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FOREWORD

On 26 February 2026, the Myanmar Academy of Arts and Science (MAAS) was reconstituted to accelerate the implementation of four different strategies:

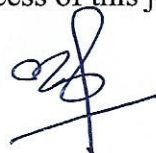
- (a) encouraging universities and colleges to engage in more research activities
- (b) organizing domestic and international research conferences
- (c) publishing research journals and proceedings, and
- (d) fostering research collaboration among local and international universities

Since the year 2001, the MAAS has been making every effort to fulfil these important functions in collaboration with universities and colleges across the country. As a result, the MAAS has published research papers in 23 volumes on diverse academic disciplines in the Journal of the Myanmar Academy of Arts and Science. It is a great honor to say that the 24th research conference was successfully held at the University of Yangon on 9–11 March 2024. The theme of this conference is '*Research and Innovation for Peace, Prosperity and Sustainability*'. A total of 369 research papers presented by both faculty and postgraduates at the conference have been published in Volume XXIII as follows:

Vol. XXIII, No. 1A	Chemistry
Vol. XXIII, No. 1B	Chemistry, Industrial Chemistry
Vol. XXIII, No. 2	Physics, Mathematics and Computer Studies
Vol. XXIII, No. 3	Zoology, Marine Science, Environment and Water Studies
Vol. XXIII, No. 4	Botany, Geology
Vol. XXIII, No. 5	English, History, Philosophy, Geography, Psychology, International Relations, Oriental Studies
Vol. XXIII, No. 6	Myanmar
Vol. XXIII, No. 7	Law, Library and Information Studies, Archaeology, Anthropology, Language and Linguistics
Vol. XXIII, No. 8	Applied Statistics, Management Studies, Statistics, Commerce, Economics, Journalism and Tourism
Vol. XXIII, No. 9A	Educational Theory and Management, Curriculum and Methodology
Vol. XXIII, No. 9B	Educational Psychology

I firmly believe that the empirical research findings from these papers will provide practical assistance for research candidates and those who are interested in research work. I am also hopeful that these findings will significantly contribute to the well-being of the community at large as well as the State's socio-economic development.

On behalf of the members of the MAAS, I would like to offer my special gratitude and thanks to those who have contributed their research papers to this journal. I also do appreciate the editing work done by senior professors and scholars of high standing as well as the members of the MAAS Editorial Board. Finally, my heartfelt thanks go to the members of the Publication Committee and the Department of Higher Education for their great dedication to the success of this journal.



Dr. Soe Win
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FROM ENVIRONMENTAL RULE OF LAW TO SUSTAINABLE DEVELOPMENT IN MYANMAR*

Swe Zin Oo¹

Abstract

Environmental rule of law can be defined as a system of practicable environmental laws which has significant impacts on the environment that are consistently applied, and effectively and fairly enforced. Effective enforcement of environmental laws is fundamental to the environmental rule of law. The failure of environmental regulations in developing countries owes to incomplete, superficial and ineffective legal provisions. The issue is further exacerbated by the ineffective enforcement of incapable regulatory institutions. Without effective enforcement of environmental laws environmental rule of law cannot be expected. As a developing country, Myanmar has encountered the same issues. This research paper critically analyzes the relation between effective enforcement of environmental law and the environmental rule of law in achieving sustainable development in Myanmar. This research is a doctrinal and textual analysis of the concept of environmental rule of law and its important role in promoting sustainable development of Myanmar by utilizing primary and secondary data on the enforcement of environmental laws in Myanmar.

Keywords: Environmental Rule of Law; Sustainable Development, Environmental impact assessment

Material and Method

This research mainly applies doctrinal and empirical analysis of primary and secondary data. First relevant literature are collected, review and analysed to understand the concept of the concepts the rule of law, environmental rule of law and their relation with sustainable development. Then textual analysis of environmental laws of Myanmar are conducted to assess these laws through the lens of the environmental rule of law. Finally, this research carried out empirical analysis by reviewing reports and relevant literature to shed light on the environmental rule of law and sustainable development of Myanmar.

The Concept of the Rule of Law

Many countries in the world today have one or other form of environmental legal framework. The constitution of many countries has one or any other form of guarantee for their citizens to enjoy clean and healthy environment. However, in many developing countries, most environmental legislations are toothless. The laws are not followed by effective implementation and enforcement.² At a minimum level, rule of law requires that there should be the law which meet the necessary standards, equipped with institutions and machinery to enforce and, most importantly, followed by an effective enforcement.³ The rule of law is a basic foundation to maintain international peace, security and political stability, to promote economic, social and all-round development, and essential to protect the rights and fundamental freedom of people. It is

* First Prize (2024)

¹ Department of Law, University of Mandalay.

² 'Environmental Rule of Law; First Global Report' (Report, July 2019) 3.

³ The Enduring Importance of the Rule of Law in Times of Change' (Speech, Environment and Planning Law Association (NSW) Annual Conference: The Times They are a-Changing, 13 October 2011) 13.

fundamental to ensure people's access to public services, combat corruption, constrain abusing power, and establish the social contract between people and the state.⁴

Formal and Substantive Concept of Rule of Law

The attempt by legal philosopher to define the concept of the rule of law led to distinguish the concept into two main ideologies, 'formal or thin conception' and 'thick or substantive conception.' One of the most notable formal conceptions of the rule of law is that of Lon Fuller. In the *Morality of Law*, Fuller lays out eight principles that can be used as guidelines for a legal system's adherence to the rule of law as follows: -

- 1) Decisions should be made according to rules; not in an arbitrary or ad-hoc manner;
- 2) Rules should be publicized, or at least made available to the people expected to observe them
- 3) Rules (legislation) should not be retroactive;
- 4) Rules should not contradict each other;
- 5) Rules should not require people to take steps beyond their capabilities;
- 6) Rules should not change so frequently that people are unable to plan their behaviour based on the rules; and
- 7) There should not be a significant disconnect between the way rules are drafted and the way they are enforced in practice.⁵

Fuller's eight principles do not state what the content of any given legal rule must be. Instead, they focus solely on the way in which legal rules are applied.

Professor Tamanaha advocates the same ideology as Lon Fuller. Tamanaha reject the substantive concept in the following terms; -

The rule of law is an ideal that relates to legality. Democracy is a system of governance. Human rights are universal norms and standards, or at least norms that claim universal application. Since each of these notions has meaning that is well understood, it invites confusion, in my view, to insist that the latter two are part of the definition of the rule of law. Each must be understood and argued for on its own terms. They are separate elements that focus on different aspects of a political-legal system, which can exist separately or in combination.⁶

Unlike formal conceptions, substantive conceptions of the rule of law do specify (to some degree) what content laws must include. In essence, substantive conceptions further added democratic and human rights value to the established formal conceptions.⁷

UN Secretary General Kofi Annan refers to substantive conception in "The rule of law and transnational justice in conflict and post-conflict societies". He advocated the concept as:

⁴ United Nations, United Nations and the Rule of Law, 'What is the rule of law?' (Web Page) <https://www.un.org/ruleoflaw/>.

⁵ Lon L. Fuller, *The Morality of Law* 39, 41-42(1969), as cited by Benjamin K. Guthrie, 'Beyond Investment Protection: An Examination of the Potential Influence of Investment Treaties on Domestic Rule of Law', [2012-13] 45 *International Law and Politics* 1151, 1161-1162.

⁶ Brian Z. Tamanaha, 'The History and Elements of the Rule of Law' (2012) *Singapore Journal of Legal Studies* 232, 234.

⁷ Benjamin K. Guthrie, 'Beyond Investment Protection: An Examination of the Potential Influence of Investment Treaties on Domestic Rule of Law' [2012-13] 45 *International Law and Politics* 1151, 1162-1163.

a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.⁸

The World Justice Project (WJP) definition of the rule of law is probably one of the most persuasive when considering how a system may be created in order to avoid arbitrary governance. The World Justice Project (WJP) suggests that the rule of law is a system in which four universal principles are upheld:

- Accountability: The government and its officials and agents as well as individuals and private entities are accountable under the law.
- Just Law: The laws are clear, publicized, stable and just, are applied evenly, and protect fundamental rights, including the security of persons and property.
- Open Government: The process by which the laws are adopted, administered, adjudicated and enforced are accessible, fair and efficient.
- Justice is delivered timely by competent, ethical, and independent representatives and neutrals who have adequate resources, and reflect the makeup of the communities they serve.⁹

Therefore, the rule of law in general refers to a power subjected to the law. The concept belongs to both 'descriptive' and 'prescriptive' meaning. The concept of the rule of law can be used to describe a particular arrangement of political institutions. It is also used to formulate an ideal set of goal in which sovereigns govern their subjects by the laws that are fixed and adopted in advance, and to which the sovereigns themselves obey.¹⁰

Rule of Law for Promoting Sustainable Development

The rule of law is directly connected to sustainable development because it sets forth legal, political, and social order while also advancing security. For example, without proper functioning institutions of governance based on the rule of law that promote social stability and legal certainty, there cannot be investment and assumption of risk that for the basis of market economy development, let alone sustainable development. Rule of law also strengthens accountability for the exploitation of natural resources and, therefore, can reduce abuses of power and corruption as well as attract investments.¹¹

⁸ United Nation Secretary General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General* (Report, S/2004/616, 23 August 2004).

⁹ 'What is the Rule of Law?' *World Justice Project* (Web Page) <<https://worldjusticeproject.org/about-us/overview/what-rule-law>>.

¹⁰ Pietro Costa, 'The Rule of Law: An outline of its historical foundations' in Christopher May and Adam Winchester (eds), *Handbook on the Rule of law* (Edward Elgar Publishing, 2018) 135.

¹¹ Alexandra Dapolito Dunn and Sarah Stillman, 'Advancing the Environmental Rule of Law: A Call for Measurement' (2015) 21 *Southwestern Journal of International Law* 283, 287.

In fact, when 191 UN member states pledged to meet the Millennium Development Goals (MDGs) for sustainable development by 2015, the eight MDGs were agreed to by all of the world's countries and international development institutions. Although not specifically referred to in the text, strengthening the rule of law emerged again as essential to promote sustainable development and achieve the MDGs. Notwithstanding the affirmation of environmental sustainability as a MDG, a recurrent criticism of the MDGs is that they insufficiently address the environmental component of sustainable development and the weaknesses in the overall progress toward environmental sustainability persist. It is important to keep the environmental component of sustainability front and centre when using the rule of law as a sustainable development underpinning.¹²

Goal 16 of the SDGs 2030 is “peace, justice and strong institution”. Goal 16 aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Goal 16 targeted, among others, promote the rule of law at the national and international levels and ensure equal access to justice for all; develop effective, accountable and transparent institutions at all levels; promote and enforce non-discriminatory laws and policies for sustainable development; and, Promote and enforce non-discriminatory laws and policies for sustainable development.¹³ SDGs do not affirm environmental sustainability as a goal on its own; rather, the protection of our environment appears as an underlying principle that permeates throughout many SDGs.¹⁴

The Concept of Environmental Rule of Law

While notion and conception of rule of law has a long history, the term “environmental rule of law” was introduced recently. The term appeared in the Decision No. 27/9(2013) of the UNEP Governing Council. The Decision called upon UNEP to take a leading role and assist the states in developing and implementing environmental rule of law as follows:

To lead the United Nations system and support national Governments upon their request in the development and implementation of environmental rule of law with attention at all levels to mutually supporting governance feature, including information disclosure, public participation, implementable and enforceable laws, and implementation and accountability mechanisms including coordination of roles as well as environmental auditing and criminal, civil and administrative enforcement with timely, impartial and independent dispute resolution;¹⁵

The Decision highlights and covered the issues areas which countries, especially developing ones, are facing in the implementation of environmental law and achieving environmental goals. The issues highlighted reflect the fundamental concepts which needs to fulfil in order to ensure the rule of law. However, none of these documents have specifically defined the term “environmental rule of law”. It may be the reason that environmental rule of

¹² Ibid 287-288.

¹³ ‘Sustainable Development Goal 16’, *United Nations and the Rule of Law* (Web Page) <[¹⁴ Alexandra Dapolito Dunn and Sarah Stillman, \(2015\) ‘Advancing the Environmental Rule of Law: A Call for Measurement’ 21 *Southwestern Journal of International Law* 287-288.](https://www.un.org/ruleoflaw/sdg16/#:~:text=Goal%2016%20Targets&text=Promote%20the%20rule%20of%20law,all%20forms%20of%20organised%20crime.>”.></p>
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¹⁵ Advancing Justice, Governance and Law for Environmental Sustainability, UNEP GC Decision 27/9.

law is not a novel but concept originally being an underlying and an umbrella concept relevant to all the specific areas of law in general.

In international environmental documents, the term “environmental rule of law” is sparsely defined. In IUCN World Declaration on the Environmental Rule of Law defined “as the legal framework of procedural and substantive rights and obligations that incorporates the principle of ecologically sustainable development in the rule of law.”¹⁶ In UNEP report, environmental rule of law is defined as “the principle of rule of law applied in the environmental context.”¹⁷

While the term “environmental rule of law” was not frequently used, the mentioning of rule of law in relation of environmental protection and sustainable development is not rare. In 2012, UN General Assembly adopted a resolution on the rule of law at the national and international level in which it emphasized the importance of rule of law to sustain, among many other development goals, the sustainable development.

We are convinced that the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law, and for this reason we are convinced that this interrelationship should be considered in the post-2015 international development agenda.¹⁸

While the declaration did not specifically mention environmental protection, it is one of the essential pillars of sustainable development. The importance of rule of law for sustainable development is further reaffirmed in the 2012 UN Conference in sustainable Development (Rio+20).¹⁹

We acknowledge that democracy, good governance and the rule of law, at the national and international levels, as well as an enabling environment are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger. We reaffirm that to achieve our sustainable development goals we need institutions at all levels that are effective, transparent, accountable and democratic.²⁰

Therefore, the term “environmental rule of law” is not specifically used, these landmark international documents repeatedly emphasize the fundamental role of rule of law in achieving national and global goal of environmental protection and sustainable development.

Many legal scholars working on the environmental rule of law usually provide an applicable definition for the purpose of discussion in their hands. It is found out that scholars who did theoretical analysis of the concept usually a full account of discussion on both these concepts. On the other hand, some scholars tend to use a thinner conception to refer to and

¹⁶ ‘IUCN World Declaration on the Environmental Rule of Law’ 2016.

¹⁷ United Nation Environment Program, ‘Environmental Rule of Law: Tracking Progress and Charting Future Direction’ (DEL/2857/NA, United Nations Environmental Program, 2023) 15.

¹⁸ Implementation of Principle 10 of the Rio Declaration on Environment and Development UNEP Resolution 1/13 (27 June 2014) [4].

¹⁹ ‘The future we want’, (UN Doc. A/RES/66/288) [8][10][252].

²⁰ Ibid [10].

evaluate a particular country's system of laws and enforcement. Benjamin and Fulton defined environmental rule of law as "a state of being in which there is the presence of, respect for, and observance of environmental norms."²¹ Ristroph gave a quite similar working definition for her work in which she defines environmental rule of law as a system of practicable environmental law which has significant impacts on the environment that are consistently applied and, effectively and fairly enforced.²²

Rule of law is a concept supported by the world scholars, practitioners and political leaders alike. However, in many circumstance, the advocacy of the rule of law does not pair with some articulation of the term.²³ As Magraw argued "individuals from societies which have very different views of the concept of 'law'" will not refer to the same concept of the rule of law.²⁴ Magraw requires the thickest or strongest version of the rule of law to be applicable in the context of environmental protection. Basically, to protect the environment, environmental laws need to be complied with and, thus effective enforcement of those law are essential. However, due to paramount importance of the relation between human rights and the environment, and the role of the civil society in protecting the environment, the thickest version of rule of law is particularly necessary. With the foundation of the human rights, procedural and substantive rights which are imperative in the impartial enforcement of environmental laws can be assured.²⁵

Environmental Rule of Law in Myanmar

Myanmar ranks 135 out of 140 in overall score of in World Justice Project's 2024 rule of law index.²⁶ WJP's rule of law index is measured against eight factors; constraint on government power, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice. Among them the factor for 'regulatory enforcement' measures the extent to which regulations are fairly and effectively implemented and enforced. Regulations, both legal and administrative, structure behaviours within and outside of the government. This factor does not assess which activities a government chooses to regulate, nor does it consider how much regulation of a particular activity is appropriate. Rather, it examines how regulations are implemented and enforced. Myanmar also ranks 115 among 142 countries in regulatory enforcement.²⁷ Again, Myanmar ranks 179²⁸ in 2022, 177 in 2024 respectively in the Environmental Performance Index which is measured among 180 countries.²⁹ In terms of ecological vitality, Myanmar rank 177³⁰ among 180 countries both in 2022 and 2024 Environmental Performance Index.³¹ Scott argued that one possible reasons of strong correlation

²¹ Ibid 32.

²² Elizabeth Barrett Ristroph, 'The Role of Philippine Courts in Establishing the Environmental Rule of Law' (2012) 42(9) *Environmental Law Reporter* 866, 867.

²³ Daniel Barstow Magraw, 'Rule of Law and the Environment' (2014) 44(1-2) *Environmental Policy and Law* 201, 201

²⁴ Ibid 201.

²⁵ Ibid 208.

²⁶ 'WJP Rule of Law Index: Myanmar', *World Justice Project* (Web Page) <https://worldjusticeproject.org/rule-of-law-index/country/2023/Myanmar/>.

²⁷ Ibid.

²⁸ Yale Center for Environmental Law and Policy, *Environmental Performance Index 'Myanmar'* (Web Page) < <https://epi.yale.edu/epi-results/2022/component/epi>>

²⁹ Yale Center for Environmental Law and Policy, *Environmental Performance Index 'Myanmar'* (Web Page) < <https://epi.yale.edu/measure/2024/EPI>>

³⁰ Ibid.

³¹ Ibid.

between the rule of law ranking and environmental performance rankings is that rights may have no significance if people cannot exercise or protect them. It is only strong rule of law that can make sure people can protect environment through access to justice and participatory decision-making.³²

The failure of environmental regulations in developing countries owes to many reasons. One of them is the incapacity of regulatory institutions. They may be understaffed and poorly trained and equipped. They are not able to adopt appropriate standards and monitor due to a lack of technical expertise. Poorly paid staff are the grounds for corruption. Environmental ministries are less powerful than those responsible for economic development and their decisions are subject to interference.³³ More importantly, the environmental regulations failed because of the imbalances of interests and power between those who are the targets of regulation and those who are beneficiaries of regulations. Those regulated disregards the regulations or sometimes circumvent the regulation by influencing the regulator's decision through political connections or trying to minimize the environmental agencies.³⁴ Incompleteness of environmental legal texts is a usual problem in developing countries. Environmental provisions are superficial and ineffective. They are stipulated to satisfy some political interest and are not serious about the implementation and enforcement.³⁵

Historically, Myanmar's rule of law is flawed by weak or non-implementation of the laws under the successive governments.³⁶ There is no exception of these effect to environmental laws. Although specifically not as same environmental rights as many other embodied in their constitution, Myanmar also has footing in the Constitution of the Union of Myanmar regarding the protection of natural environment.³⁷ Myanmar have developed necessary legal framework to implement the basic environmental principle provided in the Constitution. However, the text of these laws itself are far from supporting effective implementation although the laws were drafted with the technical assistance of regional institutions such as ADB.³⁸

One example is the Environmental Conservation Law and Environmental Conservation Rules include the implementation of polluters-pays-principle but they are not fully materialized. While environmental insurance system to complement the polluter pays principle is required under the law,³⁹ there is no such system in place for the moment.⁴⁰ Environmental compliance monitoring of investment projects requiring under the Laws has not been in place yet even after

³² Jessica Scott, 'From Environmental Rights to Environmental Rule of Law: A Proposal for Better Environmental Outcomes' (2016) 6(1) *Michigan Journal of Environmental & Administrative Law* 203, 235.

