copyright exceptions and advices of librarians. Copyright exceptions for researchers and educational purposes are provided in Section 2 of Myanmar Copyright Act 1914. Section 22 of the Myanmar Copyright Draft Law 2015 provides about exceptions for libraries and archives. However, it is needed to point out detail on the roles and responsibilities of librarians.

Keywords: copyright, exception and librarians.

Introduction

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps and technical drawings.¹

Copyright infringement happens when someone uses the copyright-protected work of someone else, (a book, an article, a song, etc.), without permission.² Copyright infringement is the use of works protected by copyright law without permission, infringing certain exclusive rights granted to the copyright holder, such as the right to reproduce, distribute, display or perform the protected work, or to make derivative works.³

Copyright law aims to achieve a balance between the interests of creators, so they receive a just reward for their works, and the public interest in terms of ensuring the public has access to such works.⁴ In this way,

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¹ <http://www.wipo.int/copyright>

² <http://www.wipo.int/sme/documents/copy...>

³ <http://en.m.wikipedia.org/wiki/Copy...>

⁴ <http://www.wipo.int/2017/04/article-0003>

copyright law supports further creation as well as the growth of knowledge and culture and its diffusion. Examples for exceptions of copyright are private use, educational use, and artistic works in public places, use for libraries and archives, use for disabled persons and use for informatory purpose for public. Libraries play an essential role in serving the public interest by preserving and making such works available to the public.

Many librarians act as mediators, guides or even, in some cases formal teachers. They help people to recognize their information needs, identify and access relevant sources and make judgments about the value of that information. To facilitate this, libraries have traditionally collected and organized information, in a wide variety of formats, from books and journals to audio-visual materials and special collections. Increasingly library collections are available in digital format which means that copyright law, licensing terms and digital rights management technologies can have a big impact on how and whether information is used.¹ In other countries, libraries exist for disabled persons, for example, Gallaudet University in United States has a library for deaf persons.

Librarians are permitted to assist researchers and students by providing limited copies of books, plays and musical scores, pictures and photos, literary, dramatic, musical and artistic works for non-commercial research and private study. The amount that can be copied is restricted to a reasonable proportion.² In Sydney University, students can quote 10% of a work for research. Researchers can cite 5% of a work in University of Leeds. For educational purpose, in University of London, teachers and students can quote 10% of a work. Librarians have duty to know how many percentage of a work can be quoted for researchers such as students because plagiarism is a crime for students. Librarians will help students and researchers to know relevant sources. Librarians can cite 10% of a work to help researchers who are students and teachers. This rules out unfair or unreasonable uses such as copying a whole film for “research” instead of buying the DVD and generally

¹ <http://www.copyrightuser.org/.../libraries>

² <https://www.swfed.org.uk/.../IPO>

means that only a part of a work can be copied. Use made of the work should be accompanied by sufficient acknowledgement¹.

Library Exceptions in the World

Library exceptions in National Copyright Statutes analyzed by WIPO are as follows;

In 2014 data revised in 2017 by Kenneth D. Crews from WIPO, 33 member countries have no library exception, 34 countries possess general library exception, and other countries accept diversity of library exceptions.

- **General Library Exception.** Some countries have a broad and flexible provision that permits a library or other institution to make copies of works, usually subject to various conditions, but not limited to particular purposes. Many more countries have a general exception together with other provisions, but it is especially insightful to note those countries rely solely on a general exception, without the benefit of a more specific library statute.
- **Copies for Research and Study.** One of the most common statutes within this study is the provision permitting a library or other institution to make copies (usually single copies) at the request of a user, often specifically for that person's research or private study. This category of statutes includes any provision that authorizes the library to make a copy of a work for a user, whether "research and study" is noted in the statute or not.
- **Making Available.** The European Union directive of 2001, as described above, led many E.U. countries to adopt a statute allowing libraries to make digital works available to users on the premises, usually for their research or study.²
- **Copies for Preservation or Replacement.** Among the most common library exceptions are statutes that authorize the library to make copies of works for preservation, without necessarily requiring that the work

¹ <https://www.swfed.org.uk/.../IPO>

² WIPO, Standing Committee on Copyright and Related Rights, "Study on Copyright Limitations and Exceptions for Libraries and Archives", Geneva, November 13 to 17, 2017, p.9.

first be at risk. Almost as common are statutes authorizing libraries to replace existing copies in the collection, or in the collection of another library, if the work is lost, damaged, deteriorated, or otherwise in jeopardy?