³³ Lesley K. McAllister, *Making Law Matter: Environmental Protection and Legal Institutions in Brazil* (Stanford University Press, 2008) 3.

³⁴ Bernardo Mueller, *Who Enforces Enforcement? Can Public Prosecutor in Brazil Break the Endless Regress?* (Brasilia: Department of Economics, University of Brasilia, 2006) as cited in Lesley K. McAllister, *Making Law Matter: Environmental Protection and Legal Institutions in Brazil* (Stanford University Press, 2008) 3.

³⁵ John Dwyer, 'The Pathology of Symbolic Legislation' (1990) 17 *Ecology Law Quarterly*, 233 as cited in Lesley K. McAllister, *Making Law Matter: Environmental Protection and Legal Institutions in Brazil* (Stanford University Press, 2008) 3.

³⁶ Tun Myint, 'Environmental governance in the SPDC's Myanmar' in (eds) Monique, and Trevor Wilson, *Myanmar- The State, Community and The Environment* (Australian National University Press and Asia Pacific Press, 2009) 189.

³⁷ *Constitution of the Republic of the Union of Myanmar 2008* s 45.

³⁸ William J. Schulte and Matthew H. Baird, 'Myanmar's Nacent Environmental Governance System: Challenges and Opportunities' (2018) 33(2) *Natural Resources and Environment* 21, 22-24.

³⁹ The Environmental Conservation Law 2012 ss 26-27.

⁴⁰ Interview, MONREC.

several years of the stipulation of the Laws.⁴¹ There is no strict criminal liability for environmental damage under the Laws. Without the proper liability for environmental damages caused by foreign investment, Myanmar environment cannot protect and sustainable development cannot be achieved.

The environmental impact assessment (EIA) is fundamental for the protection of the environmental issues which are likely to be caused by investment projects. The Environmental Impact Assessment Procedure 2015 is basically in line with international standards and good practice. Despite being good on textual context, there are challenges with its implementation. The Environmental Conservation Department (ECD) which is mainly responsible for the screening of the EIA faced with challenges at the screening stage regarding how to deal with projects that do not fall into any of the project categories enumerated in Annex. As a consequence, it can delay the projects since it is challenging for ECD staff to evaluate a proposal without any numeric criteria to refer to and provide a judgement on what level of assessment should be required.⁴²

The major obstacle they pointed out is the insufficient capacity in the department.⁴³ OECD also pointed out this particular issue in a recent policy review for Myanmar. Investment proponents face major delays in the review and approval of EIAs and IEEs, due to a significant lack of manpower and human resources in MONREC. The number of documents received by the Ministry for review has increased hugely every year, with over 2700 EIA, IEEs and EMPs received in 2017-18, against around 250 in 2014-15. According to ECD data as of early 2019, only 13% of EIAs submitted had been approved.⁴⁴

Beyond the ex-ante EIA approval process, relevant authorities at national and subnational levels also lack the capacity to monitor and audit the implementation of investments to ensure compliance with EIA results. While some of the above issues are expected due to the relatively recent establishment of Myanmar's safeguards system, urgent steps are needed to unblock critical areas. The government needs to prioritise the functioning of the country's EIA system by strengthening MONREC's staff resources, capacity and budget – at national and subnational levels.⁴⁵

According to the authorities, to keep pace with demand, ECD has increased its staff capacity in recent years and is continuing to work towards reducing the system backlog with the financial and technical assistance of development partners, such as UNDP, JICA, IFC and World Wildlife Fund (WWF). This has involved, for instance, the hiring of outsourced reviewers if the cost of review is borne by the project proponent, building the capacity of all staff in the EIA department, using specific checklists for ease and consistency of assessment and saving time, and refreshing the organizational structure among others. Efforts are also underway to enhance the monitoring process. According to the authorities, although ECD has not yet been able to carry out systematic and regular monitoring, aside from checking monitoring reports submitted by project proponents every six months according to the condition of the approval

⁴¹ Ibid.

⁴² William J. Schulte and Matthew H. Baird, 'Myanmar's Nacent Environmental Governance System: Challenges and Opportunities' (2018) 33(2) *Natural Resources and Environment* 21, 23-24.

⁴³ Interview (MONREC, October 2018).

⁴⁴ 'OECD Investment Policy Review: Myanmar 2020', (OECD Investment Policy Review, OECD, 2020) 190.

⁴⁵ Ibid 191.

letter or Environmental Compliance Certificate, some state and regional offices have started monitoring and inspection processes for approved projects. Authorities also reported that ECD is starting to prepare a monitoring guideline and is training staff for this purpose with the support of the Norwegian Environmental Agency and UNDP.⁴⁶

Sometimes, government may worry that if raising environmental standards and stringent implementation of environmental laws may drive away the investors. In this regard, Dan Esty and Michael Porter examined empirically to what extent not only income levels but also a nation's regulatory regime influences environmental quality. The results of this research which is based on an examination of regulatory intensity and environmental quality in a great number of developed and developing countries, is that economic development and environmental protection go hand in hand with the improvement of a country's institutions, and more particularly the environmental regulatory regime. The empirical evidence hence suggests that a country can benefit environmentally not only from economic growth, but also from developing the rule of law and strengthening its governance structures. Most importantly, they also found evidence that countries that adopt "a stringent environmental regime relative to their income" were able to "speed up economic growth rather than retarding it." An important policy conclusion from the empirical literature of Esty and Proter is that strengthening the regulatory structure also encourages the promotion of environmental quality.⁴⁷

Therefore, as Magraw argued, it is not realistic to expect the desired level of environmental protection embodied in environmental law in the absence of compliance. The responsible government's institutions should enforce the laws in full accord, with due process and equal protection.⁴⁸ Effective enforcement of the laws is fundamental elements of the environmental rule of law. Without the effective enforcement of the laws, environmental rule of law, even in the thinnest concept, will not be materialized. Thus, Myanmar should strive to achieve an effective enforcement of the law to promote the environmental rule of law and sustainable development in the country.

Discussion

The Environmental rule of law is not a novel concept but the application of the rule of law concept in the context of environmental protection. In international environmental documents, the term "environmental rule of law" is sparsely defined. IUCN World Declaration on the Environmental Rule of Law defined the term as 'the legal framework of procedural and substantive rights and obligations that incorporates the principle of ecologically sustainable development in the rule of law.' Conceptions of the rule of law are typically grouped into two distinct categories with varying use of terms "thin definition and thick definition" or "formal definition or substantive definition". In the context of environmental protection, due to the paramount importance of the relation between human rights and the environment, and the role of the civil society in protecting the environment, the thickest version of rule of law is particularly

⁴⁶ Ibid.

⁴⁷ Daniel C. Esty & Michael E. Porter, 'National Environmental Performance: An Empirical Analysis of Policy Results and Determinants' (2005) 10(4) *Environment and Development Economic* 391, 393-425 cited in Michael G. Faure, 'Effectiveness of Environmental Law: What does the evidence tell us?' (2012) 32(1) *William & Mary Environmental Law and Policy Review* 293, 298-299.

⁴⁸ Daniel Barstow Magraw, 'Rule of Law and the Environment' (2014) *Environmental Policy and Law* 44(1-2) 201, 202.

necessary. On the other hand, whilst environmental protections always should be based on the thickest concept, thin concept is also a useful analytical tool depending on one's particular end.

Myanmar's rule of law is flawed by weak or non-implementation of the laws under the successive governments.⁴⁹ There is no exception of these effect to environmental laws. According to Magraw, it is not realistic to expect the desired level of environmental protection embodied in environmental law in the absence of compliance. Effective enforcement of the laws is fundamental elements of the environmental rule of law. Without the effective enforcement of the laws, even the minimum requirements of environmental rule of law will not be materialized.

Myanmar's Environmental Policy, 2019 also envisions promoting environmental rule of law to achieve sustainable development as follows; 'institutional and legal frameworks for implementing and enforcing environmental laws and policies will be strengthened through clear definition of rights and responsibilities, and greater collaboration among different institutions within the government at all levels, as well as with non-government stakeholders.'⁵⁰ Accordingly, Myanmar should strive to achieve an effective enforcement of environmental laws to promote the environmental rule of law and sustainable development in the country.

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⁴⁹ Tun Myint, 'Environmental governance in the SPDC's Myanmar' in (eds) Monique, and Trevor Wilson, *Myanmar- The State, Community and The Environment* (Australian National University Press and Asia Pacific Press, 2009) 189.

⁵⁰ Myanmar Environmental Policy, 2019, p -10.

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ANALYTICAL STUDY ON SETTLEMENT OF LABOUR DISPUTES IN MYANMAR*

Wai Min Eain¹

Abstract

The Settlement of Labour Dispute Law was enacted in 2012 and the labour dispute resolution process becomes prominent among employers and workers because it provides a fair and well-structured way to address their grievances. Moreover, it includes exact time limitations to resolve the disputes efficiently within a short period, which can minimize the disruption of the workplace and promote workplace sustainability. The purpose of this research is to explore whether the resolution process is an effective mechanism for the workers or not, to highlight the need of exact provisions regarding the employment contract, to find a solution of reducing labour disputes. This study is based on the analytical review on the Settlement of Labour Dispute Law, 2012 including its amendment law and cases as well as the reports of the Ministry of Labour. The law provides the framework for resolving disputes through negotiation, conciliation, arbitration and legal adjudication. Most of the disputes received by the Arbitration Council are disputes on dismissal. The worker may seek remedy through the arbitration process only when the term of employment contract expired whereas during the term of the employment contract, the worker may seek remedy through legal adjudication or other relevant departments. Since the arbitration process is a process of social justice and the dispute settlement bodies have the right to decide to reinstate the worker under Article 25 of the Settlement of Labour Dispute Rules, 2012, the dispute on dismissal should be settled by the resolution process. It will be more beneficial for the workers if the disputes on dismissal can be resolved by arbitration.

Keywords: Labour disputes, negotiation, conciliation, arbitration, dispute settlement bodies

Introduction

On 28th March 2012, the Pyidaungsu Hluttaw enacted the Settlement of Labour Dispute Law as the Pyidaungsu Hluttaw Law No. 5/2012, repealing the Trade Disputes Act, for safeguarding the right of workers or having good relationship between employer and workers and making peaceful workplace or obtaining the rights fairly, rightfully and quickly by settling the dispute of employer and worker justly.

This law had been amended for twice on 30th September 2014 and 3rd June 2019 respectively. The second amendment of this law has many significant changes, e.g., defining new types of labour disputes such as right dispute and interest dispute (the former was individual dispute and collective dispute), encouraging the nature of collective bargaining and increasing the penalties for those who fail to comply the provisions of the law.

The dispute resolution process is a process free from litigation but during the process, no party shall be barred to proceed with the right to institute criminal or civil proceedings. By using this mechanism effectively especially the Workplace Coordinating Committee, the labour disputes can be settled through negotiation between employers and workers within the workplaces. Enhancing the labour dispute mechanism is an effective way to maintain peaceful and sustainable workplace.

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Research Method

The study examines qualitative research methodology to evaluate the effectiveness of the dispute resolution process of Myanmar, to highlight the need of exact and clear provisions regarding the employment contract and to find a solution in reducing labour disputes. The analysis is mainly based on the Settlement of Labour Dispute Law, 2012, the Employment and Skills Development Law, 2013, the labour disputes decided by the Arbitration Council and the data of the Ministry of Labour.

Labour Disputes and Kinds of Labour Disputes

Dispute means the labour dispute or disagreement between an employer or employers or the employer organization which represents them and a worker or workers or the labour organizations which represents them with respect to the employment, working and termination of an employer or employer organizations and of a worker or workers and labour organizations, or working or service including gratuity, bonus and allowances; or compensation for work related grievance, injuries and accidents in the workplace, deaths or occupational diseases; or any other matters of workers including workers' holiday and leave; or the benefits which should be entitled to the majority of workers.²

To be a trade dispute, the dispute must be between employers and workers, or between workers and workers, and if on either side or both sides the party to dispute is an organization, it is nevertheless treated as a dispute between employers and workers.³

Before the amendment of the Settlement of Labour Dispute Law, there were two types of labour disputes, namely; individual dispute and collective dispute. After the amendment of the law, there are two types of labour disputes; namely, right dispute and interest dispute.

The terms *individual dispute* and *collective dispute* were originally defined in sections 2(n) and 2(o) of the Settlement of Labour Dispute Law, 2012; however, these provisions were repealed following the second amendment of the law. The definitions were as follows;

“Individual dispute means a rights dispute between the employer and one or more workers relating to the existing law, rules, regulation and bye-law; collective agreement or employment agreement.”

“Collective dispute means the dispute between one or more employer or employer organization and one or more labour organization over working conditions, the recognition of their organizations within workplace, the exercise of the recognized right of their organizations, relations between employer and workers, and this dispute could jeopardize the operation of the work for social peace. This expression includes a dispute on rights in the existing labour law or interest dispute.”

After the second amendment of the Settlement of Labour Dispute Law in 2019, right dispute and interest dispute is defined as follows, repealing the individual dispute and collective dispute;

“Right dispute means any dispute related to the rights of employers or workers under the labour laws.”⁴

² Section 2 (m), the Settlement of Labour Dispute Law, 2012.

³ Sir Otto Kahn-Freund, *Labour and the Law*, London Stevens & Sons, 2nd ed., 1977, 248.

⁴ Section 2 (n), the Settlement of Labour Dispute Law, 2012.

“Interest disputes means disputes related to the collective agreement, the benefits which should be entitled to the majority workers despite not excluding rights under the labour law, and the relationship of the workplace.”⁵

A dispute related to the collective agreement was regarded as an individual dispute in the former law which can be settled by conciliation but not by arbitration while the second amendment law regarded such dispute as an interest dispute which can be settled by both conciliation and arbitration process. The former law allows the conciliation body to conciliate both individual and collective disputes and the grievance party may complain to a court for the individual dispute which is not being settled through conciliation but the second amendment law allows only interest dispute to conciliate and the grievance party may complain to the relevant departments or the court for the right dispute which the law does not allow the conciliation.

Labour Dispute Resolution Process

The labour disputes are negotiated, heard and decided by different bodies. The Settlement of Labour Dispute Law outlines a resolution process with mechanisms for settling the labour disputes at workplace, township, regional and national levels. The labour dispute resolution process of Myanmar includes four steps, namely; (1) Workplace Coordinating Committee; (2) Conciliation Body; (3) Arbitration Body; and (4) Arbitration Council.

Settlement of Labour Disputes by Negotiation

When grievances arise between labour and management, the first attempt at resolution is through direct negotiation between management and labour. The workplace coordinating committee is the first step of the dispute resolution process, and several stakeholders-on both the labour and employer side-expressed the hope that, if these bodies operated effectively and in good faith, nearly all disputes would be resolved at this level.⁶

Under section 3 of the Settlement of Labour Dispute Law, 2012, the Workplace Coordinating Committee must be formed compulsorily in any trade in which more than 30 workers are employed. The negotiation of labour disputes at the Workplace Coordinating Committee is not a mandatory process, but the law encourages the employers and workers to negotiate and settle their disputes at the workplace without interfering any third party which is the government. This is a bipartite process.

The Workplace Coordinating Committee shall promote good relationship between the employer and worker or labour organization, negotiation and coordination on the conditions of employment, terms and conditions and occupational safety, health, welfare and productivity.⁷

The employer and worker shall make a collective agreement, and send its copy to the relevant Conciliation Body if a dispute has been settled. The employer and worker may complain to the relevant Conciliation Body if a dispute has not been settled.⁸

⁵ Section 2 (o), Ibid.

⁶ Laura Ediger and Chris Fletcher, *Labour Disputes in Myanmar: From the Workplace to the Arbitration Council*, Research Report, C & A Foundation, May 2017, 6.

⁷ Section 5, the Settlement of Labour Dispute Law, 2012.

⁸ Section 9 (a) and Section 9 (b), the Settlement of Labour Dispute Law, 2012.

Collective agreement means the concluded bilateral written agreement as to the provisions of employment including the specification of the workplace and employment conditions of workers, the specification of terms and conditions of the relations between employers and workers as well as among their organizations concerned, recognition of labour organizations as legal entities and promoting guarantees of social protection for workers according to the collective bargaining.⁹

According to section 2 (k) of the Settlement of Labour Dispute Law, 2012, collective bargaining means the process of negotiation and conclusion of collective agreement among employers or employer organizations and workers or labour organizations with regard to situations of employment and terms and conditions, their labour relations or the measures for the prevention and settlement of the disputes.

The success of dispute resolution within factories depends greatly on the presence of worker leaders, either representatives of Workplace Coordinating Committee or unions who are capable of representing workers and negotiating with employers. In order for this type of dispute resolution to work, legal capacity trainings for workers are crucial.¹⁰

In this process, the collective agreement plays a crucial role for the employers and workers. The negotiation process at the Workplace Coordinating Committee shall be assumed as the collective bargaining because if the negotiation process is success, both parties must make a collective agreement, which arise from collective bargaining but the law does not provide any specific methods on how a collective bargaining should be carried out properly. But the law does not provide any exact provisions that the negotiation must be made compulsorily. In addition, a dispute arisen from the collective agreement is rarely to be found.

Settlement of Individual Dispute and Collective Dispute by Conciliation and Arbitration

If a dispute is not settled at the Workplace Coordinating Committee, the second step in the dispute resolution process is conciliation. The conciliation body is established in township level according to section 10 of the law. The law provides authority to the Conciliation Body to conciliate both individual and collective disputes. In individual dispute, if either party is not satisfied the result, he may apply to the competent court only.

Before the law was amended, a party, employer or worker, may complain individual dispute relating to his grievance to the Conciliation Body and if he is not satisfied with the conciliation of such body in accord with stipulated manners, may apply to the competent court in person or by the legal representative.

Employers or workers, may apply to the relevant departments or the competent court about their rights dispute by themselves or by their legal representatives.¹¹

Before the law was amended, the relevant Conciliation Body shall, in respect of the collective dispute known or received by the complaint of party, employer or worker, in respect of the dispute; information sent by the Minister or the Region or State Government or any other means, carry out as follows:

⁹ Section 2 (l), the Settlement of Labour Dispute Law, 2012.

¹⁰ Mari Tanaka, Virginia Minni, Hanh Nguyen and Rocco Macchiavello, 'Industrial relations and workplace communication in Myanmar garment sector', Working paper F-53407-MYA-1, March 2019, International Growth Center, 9.

¹¹ Section 23, the Settlement of Labour Dispute Law, 2012.

- (a) conciliating so as to be settled within three days, not including official holidays, from the day of knowing or receipt of such dispute;
- (b) concluding mutual agreement if the settlement is reached in conciliating under sub-section (a), before the Conciliation Body.

The relevant Conciliation Body shall, with respect to the interest dispute known or received by a complaint of the employer or worker, an information of the Ministry, Region or State Government, or Nay Pyi Taw Council or any other way, carry out as follows;

- (a) conciliating for settlement within seven days from the date of knowing or receiving the dispute;
- (b) concluding a mutual agreement before the Conciliation Body if the settlement is reached in conciliating under sub-section (a).¹²

The Conciliation Body shall refer the collective dispute which does not reach settlement to the relevant Arbitration Body and shall handover the case file within two days, not including official holidays, with detailed report including opinion on the facts which cannot be settled in carrying out conciliation.¹³

Disputes that are not resolved at the Township Conciliation Body level can be brought to the relevant Arbitration Body. An Arbitration Body is established in each region or state - a total of 15, including one for Nay Pyi Taw.¹⁴

The relevant Arbitration Body shall make decision on the collective dispute handed over by the Conciliation Body within seven days, not including the official holidays, from the day of receipt of such dispute.¹⁵

If parties are dissatisfied with the decision of the Arbitration Body, except for a decision in respect of essential services, they may:

- (a) apply to the Arbitration Council for its decision within seven days from the date of receiving the decision of the Arbitration Body: or
- (b) carrying out a lock-out or strike under the relevant law.¹⁶

The Arbitration Council was introduced in Myanmar in 2012. In the Myanmar context, the Arbitration Council is important as there is no functioning labour court and a lack of capable labour lawyers.¹⁷

The Arbitration Council hear and decide the disputes by the Tribunal, which includes one representative each from the persons selected by the Ministry of Labour, employer organizations and worker organizations.

The Tribunal shall make a decision on the dispute within 14 days or within 7 days from the date of receiving of the dispute.¹⁸

¹² Section 24 (a) and Section 24 (b), Ibid.

¹³ Section 25 and Section 26, Ibid.

¹⁴ Laura Ediger and Chris Fletcher, *Labour Disputes in Myanmar: From the Workplace to the Arbitration Council*, Research Report, C & A Foundation, May 2017, 11.

¹⁵ Section 27, the Settlement of Labour Dispute Law, 2012.

¹⁶ Section 28, Ibid.

¹⁷ Laura Ediger and Chris Fletcher, *Labour Disputes in Myanmar: From the Workplace to the Arbitration Council*, Research Report, C & A Foundation, May 2017, 10-11.

The Arbitration Body or Tribunal may carry out as follows in passing a decision in accord with the provisions of existing labour law by quoting the decisions and precedents to be fair for the employer and worker;

1. cause to reinstate the worker by the employer at the former designation or at any other suitable designation;
2. cause to pay damages for the suitable interval period relating to the matter of reinstatement decision;
3. cause to enjoy case benefit including wages and salary which the workers are entitled;
4. to determine and set the period of effectiveness of a decision or collective agreement.¹⁹

In the dispute of Daw Moe Wai (President of Tai Ye Basic Labour Organization) and Daw Nwet Yin Win (Treasure of Tai Ye Basic Labour Organion) (Applicant) v U Sein Oo @ U Nawrein Kyit (Employer), Daw Aye Mi Hlaing (Manager and Legal Representative of the Employer) of Tai Ye Co., Ltd. (Respondent)²⁰, this dispute is the dispute arisen from claiming reinstatement by the President and Treasurer of Tai Ye Basic Labour Organization. The Yangon Region Dispute Settlement Arbitration Body tried such disputes as of Dispute No. (60/2015). The said Arbitration Body drew an issue ‘are the workers entitled to reinstatement on dismissal or not’ and decided **‘to compensate the workers, including one-month notice fee, because the employer fail to inform one month in advance prior to the dismissal.’** The Tribunal drew an issue ‘does it necessary to amend the decision of the Yangon Region Dispute Settlement Body or not’ and it was found that the employer dismissed the workers on the occasion of 3 consecutive absent days of work without submitting leave to the employer. The President of Tai Ye Basic Labour Organization absented on 26 May 2015 without submitting leave and also enjoyed medical leave on 27 May 2015 without submitting any sufficient evidence. Furthermore, she attended to the training course conducted by International Labour Organization on 28 May 2015 without submitting leave. The Treasure of Tai Ye Basic Labour Organization absented on 26 May 2015 without submitting leave and also enjoyed medical leave on 27 May 2015 without submitting any sufficient evidence. Furthermore, she absented again on 28 May 2015 without submitting leave. The workers failed to submit leave and sufficient evidence of medical leave in time. Both the President and Treasurer enjoyed medical leave on 27 May 2015 but both absented the work in the next day and failed to submit the evidence for their medical leave. The Tribunal considered that the workers absented 3 consecutive days from work without submitting leave. Therefore, the Tribunal decided to confirm the decision of the Yangon Region Dispute Settlement Arbitration Body.

In the dispute of Mg Thet Hnin Aung (Applicant and Respondent) v U Sai Ba Sein, the owner of Aung Sein Cotton Dying Factory (Respondent and Applicant)²¹, this dispute is the dispute arisen from claiming reinstatement and damages for interval period. The Mandalay Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (1/2013). The said Arbitration Body drew an issue ‘is the worker entitled to reinstatement and damages for interval period or not’ and decided **‘to reinstate the worker and to pay damages for the**

¹⁸ Section 31 (a) and Section 32 (a), the Settlement of Labour Dispute Law, 2012.

¹⁹ Rule 25, the Settlement of Labour Dispute Rules, 2012.

²⁰ Arbitration Council, Decision of the Tribunal, Dispute No. (28/2015) (decided on 28 August 2015).

²¹ Arbitration Council, Decision of the Tribunal, Dispute No. (7/2013) (decided on 20 March 2013).

interval period from the date of dismissal till the date of reinstatement.’ Both the worker and the employer applied to the Arbitration Council. The Tribunal drew the same issue as the Yangon Region Dispute Settlement Arbitration Body, and it was found that the employment contract between the employer and the worker was made on 21 August 2012, but this contract was not ratified by the Department of Labour and it was ratified by U Kyaw Kyaw, a factory manager. The Tribunal considered that the fact that the worker frequently absented from work is undeniable, but the employer failed to take action properly under the rules of the employment contract. Both the employer and the worker has imperfections to follow up the procedures, and the action taken by the employer is needed to be consistent with the rules and procedures. Therefore, the Tribunal decided to reinstate the worker and not to pay damages for the interval period.

The employer applied for a writ of certiorari to the Supreme Court of the Union against the decision of the Arbitration Council. In the case of U Sai Ba Sein (Applicant) v Arbitration Council (Tribunal), Mandalay Region Arbitration Body and Mg Thet Hnin Aung (Respondent)²², the Supreme Court pointed out that the employment contract must be ratified by the Department of Labour, and the contract ratified by the factory manager, U Kyaw Kyaw was not made under the correct procedure. Moreover, the consideration of the Arbitration Council that the dismissal of the worker was found having procedural weaknesses and the decision of the Arbitration Council to reinstate the worker was found reasonable according to section 21 (a) of the Settlement of Labour Dispute Law, 2012. Therefore, the application for the writ of certiorari was dismissed.

In the case of Daw Thwe Thwe Aye v Arbitration Council and 3 others²³, the employer dismissed the worker without informing advance notice according to the employment contract. Yangon Region Arbitration Body decided to pay 600,000 kyats as one-month advance notice fee and Arbitration Council confirmed such decision. It was cleared that this is an individual dispute because the dispute arisen is a right dispute regarding with the employment contract.

From 2012 to May 2019, the Conciliation Body received 7,969 disputes, including both individual and collective disputes and settled 6,829 disputes, the Arbitration Body had received and made decisions on 891 collective disputes and the Arbitration Council had received and made decisions on 441 collective disputes. The number of cases received by the Conciliation Body, the Arbitration Body and the Arbitration Council can be seen through the following figures:

²² Civil Miscellaneous Case No.64/2013, decided on 23 September 2013.

²³ 2017, M.L.R, 255.

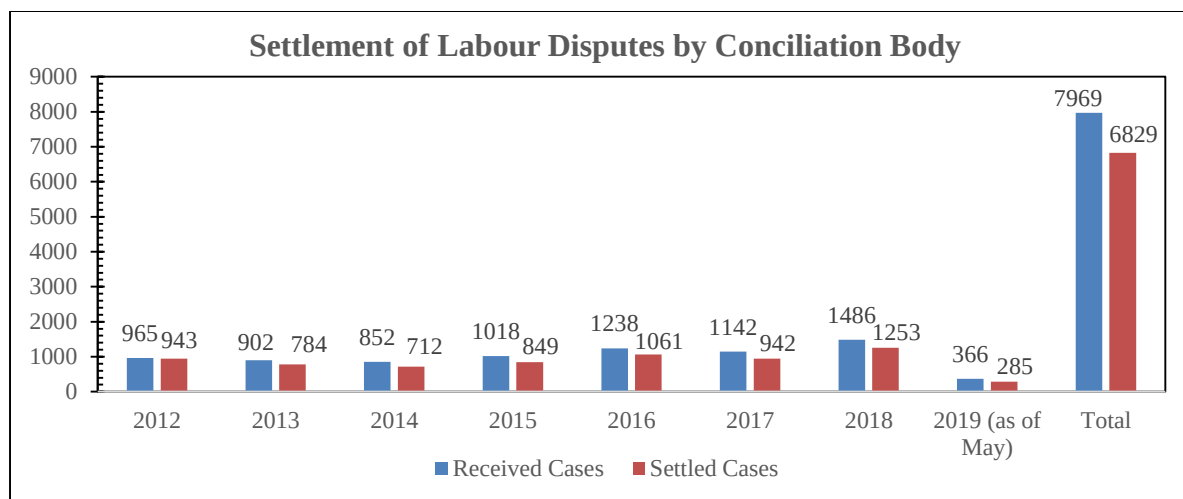


Figure 1. Settlement of Labour Disputes by Conciliation Body

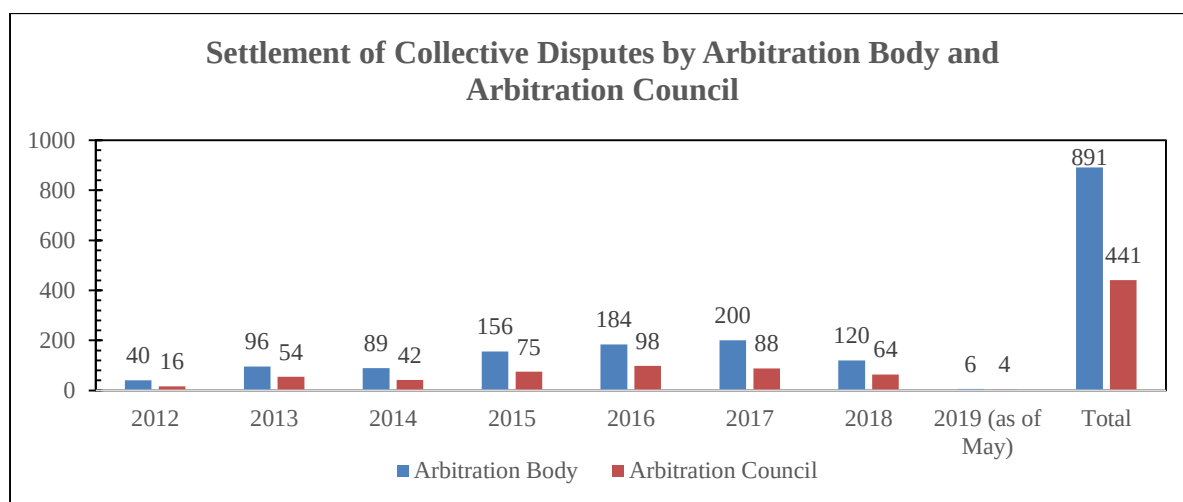


Figure 2. Settlement of Collective Disputes by Arbitration Body and Arbitration Council

Settlement of Right Dispute and Interest Dispute by Conciliation and Arbitration

After the law had been amended, the right disputes are unable to negotiate and decide by the Conciliation Body, Arbitration Body and Arbitration Council. In right dispute, even though such dispute cannot be conciliated, the grievant party has a chance to choose whether they may apply to the relevant labour departments or the competent court.

The Conciliation Body shall inform the employers or workers that they are required to submit their complaints to the relevant government departments or the court with jurisdiction if disputes are excluded from the functions of the Body, the interest disputes or the complaints are related to the rights under the existing labour laws due to without complying the collective agreement of the Workplace Coordinating Committee.²⁴

Employers or workers, may apply to the relevant departments or the competent court about their rights dispute by themselves or by their legal representatives.²⁵

²⁴ Section 12 (b), the Settlement of Labour Dispute Law, 2012.

²⁵ Section 23, Ibid.

The relevant Conciliation Body shall, with respect to the interest dispute known or received by a complaint of the employer or worker, an information of the Ministry, Region or State Government, or Nay Pyi Taw Council or any other way, carry out as follows:

- (a) conciliating for settlement within seven days from the date of knowing or receiving the dispute;
- (b) concluding a mutual agreement before the Conciliation Body if the settlement is reached in conciliation under sub-section (a).²⁶

The Conciliation Body shall refer the interest dispute which does not reach a settlement to the relevant Arbitration Body and shall transfer the case file within two days, without official holidays, with a detailed report including recommendations on the facts which cannot be settled in conciliation.²⁷

The relevant Arbitration Body shall make a decision on the interest dispute transferred by the Conciliation Body within seven days from the date of receiving the dispute.²⁸

If parties are dissatisfied with the decision of the Arbitration Body, except a decision with respect to essential services, they may:

- (c) apply to the Arbitration Council for its decision within seven days from the date of receiving the decision of the Arbitration Body: or
- (d) carrying out a lockout or strike under the relevant law.²⁹

The Tribunal shall make a decision on the dispute within 14 days or within 7 days from the date of receipt of the dispute.³⁰

The duties of the Arbitration Council are provided in section 21 (a) of the Settlement of Labour Dispute Law, 2012 as “standing and carrying out as the organisation which is independent and impartial based on social justice, decent work and principles of equity in making decisions.”³¹

In the dispute of Mr. Yang Chih Chiang (Employer) of Mountain Top Global Co., Ltd. (Applicant) v U Aung Myo Zaw and workers (Respondent)³², this dispute is the dispute arises from claiming reinstatement by the workers. The Yangon Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (48/2020). The said Arbitration Body drew an issue ‘is it suitable to reinstate the workers as a priority who had been dismissed when the factory re-operate the business or not’ and decided **‘to reinstate the former workers including U Aung Myo Zaw and 5 others as a priority when they re-apply for the job on their own will if the employer re-operate the factory.’** The Tribunal drew the same issue as the Arbitration Body and it was found that the employer permanently locked out the factory and paid the compensation and allowances, showing his sympathy to the workers. The Tribunal decided to repeal the decision of the Yangon Region Dispute Settlement Arbitration Body.

²⁶ Section 24, the Settlement of Labour Dispute Law, 2012.

²⁷ Section 25 and Section 26, Ibid.

²⁸ Section 27, Ibid.

²⁹ Section 28, Ibid.

³⁰ Section 31 (a) and Section 32 (a), Ibid.

³¹ Section 21 (a), the Settlement of Labour Dispute Law, 2012.

³² Arbitration Council, Decision of the Tribunal, Dispute No. (32/2020) (decided on 12 May 2020).

In the dispute of Mr. Masud (Employer), U Ko Ko Ye Lwin (Legal Manager and Legal Representative of the Employer) of Trinity Apparels Limited (Applicant) v Daw Thet Thet Mar and one other (Respondent)³³, this dispute is the dispute arisen from claiming reinstatement by the worker. The Yangon Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (39/2020). The said Arbitration Body drew an issue ‘are the workers entitled to reinstatement or not’ and decided **‘to reinstate the workers at the former designation, wages and place and to pay damages for the suitable interval period’**. The Tribunal drew the same issue as the Arbitration Body, and it was found that the employer dismissed the workers on the grounds that the workers had committed a serious crime under the rules of the employment contract, but the employer was unable to submit sufficient evidence. The Tribunal decided to confirm the decision of the Yangon Region Dispute Settlement Arbitration Body.

It can be noted that the decision of both the Yangon Region Dispute Settlement Arbitration Body and the Tribunal was based more on the technicality of contract status than on the substantive fairness of the dismissal. Although the employer claimed that the workers committed a serious offence under the employment contract, it failed to provide sufficient evidence to support his allegation. Consequently, the Tribunal upheld the Arbitration Body’s decision to reinstate the workers and this decision focus on whether the employer could prove the evidence rather than an examination of whether the dismissal was fair and reasonable.

In the dispute of Mr. Zhang Shizhe (Employer), U Tay Zar Win (Legal Representative of the Employer) of Dishang Fashion (Myanmar) Co., Ltd. (Applicant) v U San Min (Respondent)³⁴, this dispute is the dispute arisen from claiming compensation on dismissal by the worker. The Yangon Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (322/2020). The said Arbitration Body drew an issue: ‘is the worker entitled to compensation on dismissal or not’ and decided **‘to compensate the worker by the employer.’** The Tribunal drew the same issue as the Arbitration Body and considered that the dismissal of worker was based on the rules of the employment contract when the duration of the contract is still effective, so it amounts to a right dispute. The Tribunal decided to repeal the decision of the Yangon Region Dispute Settlement Arbitration Body.

This dispute also shows that the Tribunal’s decision relied primarily on the technical interpretation of the employment contract rather than on the substantive fairness of the dismissal. While the Yangon Region Dispute Settlement Arbitration Body initially ruled that the worker was entitled to compensation for dismissal, the Tribunal overturned this decision, reasoning that the termination occurred in accordance with the contractual terms while the contract was still in effect, thus framing the case as a right dispute.

In the disputes of Daw Phyu Phyu Thin and 5 others (Applicant) v Daw Khaing Sabal Soe (Employer), Daw May Cho Khaing (Human Resource Manager and legal representative of the employer) of Myanmar GF Co., Ltd. (Respondent)³⁵, this dispute is the dispute arisen from claiming to work within Yangon Region only by the worker. The Yangon Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (34/2022). The said Arbitration Body drew an issue ‘are the worker entitled to work within Yangon Region only or not’ and decided **‘to cancel the request of the workers’** The Tribunal drew the same issue as the Yangon

³³ Arbitration Council, Decision of the Tribunal, Dispute No. (25/2020) (decided on 8 April 2020).

³⁴ Arbitration Council, Decision of the Tribunal, Dispute No. (8/2021) (decided on 29 January 2021).

³⁵ Arbitration Council, Decision of the Tribunal, Dispute No. (29/2022) (decided on 11 August 2022).

Region Dispute Settlement Arbitration Body and it was found that the term of the employment contract is expired in 2020 and both parties fail to extend their employment contract. The employer exercised a voting system in rotation to choose the workers who would like to go to the garment factories in other Regions for a short term due to its nature of work. The applicants also previously worked in other Regions under this system and rejected this time. Moreover, the Tribunal considered that only the applicants claimed to work only within Yangon Region while others did not complain, it was an inappropriate request, and the employer has the right to manage his workers. Therefore, the Tribunal decided to confirm the decision of the Yangon Region Dispute Settlement Arbitration Body.