- Interlibrary Loan or Document Supply. Much less common are statutes that permit libraries to make copies of works to provide to other libraries for the libraries' use or for delivery to users at their request.
- Anti-circumvention. Many countries have enacted provisions barring the circumvention of technological protection measures. Some of those countries also have enacted certain exemptions. This study identifies countries that have statutory exemptions explicitly applicable to libraries.

Some countries have enacted statutes on specialized needs of libraries. Each country often includes brief references to other copyright provisions that might be important to libraries, such as personal copying, public lending, fair dealing, the needs of disabled persons, and much more.¹ Today, in the world, there have so many developed situations but children who possess poor parents can't do to library because they also work for their survivals. So, it is needed to have relevant libraries for poor children who are included as disable persons.

Library Exceptions in Myanmar

In ancient time, Myanmar government try to possess every library exist in every ward. So, nowadays, Myanmar have 93% literacy rate. There are 55,755 registered public libraries in Myanmar, but only 4,868 are considered active in 2014.²In Myanmar, there are developing with e-libraries and mobile libraries. But accessing good quality books is still needed.

In 1914 Copyright Act, there is no specific provision for a library. In 2015 Copyright Draft Law, there has a library's provision. 2017 Copyright Draft Law is more complete than 2015. Besides, exceptions for educational

¹ WIPO, Standing Committee on Copyright and Related Rights, "Study on Copyright Limitations and Exceptions for Libraries and Archives", Geneva, November 13 to 17, 2017, pp 9-10.

² <https://asiafoundation.org/2014/02/05/myanmars-libraries-a-potential-catalyst-for-community-development/>

use are contained in Section 2 (1) (iv) Part I under Schedules, An Act to amend and consolidate the Law relating to Copyright of the **Myanmar** Copyright Act 1914 which provides that copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright. Provided that the following acts shall not constitute an infringement of copyright: The publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists. Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged.¹

Section 22 of **Myanmar** Copyright Draft Law 2015 provides that notwithstanding Sub-section 12 (a), the reproduction for any library or archive can be made as a single copy for the following purposes without the permission of the author or copyright owner; (a) if the reproduction is a literary or artistic work, it would have to be of a published work a part of another literary or artistic work or excerpt and shall have made at the request of some person (b) according to Sub-section (a) the reproduction (i) the library or archive must be satisfied that reproduction is being made only for study, teaching or personal research purposes (ii) if the works are different from and unrelated to each other, separate copies must be made, (c) if reproduction is made for preserving of a copy or if necessary, for use as a substitute or if needed, in order to replace a collection, of the work , maintained and preserved by some other similar library or archive and which has become lost, destroyed, or unusable for lending purposes... (d) according to Sub-section (c), if irrefutable evidence can be shown that the reproduction of such a copy cannot be got in spite of efforts made to find one.²

¹ The Myanmar Code, Volume X, Published under the Authority of the Government of the Union of Myanmar, 1954.

² Section 22 of Myanmar Copyright Draft Law 2015

Section 25 of the **Myanmar** Copyright Draft Law 2017 provides that notwithstanding Sub-section 15 (a), the reproduction for any library or archive can be made as a single copy for the following purposes without the permission of the author or copyright owner; (a) if the reproduction is a literary or artistic work, it would have to be of a published work, a part of another literary or artistic work or excerpt and shall have been made at the request of some person. But such reproduction (i) the library or archive must be satisfied that the reproduction is being made only for study, teaching or personal research purposes (ii) if the works are different from and unrelated to each other, separate copies must be made, (b) if reproduction is made for preserving of a copy or if necessary, for use as a substitute or if needed, in order to replace a collection, of the work , maintained and preserved by some other similar library or archive and which has become lost, destroyed, or unusable for lending purposes... Such reproduction (i) if irrefutable evidence can be shown that the reproduction of such a copy cannot be got in spite of efforts made to find one, (ii) if the works are different from and unrelated to each other, separate copies must be made. (c) literary and artistic works can be copied as follows; for the purposes of copying and preservation, (i) a library or an archive can get a copy of the work or a copy of an integral part of it from another archive or a library if its own collection is incomplete or if a copy cannot be got from the market or publisher or in collecting literary and artistic works for an organization. (ii) a library or an archive can copy a literary or artistic works if in spite of trying, it cannot get permission to do so from the right holder or if it cannot get it from the market or the publisher.¹ (iii) users may study copies which are made in accordance with Sub-sections (a) and (b), within a library or an archive's premise. Beside, a library or an archive can borrow such copies to users to private study and to study within its premises. (d) Libraries can support each other by means of post, fax or safe electronic connections. But such electronic files of literary and artistic works shall be copied on paper and deleted immediately thereafter. Besides, the library that receives the copy may provide its users with such paper copies. (e) A library or an archive may translate a literary and artistic work, which it got officially for the purpose of education or research, when its users cannot

¹ Section 25 of Myanmar Copyright Draft Law 2017

access it in a required language. But such translation cannot be used for other purposes. (f) A person or an organization can translate literary or artistic works from other languages to the language of minority groups and *vice versa* for the purpose of giving information but not for economic reasons.¹

In 2017 Copyright Draft Law, there is a need to provide the appropriate amount to copy for a library.