In the dispute of Mr. Song Gi Cheon (Employer), Daw Chaw Chaw Aung (Human Resource Manager and Legal Representative of the Employer) of YJ Co., Ltd. (Applicant) v U Tin Zar Oo and the workers (Respondent)³⁶, this dispute is the dispute arisen from claiming allowances for skill proficiency and regular attendance to work. The Yangon Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (338/2020). The said Arbitration Body drew an issue ‘are the worker entitled to allowances for skill proficiency and regular attendance of work or not’ and decided **‘(a) not to pay allowance for regular attendance and (b) to pay allowances for skill proficiency.’** The Tribunal drew two issues, the first issue is the same with the Arbitration Body and the second issue as ‘whether the decision of the Arbitration Body is ultra vires or not’ and considered that the dispute on such allowances are the disputes regarding the wages according to section 2 (a) of the Payment of Wages Law, 2016 and the decision of the Yangon Region Dispute Settlement Arbitration Body is ultra vires under clause 4 (b) of the Programmes of the Arbitration Bodies. The Tribunal decided to repeal the decision No.(b) of the Yangon Region Dispute Settlement Arbitration Body.

In the dispute of U Aung Thura and workers (Applicant) v Mr. Yeh Fu Yu (Employer), Daw May Thwe Soe (Human Resource Manager and Legal Representative of the Employer) of Very Impressive Prospect Co., Ltd. (Respondent)³⁷, this dispute is the dispute arisen from the strike regarding COVID-19. The Yangon Region Dispute Settlement Arbitration Body tried such dispute as of Dispute No. (134/2020). The said Arbitration Body drew an issue ‘does bargaining on the health circumstances amount to a strike or not’ and decided **‘it amounts to a strike on the grounds that bargaining on the health circumstances from 3 April 2020 to 8 April 2020 without working resulted in suspension of work.’** The Tribunal drew the same issue as the Arbitration Body, and it was found that an interpreter named U Aung Thura was suspected of being a Covid-19 patient, and he was sent to the hospital on 3 April 2020. The workers had stopped working and claimed to temporarily lock-out the factory. The medical result of U Aung Thura is negative of Covid-19, and the employer showed such result to the workers on 5 April 2020, but the workers still refused to work and bargained till 8 April 2020. So the employer did not pay the salary under section 54 of the Settlement of Labour Dispute Law, 2012. The Tribunal considered that even though the workers clearly knowing that the suspected patient is negative of Covid-19 and still refused to work, the act of the workers amounted to a strike under the definition provided in section 2 (i) of the Settlement of Labour Dispute Law. The Tribunal decided to confirm the decision of the Yangon Region Dispute Settlement Arbitration Body.

³⁶ Arbitration Council, Decision of the Tribunal, Dispute No. (24/2021) (decided on 27 July 2021).

³⁷ Arbitration Council, Decision of the Tribunal, Dispute No. (89/2020) (decided on 4 August 2020).

Settlement of labour dispute by arbitration is a process of social justice and the dispute settlement bodies must hear and decide the disputes in compliance with the Constitution of the Republic of the Union of Myanmar and for the benefits of both employers and workers, and to entitle the rights under the existing labour laws. It is not necessary to comply exactly to the Code of Civil Procedure and Evidence Act due to its social justice nature.³⁸

From June 2019 to 2024, the Conciliation Body received 3,462 interest disputes and settled 2,310 disputes, the Arbitration Body had received and made decisions on 702 interest disputes and the Arbitration Council had received and made decisions on 375 interest disputes. The number of cases received by Conciliation Body, the Arbitration Body and the Arbitration Council can be seen through the following figures:

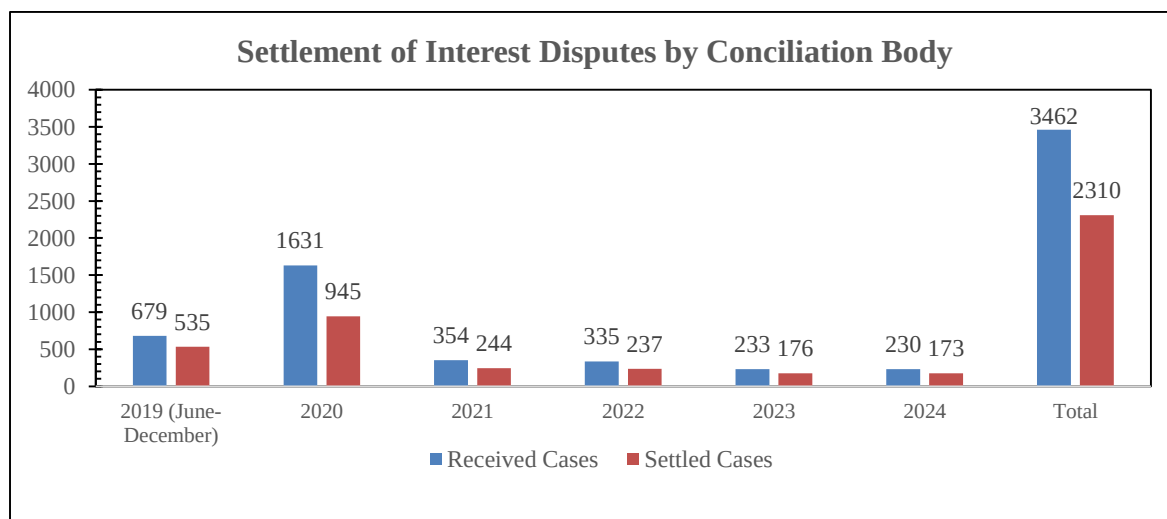


Figure 3. Settlement of Interest Disputes by Conciliation Body

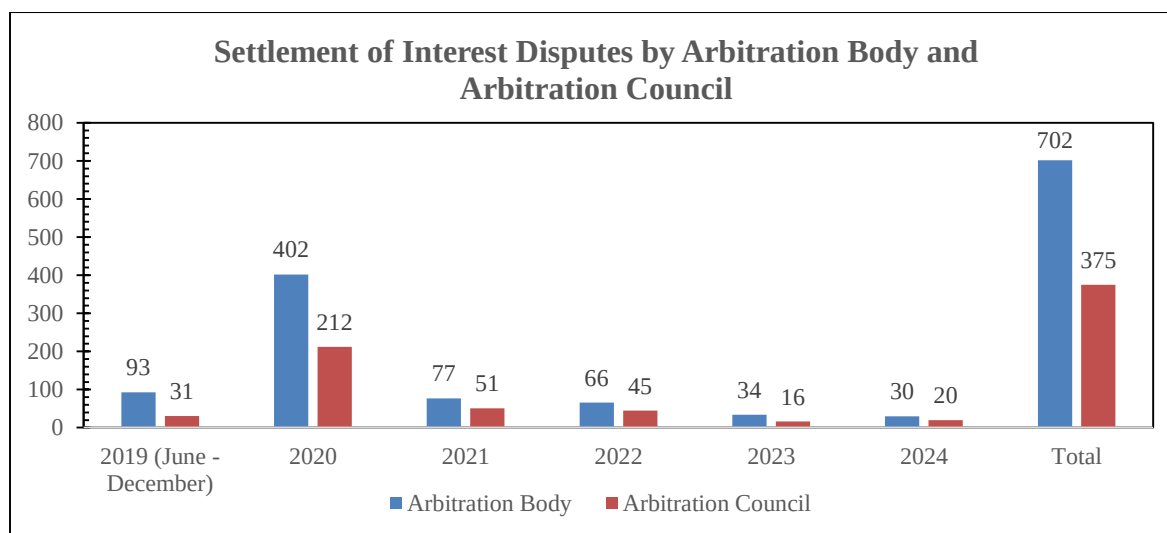


Figure 4. Settlement of Interest Disputes by Arbitration Body and Arbitration Council

Discussion

Before and after the amendment of the law, most of the disputes decided by the dispute settlement bodies were the disputes relating to dismissal or termination of work. After the

³⁸ Clause 5 (c) and (f), the Programmes of the Arbitration Bodies (17 May 2014) 18.

amendment of the law, disputes on dismissal are still decided by the dispute settlement bodies. The Arbitration Council takes into account the term of the employment contract is still effective or not. If it is still effective, it is assumed as a right dispute and if not, as an interest dispute. The consideration and performance of the Arbitration Council is fair and justice because if a worker is discharged while the contract is still effective, the concerned department has to settle such dispute. But as this law does not provide any specific measures for the extension, termination and resignation process, if a worker is discharged after the term of the contract has expired, the Arbitration Council should settle such dispute.

Since 2018 to August, 2024 (the data from 2012 to 2017 is unavailable), most of the disputes decided by the Arbitration Council are the dispute on dismissal and it can be found through the following figure:

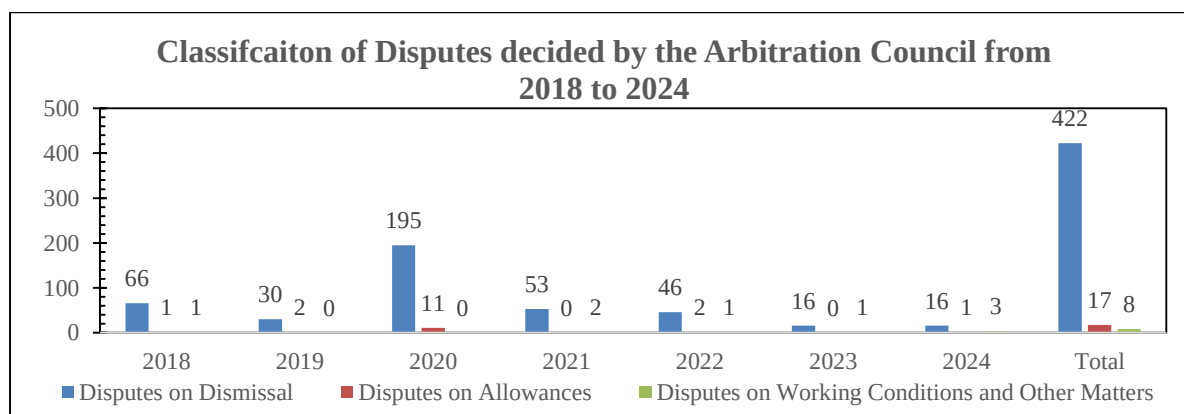


Figure 5. Classification of Disputes decided by the Arbitration Council from 2018 to 2024

The Settlement of Labour Dispute Law was amended for the second time in 2019 and at the end of this year, the Covid-19 pandemic occurred. Both effects the workplace sustainability as the second amendment to the law face some complication to identify the new types of dispute while Covid-19 caused losing jobs. According to the above figure, the Arbitration Council decided 195 disputes on dismissal on 2020 which is the Covid-19 pandemic period. Due to the pandemic but not limited to the second amendment, it can be seen that disputes on dismissal constituted 95% of all cases that year.

The Ministry of Labour, Immigration and Population (now known as the Ministry of Labour) issued Notification No. (140/2017) on 28 August 2017 and according to this notification, the employment contract must be made in any factories, workplaces, establishments, companies, enterprises where more than 5 workers are employed.

The Employment and Skills Development Law, 2013 provides that after the employer has employed a worker for any job, he shall, within 30 days of so doing, sign a Contract of Employment with the worker.³⁹ In the event that the work is completed before the duration of the Contract or if due to unforeseen circumstances the work or part of it is stopped, or for any reason the worker is discharged, the employer shall pay compensation according to the rates fixed in the Order issued by the Ministry.⁴⁰

³⁹ Section 5 (a) (1), the Employment and Skills Development Law, 2013.

⁴⁰ Section 5 (d), Ibid.

The law only provides to make the contract and did not provide any specific measures for the extension of the employment contract as well as the termination or dismissal of a worker or a right to resign by a worker and remedies on such occasions except in the employment contract template issued under notification No (140/2017). Moreover, there is no specific definition regarding the term “employment contract” in the law, and the definition can only be found at the Settlement of Labour Dispute Law, 2012 as follows:

“Employment Agreement means the bilateral written or oral agreement concluded by employer and the worker in respect of employment and working in accordance with the stipulations.”⁴¹

Clause 5 (b) of the template states that if the worker does not breach any terms of the contract, the contract may be extended, and the employer shall not refuse the extension of the contract without sufficient reasons.

Clause 15 (a) (1) and (3) states that if the assigned worker is willing to resign from the job, a resignation letter shall be sent via the in-charge person to the employer or manager or supervisor at least one month prior to the date of resignation. The employer shall approve such resignation and give remaining wages for actual working days, and provide earned leave without needing to pay compensation for the termination of employment.

Clause 15 (b) (1) and (2) states that in the event of the employer discharged the worker, the documentation process shall be carried out with sufficient reasons and shall give an order signed by himself or a responsible person. If a worker breaches the conditions specified, he shall be warned by a written notice for the first time and a second time. The third time shall be warned by signing a commitment letter. These warnings are for the breach of the minor terms of the contract. If the worker breaches such minor terms within 12 months, the employer shall dismiss the worker without needing to pay compensation for termination of employment.

Clause 15 (b) (3) states that except under clause 15 (b) (1), the employer may dismiss the worker by informing one-month advance notice and giving compensation in accordance with the existing law, rules and regulations. However, such dismissal shall not be contrary to the provisions of law and procedures.

According to the employment contract template issued under notification No (140/2017), the worker has the right to extend the employment contract, and the employer has no right to refuse it without sound reasons. On the other hand, the employer has the right to dismiss or terminate the worker by giving compensation as provided by the law. And it mentions that such dismissal shall not be contrary to any law, but the lack of explicit provisions and procedures in the law is still remaining a challenge factor.

Since the resolution process is a process based on social justice and in the absence of clear provisions regarding dismissal of a worker in the relevant labour laws, disputes on dismissal should be settled by the Arbitration Council by considering such dismissal is consistent or not with the terms of the employment contract made between employer and worker so that the workers may be entitled a legal remedy for their unemployment situations within a short period.

⁴¹ Section 2 (j), the Settlement of Labour Dispute Law, 2012.

Research Finding

According to the figures mentioned above, it can be seen that the workers mostly rely on the resolution process in seeking a legal remedy for their grievances. The settlement of labour disputes by the arbitration process is an effective mechanism for the workers, especially at the township level, it received a total of 11,431 disputes and settled 9,139 disputes, and 80% of the disputes were settled. The Arbitration Body received 1,593 disputes, and 816 disputes were referred to the Arbitration Council, and 51% of the disputes were settled in the Arbitration Body. Therefore, the resolution process can seek legal remedy effectively for the workers within a short period, especially for their termination of work.

Relevant strong provisions regarding dismissal and termination of, and resignation by, a worker should be inserted in the Employment and Skills Development Law, 2013, as well as the extension of the employment contract and relevant provisions to pay compensation to the worker. Section 5 (d) of the law should also be revised as the responsibility of the employer to pay compensation. According to the figures, it can be found that the workers totally rely on the dispute resolution system, especially when they were dismissed by the employer. But a dispute which has arisen out of the employment contract must be deemed to be a right dispute because it involves a question of whether the dismissal was justified based on the terms of the employment contract. It should be reconsidered the performance of the dispute resolution mechanism deciding the dispute on dismissal while it constitutes as a dispute which the law does not allow to hear and decide by the Arbitration Body and Arbitration Council. However, if the Settlement of Labour Dispute Law authorizes the dispute resolution mechanism the authority to settle dispute on dismissal, it will be more beneficial for the workers. In doing so, the definition of right dispute and interest dispute should be revised.

To ensure maintaining employment sustainability, developing peaceful workplace and reducing the labour disputes, it is crucially important to encourage the bipartite negotiation process of the disputes by a Workplace Coordinating Committee or between employers and workers in person within the factories and the Settlement of Labour Dispute Law, 2012 should provide compulsory measures in doing so. Moreover, since the law does not provide detailed procedures for the collective bargaining process, it should also insert some provisions regarding such a process, and an effective legal training course for the employers and workers should be conducted. Moreover, the Workplace Coordinating Committee can negotiate all types of dispute. Therefore, promoting the capacity of the committee would be a vital role in reducing the labour disputes.

Conclusion

Before the Settlement of Labour Dispute Law had been amended, the disputes heard and decided by the Arbitration Body are a mixture of individual disputes and collective disputes. After the law had been amended, the Arbitration Council can hear and decide the interest disputes only.

Before the amendment of the law, both individual dispute and collective dispute could be conciliated but after the amendment, only interest dispute can be conciliated, but not the right dispute. The second amendment of the law allows less opportunity to address the workers' grievances through conciliation.

The findings suggest that there may be more benefits in enhancing the role of arbitration in settling disputes on dismissal, regardless of the term of employment contracts. This could potentially lead to more equitable results for the workers. This research will serve as a valuable resource for understanding and enhancing the dispute settlement mechanisms in addressing workplace grievances.

The study also raises important questions about the effectiveness of current labour dispute settlement mechanisms and points to potential areas for improvement in the Settlement of Labour Dispute Law, 2012. It highlights the need for a more comprehensive approach to addressing dismissal-related disputes and emphasises the potential benefits of arbitration in achieving fair outcomes for all parties involved. Finally, this research highlights the bipartite negotiation at the Workplace Coordinating Committee is the best way to reduce labour disputes and to safeguard the benefits of both employer and worker.

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ANALYSIS ON LAW OF INSOLVENCY IN MYANMAR*

Khaing Khaing Nwet Tin¹

Abstract

Insolvency means being unable to pay due debt. When a corporation or company cannot pay its due payment, it may be defined as “corporate insolvent”. As Myanmar is a developing country, a corporate insolvency regime is critical to encourage economic prosperity and sustainable economic growth of the country. Myanmar’s corporate sector is linked not only to ASEAN countries but also to non-ASEAN countries. Hence, the well-established transparent corporate insolvency system may support the economic development. This study provides an overview of the literature and explores the rehabilitation of a company so that it is not insolvent to the extent possible. It begins by defining some relevant terminology and then reviews theories about the principle of insolvency law.

Keywords: Corporate Insolvency, Rehabilitation, Economic Prosperity.

Introduction

Insolvency laws, similar to many other legal frameworks, have their roots in English law. These laws have evolved to create distinct systems for addressing insolvency issues for both individuals and corporations. A legal framework exists wherein the rights and remedies of creditors are temporarily suspended, allowing for a structured process to collect and liquidate the debtor’s assets. Consequently, insolvency law was established to clarify the responsibilities and liabilities of debtors and the entitlements of creditors, particularly when financial resources are inadequate or when a debtor’s obligations exceed their capacity to pay. Corporate insolvency specifically pertains to a scenario in which a company cannot meet its financial commitments, either due to a lack of timely cash flow or because its total liabilities exceed its available assets. Within the corporate insolvency framework, there are three primary stakeholders: the debtor, the creditor, and society at large.

The main objective of insolvency law is “to create a strong insolvency framework that is effectively aligned with the broader legal and commercial landscape”.² An insolvency system means a legal structure that allows financially distressed businesses may choose either a form of liquidation or a rehabilitation process satisfying creditors with any future earnings so that the business can continue. According to the modern insolvency regime under Myanmar Insolvency Law, 2020, businesses pursuing the rehabilitation process must hire an insolvency practitioner, also known as the rehabilitation manager and he/she is responsible for the rehabilitation process.

Materials & Methods

This research mainly focuses on related laws, cases, and other materials published by authors. Besides, to complete this paper's goal, other countries’ insolvency laws were studied. Therefore, the research paper applies qualitative research methodology. Primary data on the national legislation and international instruments dealing with corporate insolvency are mainly

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² Section 6 of Insolvency Law 2020, (The Pyidaungsu Hluttaw Law No. 1/2020).

relied and literary, books, publications, articles, and online resources are used as secondary sources.

Problem Statement

Myanmar's developing contemporary corporate insolvency system is one of the most enticing benefits for prospective international or domestic investors. However, there should be a distinct commercial court for problems about cross-border insolvency or parties who appear before the court relating to commercial affairs. If the court proceeding relating to corporate insolvency does not proceed timely and effectively, it will negatively impact an economy's prosperity to flourish economically even if it is neither a crime nor a civil wrong. To adequately adjudicate the rights of debtors, creditors, and the public interest promptly, a separate commercial court should exist in the event that a corporation experiences corporate insolvency. It is not a favorable impression for foreign investors if the court is not distinct and the parties involved in corporate insolvency have to squander time.

Moreover, according to section 162 of the Insolvency Law of Myanmar, 2020 and Rule 78 of the Insolvency Rule of Myanmar, 2020, a company is considered insolvent if it owes a creditor an amount that exceeds 1,000,000 Myanmar Kyats. The amount that shall be presumed to be insolvent should be more than 1,000,000 Myanmar kyats because corporate insolvency is one of the drawbacks to the economic prosperity of the country.

Findings

One of the aspects of economic expansion is the company. In both local and international economic transactions, doing business through a company is more dependable than doing it through an individual or non-company. However, businesses should be the most protected from insolvency to the extent possible. Consequently, legal frameworks linked to companies or corporations are the most crucial especially insolvency regimes. Stakeholders will have rights in addition to powers and duties under the insolvency system. Thus, the insolvency system is crucial for achieving economic development and preserving the nation's economic prosperity.

Discussion

Sources of “Corporate Insolvency Law”

In Myanmar, Section 2(x) of Insolvency Law states that insolvent means “unable to pay debts as and when they become payable”.³ Corporate insolvency may involve numerous concerned parties like creditors, debtors, overseas corporations, shareholders, directors, managers and employees of a company, insolvency practitioners, courts, and customers. The objective of corporate insolvency law extends beyond merely ceasing business operations. The main goal of insolvency law is to go from an unstructured legal system where creditors' rights and remedies are temporarily suspended to a structured legal framework. This framework facilitates the systematic collection and liquidation of the debtor's assets, ensuring an equitable distribution of these assets under the claims of creditors.

³ Section 2 (x) of Insolvency Law 2020, (The Pyidaungsu Hluttaw Law No. 1/2020).

Corporate insolvency law may be traced back to the company's growth in the nineteenth century. The essential law was the Joint Stock Companies Act of 1844, which established the business as a separate legal entity while retaining limited responsibility for stockholders. Since 1844, corporate insolvency has been handled with by particular statutory measures.⁴ In *Salomon case*,⁵ it proved that a properly constituted corporation was a different legal entity from its members, and as a result, even the debts of a one-man operation were independent and distinct. As a result, the laws about corporate insolvencies and individual bankruptcy grew apart. By the end of the 1800s, individual and corporate bankruptcy cases were governed by two distinct bodies of law, handled by several courts using various procedural guidelines.⁶ In 2020, the Insolvency Law and Rule were enacted as part of the contemporary Corporate Insolvency system in Myanmar.

"Determining whether a company even meets the solvency test is not always easy," the Court of Chancery stated in *Prod. Res. Group, L.L.C. and NCT Group, Inc.*⁷ In *Parkway/Lamar Partners, L.P. and Tom Thumb Stores, Inc.*⁸, a Texas court observed that the concept of "insolvency" is "not definitely fixed and it is not always used in the same sense, but its definition depends rather on the business or fact situation to which the term applies." Furthermore, if a person who was called acknowledges that he owes the insolvent money, the court may compel him to pay the obligation to the Official Assignee in the Official Assignee High Court case of *Rangoon and VE. RM. N. R.M. Kasivisvanthan Chettyar*⁹.

Insolvency presents a considerable challenge for societies that depend on credit. The principles of insolvency law are intricately linked to the historical contexts of legal, social, and economic systems. This legal domain functions as a triadic relationship involving debtors, creditors, and society. Achieving equilibrium among the interests of these three stakeholders is a critical policy concern. In instances where the insolvent party is an individual, it is clear that the legal framework should focus on the debtor's rehabilitation.¹⁰

Insolvency law is concerned with companies and individuals who are debtors and who are unable to repay their debt. In other words, a corporation or organization becomes insolvent when it cannot pay its debts. Besides, when a company faces corporate insolvency, there have been some formal proceedings such as winding-up or rehabilitation procedures. Thus, corporate insolvency is neither a criminal offense nor a civil wrong to become insolvent.

Principles of Corporate Insolvency

The corporate insolvency system shall ensure equal legal and economic treatment among creditors in the debtor's estate. Furthermore, a nation's insolvency system has to satisfy the requirements of its principal players in the market. The earliest corporate principle of corporate insolvency emerged in the case of *RE Scheibler, Ex P. Holthausen*¹¹. In this case, corporate

⁴ Vanessa Finch, (2009), *Perspectives and Principles of Corporate Insolvency Law*, Second Edition, p-9.

⁵ [1896] UKHL 1, [1897]AC 22.

⁶ Fletcher, (2017), *Law of Insolvency*, Fifth Edition, p-12.

⁷ 863 A.2d 772 (Del. Ch. 2004).

⁸ 877 S.W.2d 848 (Tex. App. 1994).

⁹ 1961, B.L.R, (CC), 107.

¹⁰ Fiona Tolmie, (2003), *Corporate & Personal Insolvency Law*, Second Edition, p-3.

¹¹ (1874) 9 Ch. App. 722.

insolvency law recognizes the rights accrued under the general law before liquidation. In the case of Dowsley and British Canadian Trust Co., Ltd¹², the appellant had claimed that he was entitled to possess and control of theatre property under an agreement and that the respondent, to whom B. & H. had made an assignment under the Bankruptcy Act, had wrongfully dispossessed him, sued the respondent for damages. Appeal dismissed with costs. Therefore, the rights accrued after liquidation are not recognized.

As the second principle, the company ceases to be the beneficial owner of its corporate assets while in its liquidation. Though winding up does not of itself divest the company of legal title to its assets, it ceases to be the beneficial owner and holds the assets on trust to apply them in the discharge of the company's obligations. Thus, in Ayerst's case¹³

The House of Lords relating to revenue law and insolvency law confirmed that "where a company goes into insolvent liquidation it ceases to be the beneficial owner of its assets, and the liquidator holds those assets on a special "statutory trust" for the company's creditors."

Therefore, it is forbidden to utilize or sell a company's property during liquidation for the company's gain.

The third principle is that creditors can only access the debtor company's assets. The purpose of corporate insolvency is not to seize assets that belong to third parties that the firm owns or controls for the benefit of creditors. The only assets that the company's creditors can access are those that it owns at the time of liquidation or those that it later acquires.¹⁴

The fourth principle is security interests and other real rights created prior to the insolvency proceeding are unaffected by the winding up. It is to take the assets subject to all limitations and defences by the liquidator. In asserting rights in the name of the company the liquidator stands in no better position than the company itself. In situations where the company is involved in a contract, the opposing party retains the right to present any defenses that could have been asserted before the winding-up process and to invoke any termination rights stipulated in the contract.¹⁵ Therefore, the liquidator has full authority while the company is in liquidation or insolvency.

The fifth principle is, that the pursuit of personal rights against the company is converted into a right to prove for a dividend in the liquidation.¹⁶ Therefore, the liquidation of a company is not completed until dividends are distributed following the scheme.

The last point is that the statutory trust that the company is winding up holds the realizations and assets upon does not grant the creditors any kind of proprietary interest or beneficial co-ownership; instead, their only recourse is to seek court protection to guarantee that the liquidator carries out his statutory obligations. In the case of Buchler and Talbot¹⁷, Leyland DAF Ltd went into creditor's voluntary winding up and it revolves around the priority of payment for liquidation expenses and debts with preference in a floating charge situation.

¹² [1933] S.C.R 115.

¹³ [1976] AC 167.

¹⁴ Roy Goode, (2005), Principles of Corporate Insolvency Law, 3rd Edition, p-70.

¹⁵ Ibid, p-72.

¹⁶ Ibid, p-72.

¹⁷ [2004] 2 A.C 298.

The House of Lords held there was no priority for the liquidator's expenses. Therefore, the last principle is no creditor has any interest in specie in the company's assets or realizations.

In summary, safeguarding debtors' rights and upholding creditors' rights are the cornerstones of corporate insolvency concepts. To achieve economic prosperity of a country, the insolvency system of the country is crucial i.e. it is important to ensure the rights of creditors and to protect the rights of debtors if a company faces corporate insolvency.

Nature of Insolvent and Rehabilitation

The terms "insolvent" and "bankruptcy" may be confused. Sometimes, the term "bankruptcy" is misused when mentioning company insolvency. When a business experiences financial difficulties, it is referred to as being insolvent. A business may owe more than it owns, or it may have run out of cash and be unable to pay debts. The insolvency law and Rule 2020 sets out several procedures which aim to deal with insolvent people and companies.

A person is considered "bankrupt" when a bankruptcy order has been issued against them due to their inability to settle outstanding debts. A "bankruptcy order" refers to a legal order that declares an individual bankrupt as a result of their inability to settle outstanding debts under section 2(e) of the Insolvency Law ("Law"). A bankruptcy order against an individual may be initiated by one of the individual's creditors, by multiple creditors collectively, or by the individual themselves. Upon receiving an application from the individual, the Court is competent to issue a bankruptcy order concerning the debtor. Therefore, a creditor has the option to either issue a bankruptcy notice to the debtor or to initiate proceedings directly in court.

If the payment is not received by the specified deadline, the creditor has the right to submit a petition to the court, accompanied by evidence that a bankruptcy notice has been issued in accordance with the Insolvency Law, provided that the total amount of debt or the cumulative debts is no less than MMK 1,000,000.¹⁸

A bankruptcy petition may be filed by a single creditor or multiple creditors collectively. In evaluating the case, the court will take into account whether the debtor is domiciled in Myanmar or is physically present in Myanmar at the time the petition is submitted. Additionally, the court will consider if the debtor has been ordinarily resident in Myanmar, has maintained a residence in Myanmar, or has conducted business activities in Myanmar at any point during the last three years.¹⁹

A corporation is considered insolvent in the context of corporate insolvency if it has received a notice from a creditor to whom at least MMK 1,000,000 is owed. A creditor who has a security interest in the debtor's assets about their claim is referred to as a "secured creditor"; a "unsecured creditor" does not.²⁰ Typically, secured creditors are often financial institutions, such as banks, and they may have a right to a significant portion of any available funds. For instance, if a creditor has provided a loan to an individual or a corporation to purchase a property, and that individual or corporation subsequently becomes insolvent, the creditor may have a claim to the proceeds from the sale of that property.

¹⁸ Rule 105 of Insolvency Rule 2020, (Notification No. 321, 2020, The Supreme Court of the Union).

¹⁹ Section 145(a), 146(a) of Insolvency Law, 2020, (The Pyidaungsu Hluttaw Law No. 1, 2020).

²⁰ Section 2(rr) of Insolvency Law, 2020, (Th Pyidaungsu Hluttaw Law No. 1, 2020).

The debts categorized as corporate insolvency and those recognized as bankruptcy are equal in value. It would be more suitable to set separate amounts, given the substantial differences in the financial capabilities of individuals and corporations.

Once the presumption of insolvency is established, either a company director or a creditor may file an application with the court to initiate the winding up of the company due to insolvency. The court will then determine the appointment of a liquidator and assess the company's outstanding liabilities. A business may choose to close on its own initiative. To allow a member to wind up their company voluntarily, the directors must declare solvency, which means they must believe the business can settle all of its debts, including interest, within a year of the winding up procedure starting.²¹

The underlying philosophy of Myanmar Insolvency Law may be described as combining the elements of distributive, and rehabilitative. Therefore, the objectives of the Insolvency Law, 2020 is to establish a vigorous insolvency framework that will:

- “be properly integrated with the broader legal and commercial systems of the Union”;
- “provide an appropriate structure for the supervision and administration of insolvency proceedings in the Union and to develop insolvency practitioners who can administer the regime effectively”;
- “provide predictable and consistent outcomes for parties involved in insolvency proceedings in the Union”;
- “provide timely, efficient and impartial resolution of insolvencies”;
- “facilitate the rescue and rehabilitation of viable businesses, particularly MSMEs experiencing financial difficulties, thereby preserving employment and protecting investment where appropriate”;
- “provide an efficient liquidation process for non-viable businesses, and in doing so, ensure that the value of the property of an insolvent business are maximized so that recovery by creditors is also maximized”;
- “provide equitable treatment between similarly situated creditors”;
- “prevent improper use of insolvency systems”; and
- “facilitate access to the global markets by the establishment of a framework for cross-border insolvencies”.²²

As a result, “Bankruptcy” refers to a legal ruling made against an individual, as opposed to a corporation, in accordance with the Insolvency Law of 2020 and the Insolvency Rules of 2020. Following the declaration of bankruptcy, the individual involved (the debtor) is barred from holding the position of director in any company.

The Insolvency Law and Insolvency Rule, 2020 are the primary pieces of legislation under which insolvency or analogous proceedings to which companies are incorporated under the Companies Law. The first insolvency law in Myanmar was the “Yangon Insolvency Act (India Act III, 1909)” and “the Myanmar Insolvency Act (INDIA Act V, 1920)”. Myanmar's insolvency regime has been in a state of transition for a relatively long period of time, although a new insolvency law was passed in 2020. The insolvency regime in Myanmar is very rudimentary. The

²¹ Section 164, 151(a) of Insolvency Law 2020, (The Pyidaungsu Hluttaw Law No. 1, 2020).

²² Section 6 of Insolvency Law 2020, (The Pyidaungsu Hluttaw Law No. 1, 2020).

key laws and rules which will be considered are the Insolvency Law 2020, Insolvency Rule 2020, and Myanmar Companies Law, 2017.

Since the late 1990s, corporate insolvency law has shifted towards a greater focus on rescue efforts and measures to address corporate difficulties. In *Powdrill and Watson*²³ case, Lord Browne-Wilkinson stated that “the rescue culture, which seeks to preserve viable businesses, was and is, fundamental”.

The terms of insolvency practitioner include receiver; rehabilitation manager; rehabilitation adviser; supervisor of a rehabilitation plan; liquidator including provisional liquidator; and trustee.²⁴

Moreover, the District Courts located in each State, Region, Self-Administered Division, and Self-Administered Zone of the Union possess the jurisdiction to dissolve a company that is registered under the Myanmar Companies Law. Therefore, any issues relating to insolvency or solvency proceedings may apply to the competent courts and the court may, if it deems it just and advantageous, fully or partially grant the application under conditions it finds suitable, or it may issue any other order it considers appropriate.²⁵ When a business is wound up by the court, it can happen for a number of reasons, including special resolutions, failure to start operations within a year of incorporation, suspension of operations for an entire year, insolvency, or the court’s determination that “it is just and equitable that the company should be wound up” or “the Court is satisfied there are proper grounds of public interest.”²⁶

Insolvency practitioners carry out administration orders under insolvency Law and Rule, 2020 and must be qualified as insolvency practitioners.

The objective of rehabilitation proceedings is to maintain the business’s operations as a viable entity. If the business is unable to be rescued, efforts are made to ensure that as much of its activities persist as possible. In cases where the business cannot be saved or continued, the aim is to achieve a more favorable outcome for the company’s creditors collectively compared to what would likely transpire if the business were liquidated. A company facing financial challenges may appoint a receiver. It is possible for an individual to be designated as a receiver of a company’s assets.²⁷

The receiver is entitled to the privileges outlined in section 30 of the Insolvency Law, which include responsibilities related to new contracts, managing the company’s assets, conducting the company’s operations, negotiating settlements or compromises on behalf of the company, and having the authority to hire or terminate employees. In cases of financial distress, companies should initiate rehabilitation proceedings to save the company as a going concern.

Companies in financial distress have the option to reach settlements with different conditions, either through a formal legal framework or informally through contracts involving the company, its creditors, and possibly other general creditors. The agreements may include delaying payments, refraining from collecting debts, agreeing to settle for less than the full

²³ [1995] 2 AC 394.

²⁴ Section 7 of Insolvency Law 2020, (The Pyidaungsu Hluttaw Law No. 1, 2020).

²⁵ Section 159, 160 of Insolvency Law 2020, (The Pyidaungsu Hluttaw Law No. 1, 2020).

²⁶ Section 161 of Insolvency Law 2020, (The Pyidaungsu Hluttaw Law No. 1, 2020).

²⁷ Section 40, 28 of Insolvency Law 2020, (The Pyidaungsu Hluttaw Law No. 1, 2020).

amount owed, or, in a compromise situation, making a defined payment when the validity or amount of a claim is uncertain.²⁸

Therefore, a company should not be declared insolvent or shut down solely due to financial distress. Having more insolvent companies would result in reduced economic prosperity and fewer job opportunities. Even when facing financial distress, companies undergoing rehabilitation proceedings should consider the country's economic prosperity and sustainability.

Cross-Border Insolvency

In cases of cross-border insolvency, a company's assets or creditors are located in different countries, posing challenges for multinational corporations that must address insolvency issues across various legal systems. The United Nations Commission on International Trade Law (UNCITRAL) Model Law, enacted in 1996, states that creditors or stakeholders in a foreign jurisdiction have the right to initiate or participate in insolvency proceedings governed by the adopting state's laws.

The priority of foreign creditors' unsecured claims should not be lower than that of domestic creditors solely because they are foreign. A "foreign representative" is responsible for overseeing the debtor's reorganization or liquidation and represents the creditor in foreign proceedings, including temporary appointments.²⁹

The mere act of submitting an application to a court under the Model Law does not automatically place the foreign representative or the foreign assets and affairs of the debtor under the jurisdiction of the state's courts, except for the specific application outlined in Article 10. When urgent requests for interim relief need to be filed, the foreign representative must make these filings through the local Inspector or Receiver, rather than directly through the state courts. Article 10 of the Model Law protects the foreign representative and the debtor's estate from being subjected to local court jurisdiction solely due to a recognition application. However, the legislation does empower the court to issue cost orders in the proceedings and to hold the foreign representative responsible for all court orders.

Myanmar's Insolvency Law of 2020 has adopted the UNCITRAL Model Law on Cross Border Insolvency. This law sets up a framework for courts and other competent authorities in multiple states to collaborate in cases of cross-border insolvency involving companies with assets and/or creditors in more than one country. This update in Myanmar's insolvency regulations represents a significant step forward, aligning the country with international standards on corporate insolvency and aiding in the rescue of financially troubled companies, thus safeguarding investments and jobs across jurisdictions. Additionally, under this law, a foreign representative has the right to directly petition a court in Myanmar, calling for a transparent insolvency system and the establishment of a distinct commercial court in the country.