Copyright exceptions for library are different in practices by the legislations of the countries.

Library Exceptions in Canada

Section 30(2)(2) of the Canadian Copyright Act 1985 declares that it is not an infringement of copyright for a library, archive or museum or a person acting under the authority of a library, archive or museum to make, by reprographic reproduction, for any person requesting to use the copy for research or private study, a copy of a work that is, or that is contained in, an article published in

- (a) a scholarly, scientific or technical periodical; or
- (b) a newspaper or periodical, other than a scholarly, scientific or technical periodical, if the newspaper or periodical was published more than one year before the copy is made.

Under certain conditions, educational institutions or persons acting under their authority can make limited copies for instruction and examinations:

- Instructors can copy a work onto a board, flip chart or similar surface and project a work using an overhead projector or similar device. The projection must be on the school's premises for educational purposes only. Digital projectors are arguably covered by this Section.

¹ Section 25 of Myanmar Copyright Draft Law 2017

- For the purposes of an exam or test, instructors can reproduce, translate or perform a work when it is not commercially available in an appropriate medium.

Other educational exceptions are discussed in the Sections covering translation and performance, broadcasting and playing sound recordings and images. Canadian libraries, archives and museums benefit from exceptions that facilitate the delivery of print and electronic works. They may do anything that individuals may do for themselves as long as it is for private study, research, criticism or review. For example, library personnel are allowed to make a copy of an article to be placed on course reserve for a faculty member.¹

CCH Canadian Ltd v Law Society of Upper Canada,² is a landmark Supreme Court of Canada case that established the threshold of originality and the bounds of fair dealing in Canadian copyright law. A group of publishers sued the Law Society of Upper Canada for copyright infringement for providing photocopy services to researchers. The Court unanimously held that the Law Society's practice fell within the bounds of fair dealing.

"In order to qualify as a library is included in fair dealing, the Great Library: (1) must not be established or conducted for profit; (2) must not be administered or controlled by a body that is established or conducted for profit; and (3) must hold and maintain a collection of documents and other materials that is open to the public or to researchers." Since Chief Justice McLachlin already concluded the library's dealings were fair, she did not need to rule on this issue. Regardless, she determined that the Great Library would have qualified for the library exemption.

Since the Great Library was found not to have infringed on copyrighted material, no determination was made as to whether the Court of Appeals was correct in denying injunctive relief.³ Especially, Copyright exceptions are determined upon the Article 9(2) of the Berne Convention 1886. It must be certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate

¹ <http://fairuse.stanford.edu/overview/academic-and-educational-permissions/non-coursepack>.

² [2004] 1 SCR 339, 2004 SCC 13

³ https://en.wikipedia.org/.../CCH_C..

interests of the authors. It will take a decision upon whether it is fair use or not. In EU, public libraries have Public Lending Right. E-Lending is the special thing for EU. In Singapore, the provisions of library are divided into sectors by sectors such as for copying for preservation and other purposes, copying of unpublished works and copying for published works. In *Basic Books, Inc. V. Kinko's Graphics Corp* 758 F. Supp. 1522 (S.D.N.Y. 1991) case, Kinko's Graphics services affect the market of Basic Books so their copying are not fair use even they have reason for educational purpose. In *Authors Guild V. HathiTrust* 755 F.3d 87 (2d Cir. 2014) and *Authors Guild V. Google, Inc.* No. 13-4829 (2d Cir. 2015) cases, the uses of transformative are limited and they do not harm the market of right holders so the Court considered as fair use. So libraries can computerize their collections for researchers found on a fair use as reasoning.

Methods and materials

- Studying on international conventions, Laws of Canada and Myanmar relating to Copyright Exceptions for Librarians
- Studying on cases, published books and websites.