The Insolvency Law of Myanmar 2020 adopts the United Nations Commission on International Trade Law UNCITRAL, Model Law on Cross Border Insolvency. The Insolvency Law 2020 introduced a framework under which courts and other competent authorities in more than one state may cooperate in cases of cross-border insolvency law involving companies with

²⁸ Vanessa Finch, (2009), *Perspectives and Principles of Corporate Insolvency Law*, Second Edition, p-23.

²⁹ Section 381, 369 of Insolvency Law 2020, (The Pyidaungsu Hluttaw Law No. 1, 2020).

asserts and/or creditors in more than one country. This development in the insolvency regime in Myanmar is a significant progression that brings it in step with international frameworks on corporate insolvency and helps to facilitate the rescue of financially distressed companies, thereby protecting investments and employment regardless of jurisdiction. Besides, a foreign representative is entitled to apply directly to a court in this State and there should be a transparent insolvency system and a distinct commercial court in Myanmar.

Conclusion

The recently enacted insolvency law, which replaces over a century-old legislation, represents a crucial element of Myanmar's efforts to update its legal system. It is also the introduction of the rescue and rehabilitation process for companies and the implementation of the United Nations Commission on International Trade Law (UNCITRAL Model Law) on cross-border insolvency which provides a legal framework for assisting the financial distress of corporations that are related in more than one country. Therefore, it helps to facilitate the rescue and rehabilitation of financially distressed corporations and to protect investment, and employment regardless of jurisdiction. This development indicates a positive and improving legal environment for companies already established in Myanmar or those considering growth in Myanmar.

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THE PRACTICE OF COURT-LED MEDIATION IN YANGON REGION: 2021 TO 2023*

Aye Myat Kay Khaing¹

Abstract

This research examines the effectiveness of the newly introduced court-led mediation system in Myanmar, focusing on Yangon Region between 2021 and 2023. The study reveals that 27.7% of mediation sessions were successfully settled, with financial disputes showing the highest success rate. Factors such as mediator training and proper procedures contributed to positive outcomes, while limited public awareness, incomplete documentation, and accessibility challenges affected effectiveness. The study recommends improving mediator capacity, promoting public understanding, and strengthening institutional support to enhance the role of court-led mediation in Myanmar's judicial system.

Keywords: Court-led Mediation, Mediator, Alternative Dispute Resolution (ADR)

Introduction

Court-led mediation has emerged as a component of alternative dispute resolution (ADR), in Myanmar Yangon Region for quite some time now. In the past in Myanmar dispute settlement mainly revolved around action that resulted in prolonged court battles escalated expenses and considerable delays in attaining fairness. The formal integration of court-led mediation since March 2019 signified a change, in how conflicts are resolved within the legal framework. This project was designed to ease the strain on a court system and offer parties a way to settle disputes that is both effective and cooperative. The use of alternative dispute resolution (ADR) in the judicial process is becoming more prevalent around the world. It allows parties to resolve their disputes through peaceful dialogue and mutual understanding. In Myanmar, which has a highly valued community and harmony, mediation can help resolve conflicts.

Then, with the amendments to the Myanmar Civil Procedure Code in October 2021, court-led mediation further cemented its place as a legal route for dispute resolution. This legislative change made cases of specified natures, such as monetary claims, family disputes, and commercial disputes, refer first for mediation before heading into litigation. The aim is to reduce the stress of the court and to ensure good cooperation and resolution between the parties. Thus, mediators have increasingly played an important role in guiding parties through the mediation process and assisting in effective settlements that satisfy the parties. This study will also trace the effectiveness and practical implications of court-led mediation in Yangon from 2021 to 2023. Court-led mediation serves as a vital mechanism for the peaceful settlement of disputes, particularly within the context of court-led mediation in Myanmar. This process emphasizes dialogue and mutual understanding, allowing parties to resolve their conflicts peacefully without resorting to adversarial litigation.

Myanmar people are familiar with the mediation and traditionally pay attention to solving cases of harmony and peace in society. During the time of Myanmar Kingdoms, the judges and arbitrators gave a patient ear to the litigants and encouraged them to settle disputes by agreement.

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On 1 March 2019, the court-led mediation pilot program was initiated in Dekkhina District Court, Taungoo District Court, Takkone Township Court and Taungoo Township Court. It was expanded to 6 township courts of Nay Pyi Taw Union Territory in 2020 and all courts of Yangon and Mandalay Regions in 2021. The court-led mediation project in Yangon region started in March 2021. After the amendment of the Civil Procedure Code, the court-led mediation system was implemented nationwide on 1 August 2022.

Materials & Methods

The research focuses on analyzing mediation outcomes between 2021 and 2023 to evaluate effectiveness and identify key challenges. Primary data were collected from literary, books, reports, judicial manuals, and, while secondary data were obtained from the annual reports of the Supreme Court of the Union and the Yangon Region Court-led Mediation Center. The research focuses on analyzing mediation outcomes between 2021 and 2023 to evaluate effectiveness and identify key challenges. Therefore, the research paper applies qualitative research methodology.

Findings

The study found that the total number of settlements obtained by the Yangon Region from 2021 to 2023 was 27.7%. Notably, this time, 822 out of 2,966 recipients completed the session. The mediation process is open and structured to facilitate discussion between the two parties. Many potential users do not understand the benefits and methods of mediation, making mediation unnecessary. The Supreme Court of the Union has also developed and implemented a strategic plan for the development and improvement of alternative dispute resolution (ADR). Understanding the impact and nature of the hearing should be included in the curriculum so that the public can access the hearings. The information about court-led mediation needs to be spread to people from various fields. The use of court-led mediation in court needs to be improved. In financial cases, the successful resolution of a large-scale civil case in a short time is the success of mediation. Some parties, especially in remote areas, have experienced problems accessing mediation facilities, which hinders cooperation. Mediation is generally considered less formal than litigation, which may affect public acceptance. Studies show that parties involved in financial, family, and business disputes prefer mediation to litigation because it is quicker and less costly to resolve.

Discussion

Definition of Mediation, Court-led Mediation and Mediator

Mediation is defined as a dispute resolution process involving a mediator by the Court who facilitates the parties to reach a mutually agreeable solution.¹

Court-led Mediation is defined as a process in the civil suit filed at the court that facilitates parties' settlement negotiation to reach a mutually acceptable agreement with the assistance of a mediator.² In addition, it is described in the Court-led Mediation Manual as the

¹ Section 89A of the Civil Procedure Code 1908

² <https://www.unionsupremecourt.gov.mm>

voluntary or mandatory settlement dispute of the parties in civil suits with the assistance of a court-assigned mediator at the Court Mediation Center.

Mediator: The Judicial officers who have mediation training are assigned as mediators. They have to comply with the principles of Independence, Fairness, Impartiality, and Confidentiality in mediation process.

Alternative Dispute Resolution (ADR)

Alternative dispute resolution involves various ways to resolve disputes outside of traditional courts. In a developing society where the legal system strives to serve people well, ADR has emerged as an alternative to litigation. The main purposes of ADR include negotiation, mediation, arbitration, and conciliation; each has a different purpose and uses different methods. The key features of ADR: ADR processes are generally confidential and allow parties to discuss issues openly without fear of public disclosure. ADR has a flexible process based on the specific needs of the parties involved. ADR can help manage and strengthen the relationship between parties to a dispute by encouraging dialogue and understanding. Discussion to help them reach consensus and agreement. The mediator does not create solutions but guides the parties through the negotiation process.

The mediator will help the parties communicate effectively, understand the interests behind them, and find a way out. The mediator does not make decisions like a judge or magistrate but guides the parties to a decision or agreement. This process can encourage cooperation and preserve relationships that might otherwise be damaged by conflict.

In recent years, many jurisdictions, including Myanmar, have increasingly recognized that ADR processes such as mediation can help improvement justice. Courts have turned to mediation as a measure to help reduce litigation and provide litigants with real options for resolution. In some countries use mediation before the trial for example Indian. The Indian legal system has incorporated court-led mediation into its framework, with many high courts encouraging mediation as a form of pre-trial option. Court-led mediation is a process that has been successfully implemented in most countries.

Law relating to the Court-Led Mediation in Myanmar

To implement the court-led mediation, the Code of Civil Procedure is main legislation. Therefore, the Government enacted the law amending the Code of Civil Procedure in 2021.¹ The Law Amending the Code of Civil Procedure provides the legal framework for voluntary and mandatory Court-led mediation in civil suits, confidentiality of mediation, court's power to pass an order or decree on mediation agreement, and rules making power of Union Supreme Court. The Court-led Mediation Manual of the Union Supreme Court sets out good practice guidance for judges, mediators, court staff, and parties.

¹ State Administration Council Law No. 58/2021 dated 11 October 2021.

According to Section 89 A of the Civil Procedure Code –

- (1) The Court may conduct mediation to a dispute in the case involving a civil nature under this section.
- (2) The Court may refer the following cases to mediation: (a) cases which are prescribed to be mediated by any law or by any notification issued by the Supreme Court of the Union; and (b) cases which are voluntarily referred to mediation by disputant parties.
- (3) The proceedings of mediation shall be confidential. Any communication, statement, and admission made during the mediation process shall not be admissible in any subsequent hearing of the same suit or any other proceedings.
- (4) Where the parties to mediation reach an agreement, the parties shall apply the Court to verify the agreement. The Court shall pass an order or a decree, as it thinks fit, by the relevant provisions of the Code of Civil Procedure.
- (5) The Supreme Court of the Union may issue notifications, orders, directives, procedures, and manuals relating to mediation under this section as may be necessary.

The Practice of Court-Led Mediation in Myanmar

A person who wants to participate a court-led mediation must first file a civil case in court. This is because the client has not yet been able to directly apply to the Mediation Center for mediation. Court -Led Mediation operates within a framework of rules and regulations that guide its practice. This framework should ensure that conflict resolution is fair, efficient, and effective for all parties. In many countries around the world, such as Myanmar, court mediation has been incorporated into the judicial process to increase access to justice and improve efficiency. It is a major step forward in modernizing the way the country resolves disputes.

Mediation facilitates cooperation between the parties. The parties may be represented by their lawyers, but if necessary, they must appear before a mediator. The rules of the court-led mediation manual govern the mediation process. The mediation period is generally limited to one month, but if the mediator deems it necessary, the period may be extended with the approval of the court. The offer remains valid during the mediation period and continues to be valid after the conclusion of the mediation.

Enforcement

Mediation is strongly recommended as a mandatory settlement for claims involving financial, family, and commercial matters. As a voluntary settlement for financial, family, and commercial matters; and as a voluntary settlement for others. The court refers to the Mediation Center as soon as possible during this process. Section 89A (3) of the Civil Procedure Code provides, the legal basis for enforceability of the meditation agreement. The Court shall pass an order or a decree, as it thinks fit, on the application of the parties to verify the agreement. In the mediation center, when the mediation is successful, both sides based on mutual agreement the

court may pass, the degree of admission¹ or, withdrawal of case² or the passing of a degree of settlement³, an appropriate degree must be passed. If the parties withdraw their claims through actual settlement negotiations before the hearing of witnesses, one-half of the court fees for the claim will be refunded under the Supreme Court of the Union Notice No. 243, dated June 29, 1973.

If the court may pass Order 23 Rule 3 of the civil procedure code, there are two parts. The first part is the dismissal of the case in whole or partly by agreement or settlement by law. When it is proved to the satisfaction of the court that it has been negotiated and clarified in part or part. Whether the litigation is related to the entire content of the case or when the plaintiff is satisfied with some of the parts. The court will consider this agreement. A decree shall be adopted because the settlement or satisfactory action shall be written down in the case. After the decree is passed, the case will be closed. If the judgment-debtor fails to act as they agreed, the decree-holder can open file an application with the court to initiate execution proceedings to enforce the judgment.

Under the Civil Procedure Code, order 23 rule 3 second part, by the terms of the settlement agreement or satisfaction measures, a decree must be issued with the right for the clients to apply to suspend and approve all further actions in the case. About the established decree, if the client does not act according to the terms of the agreement, he applies in the pending legal case to act according to those terms. When such an application is made, the court will make a decree that the client will act according to the agreement.⁴ If the judgment debtor fails to implement the decree, the decree-holder can apply for the execution. There is no sanction for failure to mediate if one party to the dispute proposes mediation and the other party ignores the proposal, refuses to mediate, or interferes with the mediation process. The case will continue even after mediation fails.

The Effectiveness of Court-Led Mediation in Yangon Region

The court-led mediation project in the Yangon region started in March 2021.

Year	Total Cases Referred to Mediation	Successfully Settled Cases	Success Rate (%)
2021	417 cases	111 cases	26.6 %
2022	1,447 cases	414 cases	28.6 %
2023	1,102 cases	297 cases	26.8 %
Total (2021–2023)	2,966 cases	822 cases	27.7 % (average)

According to the data obtained from the Yangon Region Mediation Center, out of a total of 297 successfully mediated cases in 2023, financial disputes accounted for 167 cases (56%), family disputes for 67 cases (23%), commercial disputes for 48 cases (16%), and other disputes for 15 cases (5%). It was found that financial disputes had the highest success rate among all

¹ Order 12, Rule 6 of the Civil Procedure Code.

² Order 23 Rule 1(1) of the Civil Procedure Code.

³ Order 23 Rule 3 of the Civil Procedure Code.

⁴ Ko Min Lwin and Maung Than Naing 2005, MLR,P-127.

types of cases. However, the overall success rate of mediation appeared relatively low because it was calculated based on the total number of cases referred to the mediation center from 2021 to 2023, including those that were not actually mediated. Some cases were unsuitable for mediation or could not proceed due to incomplete documentation or other procedural issues. Therefore, if the success rate were calculated only from the cases that were actually mediated, the percentage of successful settlements would likely be significantly higher, indicating a more effective performance of the mediation process in practice

Parties to claims involving financial, family, and business matters prefer mediation than other claims. The success rate for mediation of financial claims is the highest of all. Litigation is often time-consuming and expensive, leaving both parties in limbo for long periods. Mediation can provide a quicker resolution, allowing both parties to move on with their lives without the burden of lengthy court proceedings. This quality is especially welcome in situations where relationships are important, such as family conflicts or business partnerships.

In India, court-referred mediation was formally introduced through the amendment of Section 89 of the Code of Civil Procedure in 1999, which empowered courts to refer civil disputes to Alternative Dispute Resolution (ADR) mechanisms, including mediation. To institutionalize this practice, the Supreme Court of India established the Mediation and Conciliation Project Committee (MCPC) on 9 April 2005, marking the beginning of structured court-annexed mediation across the country. The first mediation centers was inaugurated at the Madras High Court in April 2005, followed by similar centers in Delhi, Bangalore, and other jurisdictions. Within the first three years of implementation (2005–2008), the reported success rates of court-annexed mediation ranged between approximately 50 to 65 percent—Delhi’s “Samadhan” centers recorded around 56–60 percent settlement rates, while the Bangalore Mediation Centre achieved about 65 percent. These results demonstrated that court-referred mediation could significantly reduce case backlogs, deliver quicker resolutions, and enhance public trust in the justice system. The Indian experience thus provides a valuable reference point for Myanmar, where court-led mediation has similarly been developed to promote amicable dispute settlement and to relieve the burden on the judiciary.

When comparing the mediation systems of Myanmar and India, it is evident that India has a more experienced and well-established mediation framework. The Indian system was introduced through the amendment of the Code of Civil Procedure in 1999, and in 2005, the Mediation and Conciliation Project Committee (MCPC) was formed to oversee and expand court-annexed mediation centers across the country. Within the first three years of implementation (2005–2008), the success rate of mediation ranged between 50 and 65 percent.¹

On the other hand, Myanmar introduced its court-led mediation system only recently, in March 2021. From 2021 to 2023, the Yangon Region recorded a total of 2,966 cases referred to mediation, out of which 822 were successfully settled, showing an average success rate of 27.7 percent. Among these, financial disputes represented the highest number of successful settlements.

Therefore, Myanmar’s court-led mediation system remains in its early stage of development, comparable to India’s initial phase of implementation. With continued efforts to

¹ <https://www.delhihighcourt.nic.in>

enhance mediator training, expand access to mediation centers, and raise public awareness, Myanmar's mediation success rate is expected to increase significantly in the coming years, following India's successful model.

Challenges of Court-Led Mediation

Currently, mediation centers can be established in all the high courts in the state. In some areas, parties are unable to travel to mediation centers that are located far from their residences. The failure of parties to attend mediation was a major cause of mediation failure. Access to mediation centers remains a challenge for effectively implementing the court-led mediation system. The problem for the courts is that parties refuse to agree to mediation and do not appear in court even after the mediation process is completed. The court solves these issues by the Civil Procedure Code. The biggest challenge facing court mediation is the lack of public understanding of the benefits of mediation and the process involved. Due to lack of knowledge, many potential clients are still unaware of the possibility of mediation as a means to resolve their dispute. For mediation, timely access to services can maintain momentum and ensure that the conflict is mutually beneficial. The transition to mediation requires a cultural shift. The perception of mediation as an informal, less legal process is related to differences in human participation. Public information campaigns are needed to inform the public about the benefits to be gained from court discussions to increase participation. Training and information sessions are particularly effective community participation strategies. This may include improving resource allocation and administrative support for mediators. Through mediation, both parties and the court can enjoy the benefits of mediation, because both parties can negotiate to resolve the dispute by actually discussing and finding a solution during the meeting, the relationship between the two clients can be improved; the consultation process is simple and easy for the client to participate. Details that the user wants to keep confidential; ensuring the security of evidence without the knowledge of others; when mediation is done, it will help to reduce the burden of workloads in the courts and also help the process to be completed quickly.

Conclusion and Recommend

The study of court-led mediation in Yangon from 2021 to 2023 shows little progress but great potential for improvement. These findings highlight the importance of mediator training and the need for clearly defined procedures to improve mediation outcomes. Strengthen Public Awareness: conduct awareness campaigns to educate the public and lawyers about the benefits of mediation. Improve Institutional Capacity: establish mediation centers in all districts and townships to ensure accessibility. Data and Monitoring Systems: develop standardized data reporting and monitoring mechanisms to assess mediation performance to increase the effectiveness of court negotiations, public information aimed at educating potential users on the advantages and methods of the court is important. By implementing the court-led mediation system, civil cases in the courts can be resolved more efficiently, quickly, and at a lower cost, not only for the public's access to justice but also for improving people's social-economic lives and prosperity. If Myanmar continues to improve mediator professionalism, public participation, and institutional infrastructure following India's successful example court-led mediation can become a vital instrument for delivering timely, cost-effective, and harmonious justice within the

country's evolving legal framework. Furthermore, providing ongoing support to mediators will contribute to a stronger peace process in Myanmar.

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LEGAL STUDY ON PRESERVATION AND PROTECTION OF INLE LAKE

Seinn Seinn Maw¹

Abstract

The Inle Lake is one of the most prominent landmarks in Shan State. It is very important to the living organisms. Human activities have led to degradation and loss of lake ecosystems, loss of biological diversity and climate change. This paper aims to protect the Inle Lake's ecosystem legally, to get the benefits from the lake's resources and to explore the adequacy of the current legal provisions on conservation of the Inle Lake. This study utilized the qualitative interview questionnaires conducted with 30 respondents living in the Inle Lake. Among them, fifteen persons said that the main problem of Inle Lake's loss and degradation are extremely disposing the garbage and sewages. Moreover, five persons said that the Lake is facing gardens and ten persons said that it is degradation by deforestation in the catchment areas. While there are more than 90 volunteer groups dedicated to preserving the Inle Lake, only three groups are working effectively. The key findings include a lack of awareness about the Inle Lake conservation, lack of wise use of lake resources and lack of funding. Degradation of the Inle Lake ecosystem poses a big challenge for their local community. Despite their awareness about the degradation of the lake's ecosystem, they lack knowledge about how to conserve and maintain it. In order to address this issue, the Inle Lake Conservation Law was enacted in 2019, but this law deals only with the Inle Lake. The National Wetland Policy was enacted in 2019. There are many important wetlands, such as the Inle Lake in Myanmar. Therefore, a specific law for all the areas of wetlands should be enacted in Myanmar.