Findings

Copyright exceptions for library vary from country by country, university by university and case by case. In each country, there have their national legislation so library exceptions will depends on their legislations. But knowledge transfer relies upon libraries and librarians can assist researchers and public by getting relevant exceptions. Is Section 25 of Myanmar Copyright Draft Law 2017 in line with fair use which is come out from Article 9(2) of the Berne Convention, 1886? From my point of view, in our country, library exceptions are needed to provide in details. Myanmar is not a rich country so it cannot give public lending right in Section 25 of the Myanmar Copyright Draft Law 2017. But it can allow a reasonable portion (amount) that must be fair for public and authors. If a single copy of small portion of a book will be taken by users in one day after one day, the whole book will be in their hands and the market of the author will affect.

Conclusion

Copyright exceptions for library must be rigid and effective. Because librarians can help public, researchers and children to gain better lives by getting precious knowledge and information. Librarians can guide researchers what measures cannot or can quote from authors, what measures can be plagiarism and how researchers can cite. Especially, Myanmar needs many librarians who help people to be more educated by performing their duties. So, copyright exceptions for library should provide effectively.

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References

Conventions and Laws

Berne Convention for the Protection of Literary and Artistic Works 1886.

Myanmar Copyright Act 1914.

Myanmar Copyright Draft Law 2015.

Myanmar Copyright Draft Law 2017.

Canadian Copyright Act 1985.

Books

WIPO, Standing Committee on Copyright and Related Rights, "Study on Copyright Limitations and Exceptions for Libraries and Archives", Geneva, November 13 to 17, 2017.

The Myanmar Code, Volume X, Published under the Authority of the Government of the Union of Myanmar, 1954.

Cases

CCH Canadian Ltd v Law Society of Upper Canada, [2004] 1 SCR 339,2004 SCC 13.

*Basic Books, Inc. V. Kinko's Graphics Corp*758 F. Supp. 1522 (S.D.N.Y. 1991).

*Authors Guild V. HathiTrust*755 F.3d 87 (2d Cir. 2014).

Authors Guild V. Google, Inc No. 13-4829 (2d Cir. 2015).

Internet Websites

https://en.wikipedia.org/wiki/CCH_Canadian_Ltd_v_Law_Society_of_Upper_Canada

<http://www.copyrightuser.org/educate/intermediaries/libraries/>

<https://asiafoundation.org/2014/02/05/myanmars-libraries-a-potential-catalyst-for-community-development/>

[http://fairuse.stanford.edu/overview/academic-and-educational-permissions/non-coursepack.](http://fairuse.stanford.edu/overview/academic-and-educational-permissions/non-coursepack)

<https://www.scribd.com/.../%E1%80%99%E1%80%B0%E1%80%95%E1%80%>

<https://www.mediafire.com/.../%E1%80%85%E1%80%AC%E1%80%B1%E1%80%>

<http://www.wipo.int>copyright>

<http://www.wipo.int>sme>documents>copy...>

<http://en.m.wikipedia.org>wiki>Copy...>

<http://www.wipo.int>2017/04>article-0003>

Annex (1) Provisions relating to library exceptions in Myanmar

	Myanmar Copyright Act 1914	Myanmar Copyright Draft Law 2017
Library or Archives	-	<p>Sec 25</p> <p>The reproduction for any library or archive can be made as a single copy</p> <ul style="list-style-type: none"> - for study, teaching or personal research purposes at the request of some person, - for preserving and for replacement in a collection of works from some other similar library. <p>Libraries can support each other by means of post, fax or safe electronic connections.</p> <p>A library or an archive may translate a literary and artistic work for education in a required language</p> <p>A person or an organization can translate literary or artistic works from other languages to the language of minority groups and <i>vice versa</i> for information.</p>

Source: A Comparative Study of “fair use” in Japanese, Canadian and US Copyright Law by Susan Wilson and Cameron Hutchison.

Annex (2) Library exceptions in National Copyright Statutes analyzed by WIPO

Library Exceptions in National Copyright Statutes Summary of Findings of a 2017 Study for the World Intellectual Property Organization Study by Kenneth D. Crews Total Countries in the Study: 191	
Exception	Number of Countries
No Library Exception that have enacted no copyright statutes.)	28(today 33) (In addition, two countries
General Library Exception (Note: The statistic is the number of countries With <i>only</i> a general exception and no specific Library exception.)	21 (today 34)
Copies for Library Users (for Research or Study or similar stated purpose)	105
Preservation or Replacement	Preservation: 102 Replacement: 98
Research or Study (Making Available on dedicated terminals)	34
Document Supply or Interlibrary Loan	Document Supply:22 Interlibrary Loan: 9
Anti-Circumvention of Technological Protection Measures- Exemption for Libraries	53

Source: Study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and Revised (2017 Edition) prepared by Kenneth D. Crews, J.D., Ph.D.