Keywords: Inle Lake, Wetland, degradation, preservation, wise use, law, policy.

Introduction

The Inle Lake is one of the priority conservation areas in Myanmar due to its unique ecology, historical, religious, cultural, and traditional background, and natural beauty. People, nature, and culture coexist in a unique wetland. The Inle Lake is the second largest lake in Myanmar and also known as the heart of the country. It is an invaluable source for biodiversity protection and sustainability of the environment. It constitutes a resource of great economic, scientific, cultural and recreational value for the community. The main threats are deforestation, pollution, unsustainable agriculture and tourism. It is being threatened by changes in global climate patterns. Moreover, the overuse of lake resources and pollution of the lake have caused several environmental damages. In order to resolve these issues, the Government of Shan State enacted the Inle Lake Conservation Law on 19 December, 2019. Myanmar has also adopted the National Policy for wetland conservation in 2019. The Myanmar government ratified the Ramsar Convention on the Wetlands of International Importance Especially as Waterfowls Habitats, 1971 and is intended to be conserving wetland areas and their ecological systems by the wise use of them through local, regional, and national actions and international cooperation. Marshes, ponds, lakes, streams, floodplains, and swamps include inland wetlands. Such international instruments as Convention Concerning the Protection of the World Cultural and Natural Heritage 1972, the Convention on the International Trade in Endangered Species of Wild Fauna and Flora 1973, the Convention on Migratory Species of Wild Animals 1979 and the Convention on the Biological Diversity 1992.

Making policy and legislation initiates the development of infrastructures and efficient systems that ensure wise use of the Inle Lake and protect against environmental degradation. The

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establishment of a comprehensive measure is essential for its conservation to properly implement the effective mechanism. Therefore, the creation of legal frameworks is a crucial step of the states at both national and international levels.

Objectives

This paper aims to preserve ecosystems of the Inle Lake and share the awareness of the value of the Inle Lake and wise use of the Inle Lake resources, as well as encourage the indigenous people to preserve and protect the Inle Lake and its watershed areas. They also need to know what facts they have faced when threatening the Inle Lake ecosystem and to preserve and control the loss and degradation of it as well as to ensure the socioeconomic development.

Research Methodology

This study is conducted by a qualitative legal research approach comprising a doctrinal (legal analysis) method. A combination of descriptive and analytical research is used: Data collection methods include doctrinal (library-based) research based on primary sources such as Myanmar's environmental laws, regulations, and policies, and secondary sources such as books, journal articles, and reports from government agencies and international organizations. Data analysis methods are used for examining status, case laws, and legal commentaries to identify strengths and weakness in the legal framework.

Research Findings

The biggest challenges facing the Inle Lake preservation are a lack of awareness to understand the values of the Inle Lake, a lack of wise use of lake's resources, a lack of coordination for appropriate measures at the private or public level, and a lack of funding. In addition, there are no deterrent sanctions to enforce the offence in the Inle Lake Law. Moreover, a specific provision should be enacted in order to protect the deterioration of the lake ecosystem.

Discussion

Definition of the Inle Lake

The Inle Lake is a freshwater lake situated in Naung Shwe Township, Taunggyi District, Southern Shan State, and it is the second-largest freshwater lake in Myanmar.

Inle lake region means Inle Lake, Sankar Inn, Moby Reservoir, and all their watershed areas.² There is no provision that defines the "Inle Lake" in the Inle Lake Wetland Conservation Law, 2019.

According to the Ramsar Convention, 1971, Inle Lake is one of the types of wetlands. Wetlands are areas of marsh, fen, peatland, or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish, or salt, including areas of marine water the depth of which at low tide does not exceed six meters.³ Wetlands may incorporate riparian and coastal zones adjacent to the wetlands and islands or bodies of marine water deeper than six at low tide lying within the wetlands.⁴

² Section 2 (e) of the Inle Lake Conservation Law, Myanmar, 2019.

³ Article 1.1 of the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, 1971.

⁴ Article 2.1 of Ibid.

In Myanmar National Policy, 2019, it is stated that all lakes and rivers, underground aquifers, swamps and marshes, wet grasslands, peatlands, estuaries, deltas and tidal flats, mangroves and other coastal areas, coral reefs, and human-made sites such as fish ponds, rice paddies, reservoirs, and salt pans are included in the wetland. In the National Wetland Policy, the definition of wetlands is used by Article 1 of the Ramsar Convention, 1971.

Importance of the Inle Lake

The Inle Lake is an integral component of the country's natural and cultural heritage. It is very important for the national economy and ecology and local survival livelihoods. The Inle Lake is an important habitat for freshwater fish, and they are useful for local people, or Lake People.

The lake is also the source of livelihood for the lake-dependent people, the Intha. It was declared a Wildlife Sanctuary in 1985. It was also included in the list of UNESCO's World Heritage Sites in 1988. In addition, it was declared an Important Bird and Biodiversity Area (IBA) in 2004. It became an ASEAN Heritage Park in 2013 and a Man and Biosphere Reserve in 2015. It was also designated as a Ramsar Site on September 7, 2018, which is providing added value of technical and financial support, information sharing among groups, and education.⁵

In addition, the Inle Lake is very important to the health and development of local communities. The species are living on and around the lake and the ecosystem that supports freshwater, air and soil. The lake is a vital source of income for many people.⁶ The people residing in villages near the lake pluck lotus flowers, seed pods, and roots from the lake and sell them in the markets. They have also been producing lotus fiber for use in their famous traditional weaving business. Every year, this lake is covered with different varieties of colorful lotus, except in the winter season, and birds flock to the lake to rest. Moreover, it is the main water reserve for the Law Pi Ta hydropower plant and is a major tourist area.

Wetlands play an important role in water-related disaster risk reduction. Wetlands have special cultural, spiritual, or historical values associated with them. It is also attracting people for recreational activities, including boating, bird watching, and photography.⁷

Threats to the Inle Lake

The Inle Lake is threatened by human activities that directly or indirectly affect the lake's ecosystem development. Its health can be damaged by losses of lake areas, changes to the water regime, changes in water quality, over-exploitation of products, and introduction of alien species.

Moreover, overuse of chemical fertilizers and pesticides, population growth, increased utilization of fuel wood, rapid tourism development and climate change are threatening the Inle Lake ecosystem. Lake People who drink water from the lake and eat its fish face serious health risks.⁸

⁵ Bishnu B.Bhandari, Reiko Nakamura, Amado S. Tolentino, Jr. Shiina Suzuki., (2014) *Catalyzing the Wise Use of Wetlands in Myanmar: Efforts and Ways Forward*, p.11.

⁶ Ketevan Khurtsia., (2015) *Inle Lake Conservation and Rehabilitation*, p.9.

⁷ Myanmar National Wetland Policy and Strategic Actions, 2019, p.6.

⁸ Ketevan Khurtsia., (2015) *Inle Lake Conservation and Rehabilitation*, p.8.

Agriculture is the primary source of livelihood for the majority of rural communities in and around the Inle Lake. But it has also been a major problem for the lake ecosystem. Floating gardens spread rapidly, encroaching into the diminishing area as the floating beds become solid ground. The availability of open water area has declined, the level of sedimentation in the lake has increased, and the lake is becoming smaller, shallower, and polluted in water quality. The lake's biological diversity and ecosystems have been seriously endangered.⁹

Drainage and reclamation, agricultural and land expansion, and fish and shrimp pond expansion—these activities are leading to wetland loss and degradation. Wetlands are indirectly driven to water regime change by deforestation in the catchment, development activities, illegal settlement, and mining of the watershed and catchment areas. The wetlands water quality is threatened by irrigation, eutrophication, pollution and erosion and silt deposition, intrusion of salt water, desiccation, and salinity. Overfishing, destructive or illegal fishing, overgrazing, trapping, and poisoning aquatic species can cause the deterioration of wetland ecosystems.¹⁰

Wetlands are threatened by human activities or human-generated processes occurring around the river basin, catchment area, or coastal region. The main processes that affect wetlands may be loosely grouped into five main categories: loss of wetland area, changes to the water regime, changes in water quality, over-exploitation of wetland products, and introduction of alien species.¹¹

Lakes of the ASEAN countries are threatened by the building of dams, extreme use of water resources, untreated waste materials from industries and domestic sectors, development of infrastructure, deforestation, and introduction of invasive alien species, increasing agriculture and aquaculture farms, and over-exploitation of lake's resources.¹²

Ramsar Sites in Myanmar

The Ramsar Convention¹³ encourages the designation of wetland sites containing representative, rare, or unique wetlands or wetlands that are important for conserving biological diversity. According to the obligations of Ramsar Contracting Parties, nations need to designate their wetlands as International Importance of Wetland (Ramsar Sites).

Under the Ramsar Convention, these countries designated their wetlands as International Importance of Wetland (Ramsar Sites). The number of wetland areas and total surface area are designated.

According to the Ramsar Convention, a wetland can be considered to be internationally important provided one of the nine criteria applies. Under the Ramsar Convention, any wetland that meets at least one of the criteria for identifying wetlands of international importance and has been designated by the appropriate national authority can be added to the Ramsar List.¹⁴

In order to maintain the wetlands, Myanmar became a contracting party to the Ramsar Convention on 17 March, 2005. It can be found that there are many wetlands that meet the

⁹ Ketevan Khurtsia., (2015) *Inle Lake Conservation and Rehabilitation*, p.8.

¹⁰ Myanmar National Wetland Policy and Strategic Actions, 2019.

¹¹ Clare Shine and Cyrille De Klemm., (1999) "Wetlands, Water and the law", (Using Law to Advance Wetland Conservation and Wise Use), IUCN, p.8.

¹² Forest Mirror Journal, Forest Department, the Ministry of Environmental Conservation and Forestry, 2018, p.39.

¹³ The Convention on Wetlands of International Importance Especially as Waterfowl Habitat, 1971.

¹⁴ www.ramsar.org. > wetland > Myanmar.

Ramsar Criteria in Myanmar. Myanmar currently has 7 Ramsar Sites designated as Wetlands of International Importance (Ramsar Sites). The Moeyungyi Wetlands Wildlife Sanctuary in the Bago Region was designated as a Ramsar Site on May 22, 2004; the Indawgyi Wildlife Sanctuary in Kachin State was designated as a Ramsar Site in May 2016; the Meinmahla Kyun Wildlife Sanctuary in the Ayeyarwaddy Region was designated as a Ramsar Site on February 2, 2017; the Gulf of Mottama, Mon State, was designated as a Ramsar Wetland Site on May 8, 2017; Inlay Lake in Shan State was designated as a Ramsar Site on September 7, 2018; the Nantha Island and Mayyu Estuaries were designated as a Ramsar Wetland Site on May 22, 2020; and Pyu Lake in the Mandalay Region was designated as a Ramsar Site on February 2, 2014.

Although seven Ramsar Sites have been designated as wetlands of international importance, there are many wetlands that meet the Ramsar Criteria as wetlands of international importance in Myanmar.

Provisions for Inle Lake Preservation

Inle lake is a freshwater lake and it is including in the wetland types. And it has played an important role in the support and development of community. Threats are drainage for agriculture, settlements and urbanization, pollution and hunting. The Inle Lake Conservation Law and the National Wetland Policy were provided to preserve and protect the Inle Lake ecosystem. In addition, other related laws were enacted.

The government of Shan State passed its Inle Lake Conservation Law, which took effect on 19 December 2019. It aims to ensure that a good natural environment will be inherited by future generations and to sustain socioeconomic development in conformity with the Inle region. Its other purposes are to carry out a systematic cooperation administrative system; to conserve ancient pagodas, ancient buildings, and other ancient cultural heritage and literature; to promote conservation of the environment and biological diversity; to promote the sustainable multi-development of the Inle Lake area; and to elevate human resource's ability.¹⁵

The basic principles have been adopted by the government. They are implementation of the environmental policy and the implementation the water resources policy based on the Union Government's and Shan Governments' Policies; implementation of executive and management methods in conformity with the Inle Lake Region based on the methods of the all-round executive and management methods for lakes and their catchment areas.¹⁶

Moreover, UNESCO's Man and the Biosphere (MAB) management methods; implementation of policies in accordance with international agreements which are related to forest conservation, natural environment and biodiversity conservation; conservation of ancient heritage buildings, culture heritage and customs of the local people; carrying out measures to impose responsibility upon those responsible for the problems which cause pollution in the area; carrying out social-economic development with the participation of the local people and the development of human resources related to environmental management of the natural resources of the Inle Lake and the creation of employment opportunities based on the ecosystem.¹⁷

¹⁵ Section 3 of the Inle Lake Conservation law No.8 /2019.

¹⁶ Section 4, Ibid.

¹⁷ Ibid.

According to the Inle Lake Conservation Law, 2019, the governing body shall be screened for long term use of nature resources of Inle Lake before planning; shall cooperate with relevant department comply with applicable Laws by the land or water user to prevent the loss of natural resources; shall direct to control the inflow and outflow of the lake; shall designate environmental pollution standard that pollution arose from the industry, guest house, machinery, agricultural, industrial wastes by negotiate with the Government Department as well as take action in accordance with the existing Law; shall publish the regulations, notifications, prohibitions, directions, rules for carrying out of the sustainable development of Inle Lake for facilitating work; and shall inform to the public that the designated wetland as core zone, buffer zone and transition zone.¹⁸

If the case of any offense occurs in the Inle Lake Conservation Area, the governing body shall cooperate with the relevant departments for taking action in accordance with the existing law and regulations. This law does not explicitly describe penalties for violation of any offense. If the provisions of legal liability enacted in the Inle Lake Conservation Law, 2019, are followed, it will be more effective for wetland protection.

The National Wetland Policy was promulgated in 2019. The major goals of the National Wetlands Policy are to conserve wetlands and to promote their wise use to secure habitats for biodiversity as well as wetland benefits for human beings. This policy supports targets for protection, conservation, restoration, and sustainable use of wetlands to achieve the 2030 Agenda for Sustainable Development's goals of sustainable management of water and halting land degradation and biodiversity loss. In addition, the formation and implementation of the National Wetland Policy contribute to achieving the overarching goals and objectives of Myanmar's other environmental and natural resources-related policies.¹⁹

There are the related laws for Inle Lake conservation. They are the Penal Code, 1861; the Constitution of the Republic of the Union of Myanmar, 2008; the Myanmar Environmental Conservation Law, 2012; the Marine Fisheries Law, 1990; the Conservation of Water Resources Law, 2006; the Conservation of Biodiversity and Protected Areas Law, 2018; the Pesticide Law, 1990; the Fertilizer Law, 2002; and the Vacant, Fallow, and Virgin Land Management Law, 2018.

According to Section 188 of the Penal Code, 1861, it is provided that a person not following an order of a public servant who is legally permitted to give such an order shall be punished with imprisonment of description for a term that may extend to six months, or with a fine that may extend to one thousand rupees, or with both. In addition, whoever pollutes a spring or reservoir that is used for the public benefit will be punished with imprisonment for a term that may extend to 3 months or a fine or both under this Code.

Under the Constitution of the Republic of the Union of Myanmar, 2008, every citizen has the duty to assist the Union in carrying out the preservation and safeguarding of cultural heritage and environmental conservation.²⁰

¹⁸ Section 11 of the Inle Lake Conservation law No.8 /2019.

¹⁹ Myanmar National Wetland Policy and Strategic Actions, 2019.

²⁰ Section 390 of the Constitution of the Republic of the Union of Myanmar, 2008.

The Myanmar Environmental Conservation Law, 2012, provided that the authority shall carry out the conservation management, beneficial sustainable use, and enhancement of regional cooperation of the freshwater resources and marine resources.

In the Conservation of Biodiversity and Protected Areas Law, 2018, Section 3 provided that to protect geophysical unique areas, endangered wildlife and wild plants, and their habitats. According to Section 17 of this Act, the authority shall protect and conserve living organisms and their natural habitats.

The Conservation of Water Resources Law 2006 aims to conserve these water resources and river systems for beneficial utilization by the public. However, this law does not include inland water conservation. It addresses the lake derived from the rivers and creeks. Therefore, it is also protecting the lake by conservation of the rivers and creeks. Lake ecosystems are protected and conserved by the protection and prevention of their water resources. The loss of these water resources can be prevented by systematically extracting underground water, the conservation of catchment areas, and the systematic disposal of wastewater. Therefore, lake ecosystems and water resources are interdependent.

In the Pesticide Law, 1990, and the Fertilizer Law, 2002, the spraying of pesticides and fertilizers can be a cause of water pollution and impact others resources and human health. In this law, the user of pesticides or fertilizer shall follow use instructions shown on the label and shall follow the pesticide safe handling instructions of the authorities as well as comply with the directives of the authorities regarding the disposal of empty containers, wrappers, and packages of pesticides and fertilizer because they are impacted by wetlands by overusing them. Therefore, the Pesticides Law and the Fertilizer Law are also relevant laws for the Inle Lake conservation.

In the Myanmar Vacant, Fallow, and Virgin Land Management Law, 2018, the central committee shall work in coordination with the Ministry of Natural Resources and Environmental Conservation and other relevant ministries to conserve the natural lakes, watershed areas, natural lands, ponds, islands, and archipelago.

Preservation of the Inle Lake

Protection is to keep the Inle Lake's ecosystem safe, while preserving the lake ecosystem is to sustain its resources. The Inle Lake conservation was made with the Ministry of Environmental Conservation and Forestry, the state authorities, and village administrators with support from the Norwegian government.

Logging within the Inle Lake's watershed loosens the soil in the shrinking forests. The case for fuel-efficient stoves is strong. It reduces the use of wood, soil erosion, and sediment as well as polluting the air. Moreover, it preserves the water regime of the Inle Lake, which contributes to indigenous people. Unregulated and harmful fishing practices threaten the lakes' habitat. They decrease ecosystem productivity and adversely affect focal and other species. In an effort to address indiscriminate fishing practices all year round without a closed season, UNDP encourages the establishment of Fishing Free Zones in the lake. The boundaries of the zones are demarcated, and all fishermen are required to respect them. Local fishermen and local CBOs, which are concerned about the health of the lake's ecosystem, have been mobilized to patrol the zones. Encroachers are intercepted and handed over to the lake's administration. The

participation of government officials provides the patrols with the authority to arrest and fine perpetrators. Those penalties send a clear message that the FFZs need to be respected. A practical decision was made jointly by the local communities, the lake's administration, and the Department of Fisheries. The patrol is organized in shifts, and perpetrators are intercepted.²¹

The Farmer Field Schools training covered good agricultural practices. Moreover, bio-septic tanks are built for avoiding affecting the health of the village population and polluting the water in the lake, endangering its ecosystem. In addition, UNDP has partnered with the Innthar Literature, Culture, and Regional Development Association, an Indigenous community, to establish an Environmental Education Center to educate the population about the environment and the importance of sustainable use of resources.

Conclusion

The Inle Lake plays the crucial role in preserving the natural resources of Myanmar. There are many problems for the conservation of lake ecosystems. Under Shan State's Inle Lake Conservation Law 2019, the respective authority endeavors to control the drying up of water by reducing the agricultural land extension and human dwelling extension extremely; moreover, it seeks to restore the lake by seeking migrant farm system protection, constructing a siltation reservoir, controlling the flow of water, and conserving watershed areas and the lake ecosystem. Concerning penalties for violation of the offenses, the prohibition and the liabilities should be provided in this law in order to be effective protection. In this law, there should be a legal definition of what constitutes a lake based on geographical features of the state. The provisions of this law are very important for the Inle Lake, as it will be likely to dry up in the near future if it is not put under the control of a law in time. The enactment of this law is a major milestone for the long-term conservation and management of the Inle Lake. However, this law is local to the Inle Region. The specific law, therefore, should be adopted like in China (Taipei), where there is a specific law for wetland conservation. It is the Taipei Wetland Conservation Act, which was enacted in 2013. The Taiwan Wetland Conservation Act provided that an offender who violates it by disturbing, poisoning, hunting, abusing, or killing wildlife; logging; gathering; setting free captured animals; fishing; or hunting for biodiversity resources in the wetland area without permission from authorities shall be punished by a penalty of over 60,000 Taiwan dollars and up to 300,000 Taiwan dollars, and for causing wildlife to die, shall be punishable by a penalty of over 100,000 Taiwan dollars and up to 500,000 Taiwan dollars. The Act adopted those found to fall under the circumstances, which are not only subject to penal actions stipulated by four to eight hours of environmental education. The environmental education program was established by the competent government authorities. The law protects their wetland resources by strong enforcement and implementation of the regulations. It is not only providing an effective measure for the country but also protecting its wetland (lake) resources. The biggest challenges facing Inle Lake are a lack of awareness to understand the benefits of the lake and a lack of wise use of lake resources. Thus, the public shall participate in disclosing the lake resources information and increasing the awareness about wetland protection.

²¹ Ketevan Khurtsia., (2015) *Inle Lake Conservation and Rehabilitation (UNDP)*, p.8.

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LEGAL PROTECTION AGAINST CYBERBULLYING AND CYBER VICTIMIZATION

Ei Phyu Thin¹

Abstract

Cyberbullying and cyber victimization have emerged as significant issues in the digital age, affecting individuals across various age groups and geographic locations. This study examines the legal frameworks currently in place to address these issues, focusing on how laws can effectively protect victims and deter perpetrators. The research analyzes the existing legal protections under telecommunications, electronic transactions, criminal, and tort laws, highlighting their strengths and limitations. The findings suggest that while some legal measures provide a foundation for addressing cyberbullying, there is a critical need for more comprehensive and targeted regulations. The study also emphasizes the importance of integrating multi-modal approaches, including public education and international cooperation, to address the complex nature of cyberbullying and cyber victimization. The recommendations for future legal and policy developments aim to create a more robust framework to safeguard individuals in the online environment.

Keywords: Cyberbullying, cyber victimization, problematic internet use.

Introduction

Cyberbullying, which typically occurs on websites and social media platforms, can cause a range of problems for victims, including fear, sadness, anger, self-harm, academic failure, and low self-esteem. It is widespread among young people. Understanding the experience of cyberbullying and its potential negative consequences is crucial. Additionally, examining problematic internet use, which is believed to be related to cyberbullying and victimization, could provide deeper insights into the issue. Cyberbullying is a global public health concern with significant negative impacts on the physical and mental health of victims, as well as their overall well-being and academic performance. Myanmar is still in the early stages of developing its cyber law framework. Currently, protection against cyberbullying is provided under the Telecommunications Law and the Electronic Transactions Law, with additional, albeit indirect, protection through Criminal Law and Tort Law.

Research Methodology

This research employed a qualitative approach to gather and analyze information from various sources. It involved collecting legal data, including relevant provisions and commentary from Myanmar law, which are crucial for the study. The methodology included a thorough review and analysis of books, reports, legal texts, news articles, and other information from internet sources. This comprehensive examination of literature and legal documents provided the foundation for understanding and evaluating the subject matter of cyberbullying and cyber victimization.

Cyberbullying

Cyberbullying is a form of bullying that takes place over digital devices such as computers, smartphones, and tablets, using online platforms like social media, websites, messaging apps, forums, or gaming communities. It involves repeated, intentional actions aimed at hurting, humiliating, or threatening another person.

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Cyberbullying occurs through electronic communication tools, including text messages, emails, social media platforms (e.g., Facebook, Instagram, Twitter), and online gaming or forums. Similar to traditional bullying, cyberbullying is usually persistent. The bully repeatedly engages in harmful behavior over time. One key feature of cyberbullying is that perpetrators can hide behind anonymous profiles or fake accounts, making it easier for them to harass others without immediate consequences.

Unlike traditional bullying, which may occur in a limited, physical space, cyberbullying can reach a large audience quickly. A single post, comment, or photo can be shared widely, leading to greater humiliation and distress for the victim. Cyberbullying can occur at any time of day or night, meaning victims may feel there is no escape from the harassment, sending abusive or threatening messages repeatedly. Creating fake accounts to pose as someone else and harm their reputation or relationships, sharing someone's private information, photos, or secrets online without their consent, intentionally excluding someone from an online group, chat, or social activity, leading to social isolation, continuously sending intimidating or threatening messages, often escalating to real-world threats, posting deliberately inflammatory or off-topic messages to provoke emotional responses and disrupt online discussions, spreading false, damaging rumors about someone online, sharing intimate photos or videos without consent, often to embarrass or blackmail the victim.

Traditional bullying and cyberbullying are not the same. Differentiating between traditional bullying and cyberbullying involves understanding the mediums, methods, and contexts in which these forms of bullying occur. While both are harmful, they manifest differently in terms of how the bullying is carried out, where it happens, and the overall impact. Traditional bullying refers to direct, face-to-face aggression or harassment that typically occurs in physical settings, such as schools, workplaces, or communities. It involves repeated actions intended to harm, intimidate, or dominate another person.

Traditional bullying includes bullying that happens through in-person confrontations, where the victim and the bully are physically present in the same space. Traditional bullying can take several forms: physical bullying, verbal bullying, and social or relational bullying.

Relational or social aggression affects a person's social relationships, status, image, or reputation. It includes actions such as spreading rumors or embarrassing information, making rude or disrespectful gestures, cracking jokes to humiliate someone, mimicking unkindly, causing social isolation or exclusion, encouraging others to exclude someone, and damaging someone's social reputation or acceptance.²

Cyberbullying can occur through SMS, Text, and apps, or online in social media, forums, or gaming where people can view, participate in, or share content. Cyberbullying includes sending, posting, or sharing negative, harmful, false, or mean content about someone else. It can include sharing personal or private information about someone else causing embarrassment or humiliation. Some cyberbullying crosses the line into unlawful or criminal behavior.³

Direct cyberbullying occurs when the cyberbully "directs the electronic communications directly at the victim. It encompasses a cyberbully's use of instant messaging, text or multimedia messaging, or email intended to have a direct, immediate effect on the victim."⁸ Direct

² Willard, Nancy E. *Cyberbullying: Bullying in the Digital Age*. 2nd ed., Corwin Press, 2015. p.5.

³ <https://www.pacer.org/bullying/info/cyberbullying/>

cyberbullying is limited to the context where the cyberbully directs communications to the victim only, as opposed to communications that are posted to more public areas of cyberspace. Direct cyberbullying occurs in the private domain.⁴

Indirect cyberbullying occurs where the cyberbully “does not direct the electronic communication that constitutes the bullying at his or her victim directly. Instead, the bully posts them on MySpace, Facebook, a specially created Website or blog, or some other reasonably public area of cyberspace.” Public forums such as social media sites, blogs, Web pages, and video-sharing Web sites are obvious examples of platforms that fall within the public cyberspace arena. The concept of the public domain in cyberspace extends to situations where the victim has knowledge of multiple recipients being privy to personal communication transmitted via ICTs. The nature of this technology is such that the sender has no control over to whom the original communication is forwarded. Because multiple parties are directly privy to the original electronic communication, the communication has the potential to spread to an infinite audience. Thus, once any other recipient has access to the information, it should be considered material falling within the public arena.⁵

A cyber-attacker can be physically remote from the victim, being on the other side of the state, country, or world. Essentially, the unlimited geographical reach of the Internet means that online abuse differs from offline abuse in three important ways. First, online abusers can act cheaply and easily anywhere globally. While the second is the ominous privacy of the attacker's location, it makes the victim feel either proximate or most distantly close to the perpetrator. Finally, the jurisdictions enforcing laws and gathering evidence due to its global spread make legal issues challenging.

Therefore, cyberbullying is a harmful form of harassment that occurs through digital platforms, utilizing technology to target individuals with repeated, intentional acts of aggression, humiliation, or threats. Unlike traditional bullying, it can occur at any time and reach a wider audience, often leading to severe emotional and psychological effects on victims. The anonymity of the internet exacerbates the problem, making it harder to hold perpetrators accountable. However, through education, responsible online behavior, legal protections, and platform-based interventions, cyberbullying can be mitigated, helping to create safer digital spaces for all users.

The Causes and Harmful Effects of Cyberbullying

Cyberbullying is a very serious issue that impacts not only the victims but also their families, the perpetrators, and those who witness the instances of cyberbullying. The effects on victims can be particularly detrimental. They often experience a range of emotional issues that affect their social interactions, academic performance, and overall mental health.

The distinctive and extraordinary characteristics of the digital realm create a fertile breeding ground for aggression. From a psychological perspective, anonymity emboldens individuals, making them less apprehensive about consequences and discipline. When one believes that their identity is concealed, the sense of responsibility for their words often

⁴ Colette Langos, “Cyberbullying: The Challenge to Define”, Article in *Cyberpsychology, Behavior, and Social Networking* · June 2012, pp.286, <https://www.researchgate.net/publication/227162137>.

⁵ Colette Langos, “Cyberbullying: The Challenge to Define”, Article in *Cyberpsychology, Behavior, and Social Networking* · June 2012, pp.286, <https://www.researchgate.net/publication/227162137>.

diminishes. Within this virtual domain, freedom of expression takes on a transformative nature, resulting in relentless debates and the proliferation of hurtful language. When individuals recognize the exceedingly minimal cost associated with online aggression—virtually no financial repercussions and a limited likelihood of facing punishment—the inclination to engage in such behavior becomes more pronounced.⁶

Cyberspace gathers people from all over the world, which also means that netizens have the characteristics of diverse cultures, diverse beliefs, diverse languages, etc. In an environment where diversity is not limited, or in other words, cannot be limited, the dispute between different viewpoints is more likely to arise. This makes heated disputes inevitable; therefore having negative language contributes to cyberbullying.⁷

In certain cases, some individuals may not be fully aware that their actions contribute to cyber violence due to the ambiguous boundaries of such behavior. The way we define cyberspace and cyber violence plays a crucial role in shaping people's motivations to engage in these activities. When we define "cyberspace" as an electronic interactive realm crafted by information network technology, essentially an intangible "virtual society" distinct from the physical world, it becomes clear that the online conduct of netizens is primarily influenced by the moral dynamics within this virtual realm. However, if we fail to distinguish between the "network society" and the "real society," considering both as collections of individuals and viewing the Internet merely as one of the modern mediums for free speech, we can better understand that netizens' "violent" actions often stem from their pursuit of freedom of expression. In this context, their behavior can be seen as a reflection of their desire to exercise their right to free speech in a digital age.⁸

The impacts of cyberbullying can be severe, leading to:

- Emotional distress, anxiety, and depression.
- Low self-esteem and withdrawal from social activities.
- Academic problems in school-aged victims due to stress and distraction.
- Physical symptoms, such as sleep disturbances or health issues caused by ongoing stress.
- Self-harm or suicidal thoughts, especially in severe cases of online harassment.

Many cyberbullies hide behind fake profiles or anonymous usernames, making it harder to hold them accountable. This perceived invisibility can embolden individuals to behave aggressively or maliciously online without fear of immediate repercussions. Unlike face-to-face bullying, where the bully may see the immediate reaction of their victim, cyberbullies don't directly witness the emotional or psychological effects of their actions, making them more detached from the harm they cause. Some cyberbullies seek to assert dominance or gain a sense of power over others. They may bully others online to feel superior, especially if they feel powerless in other areas of their lives. Sometimes, cyberbullying can become a group activity, where individuals join in or encourage the bullying to fit in or avoid being targeted themselves.

⁶ Liang, Xuanlin. "The Cause and Influence of Cyberbullying." *Journal of Education, Humanities and Social Sciences*, vol. 26, 2024, pp. 662. Shenzhen College of International Education, Shenzhen, China.

⁷ Liang, Xuanlin. "The Cause and Influence of Cyberbullying." *Journal of Education, Humanities and Social Sciences*, vol. 26, 2024, pp. 663. Shenzhen College of International Education, Shenzhen, China.

⁸ F. Jiang, "'Cyberviolence': Concept, Root Causes and Responses - An Analytical Perspective Based on Risk Society," a.xueshu.baidu.com, 2011.

Cyberbullying can be driven by envy, where individuals feel jealous of their victim's success, appearance, popularity, or social status. They may attempt to undermine or harm the victim by spreading rumors, posting hurtful content, or publicly humiliating them. Individuals who feel wronged or slighted by someone may turn to cyberbullying as a way to seek revenge. They may use online platforms to shame, harass, or publicly attack the person they feel has harmed them. Online environments can sometimes reduce empathy, as communication through screens is less personal than face-to-face interactions. This emotional detachment may make it easier for some people to engage in hurtful behavior without considering the consequences for the victim.

Exposure to negative or toxic behavior on social media, reality TV, or online platforms can normalize bullying behavior. When people see others bullying without consequences, they may feel that such behavior is acceptable or even expected in certain social circles. Adolescents, in particular, may participate in cyberbullying to gain approval or acceptance from their peers. They might join in online bullying to avoid being ostracized or to boost their own social standing. Some individuals engage in cyberbullying simply out of boredom. In an environment where there is little adult supervision, young people might turn to bullying as a form of entertainment or a way to pass the time.

Cyberbullying can have severe emotional, psychological, and social consequences for victims. Unlike traditional bullying, its impact can be amplified by the reach and permanence of the digital space. Victims of cyberbullying often experience increased levels of anxiety and depression. Constant exposure to hurtful messages, rumors, or threats can lead to persistent feelings of sadness, worthlessness, or hopelessness. Repeated online attacks on someone's character, appearance, or abilities can severely damage their self-esteem, making them doubt their worth and capability. In extreme cases, cyberbullying has been linked to suicidal ideation and suicide attempts. The relentless nature of online harassment can push victims to feel that there is no escape, leading them to consider taking their own lives.

Cyberbullying can make victims feel unsafe or unwelcome in online spaces and social gatherings. As a result, they may withdraw from social interactions, both online and offline, leading to feelings of isolation. Victims might feel ashamed or embarrassed about what is being said about them online, causing them to avoid friendships, social activities, or even going to school or work. Cyberbullying can strain friendships and relationships. Victims may distance themselves from friends or family out of fear that they will be judged, or because the cyberbullying is linked to social group dynamics.

Victims of cyberbullying often struggle to concentrate in school, leading to a decline in academic performance. They may skip school out of fear of facing their bullies or feeling too distressed to focus on their studies. In severe cases, cyberbullying can lead to truancy or dropping out of school entirely. Similarly, in the workplace, employees may take more sick days or quit their jobs due to the stress caused by cyberbullying. Some victims turn to drugs or alcohol as a way to cope with the emotional pain caused by cyberbullying. Substance abuse can further complicate their mental and physical health. Victims of cyberbullying may experience difficulty sleeping due to stress, anxiety, or fear of encountering more bullying. This can lead to insomnia, nightmares, or poor sleep quality. The emotional toll of cyberbullying can manifest in physical symptoms, such as headaches, stomachaches, or fatigue. The constant stress can weaken the immune system, making victims more susceptible to illness.

Cyberbullying often involves spreading false information, rumors, or embarrassing photos or videos that can damage a person's reputation. This can be especially harmful when content is shared widely and cannot be easily erased. Negative online content can affect future opportunities, such as college admissions, job prospects, or social relationships. Employers and educational institutions may come across harmful or untrue information about the victim during background checks.

Cyberbullying is a pervasive and harmful form of bullying that thrives in the digital age, where anonymity, vast reach, and a lack of accountability make it more insidious than traditional bullying. The causes of cyberbullying range from a desire for power and control to envy, revenge, and the negative influence of media and social norms. Its harmful effects extend beyond immediate emotional distress, leading to long-term psychological issues like anxiety, depression, and even suicidal thoughts. Social isolation, work performance, and physical health problems are also common among victims, highlighting the far-reaching impact of cyberbullying. Unlike traditional bullying, the digital footprint left behind by cyberbullying can haunt victims indefinitely, damaging their reputations and limiting future opportunities. Addressing cyberbullying requires increased awareness, stronger online regulations, and the promotion of empathy and responsible behavior in digital spaces. Victims need access to support systems to help them recover from the emotional and psychological harm caused by this form of abuse.

Protection of Cyber Victimization

Protecting individuals from cyber victimization involves a combination of legal, technological, educational, and support measures. Develop and implement specific laws that address various forms of cyberbullying and online harassment. Current laws need to cover online offenses more explicitly, including harassment, defamation, and intimidation. Ensure laws clearly define cyberbullying, online harassment, and related offenses. Create accessible and confidential channels for reporting online abuse and enhance the capacity of law.

Current criminal laws, including those targeted specifically at online conduct, fail to comprehensively deal with today's cyberbullying. Existing disharmonized state laws cannot effectively deter conduct that typically crosses state or national borders. Criminal law shares with civil law the shortcoming that victims are forced to relive the humiliation, embarrassment, shame, and fear attached to the defendant's conduct on the public judicial record. Closed criminal trials may be preferable in particularly sensitive cases. Absent effective privacy protections, victims of online abuse may be reticent to make complaints or to give evidence in court.⁹

Both criminal and civil processes often exacerbate the trauma for victims. Trials, by nature, involve making details public, which can be retraumatizing for victims of cyberbullying who already experienced humiliation online. This public exposure can lead to secondary victimization, as victims are forced to relive the abuse.

When studying the Electronic Transactions Law (2004) provides that "This Law shall apply to any person who commits any offence actionable under this Law within the country or

⁹ Smith, John. "Cyberbullying and Legal Challenges." *Journal of Cyber Law* 12 (2022): 40-60

from inside of the country to the outside of the country, or from outside of the country to inside of the country by making use of the electronic transactions technology.”¹⁰

This law ensures that cross-border electronic crimes, including cyberbullying and online fraud, are subject to legal accountability under the law, addressing the challenges of enforcing digital conduct across national boundaries.

The Electronic Transactions Law 2004 stated in Chapter XII in respect of Offences and Penalties: “Whoever commits creating, modifying or altering of information or distributing of information created, modified or altered by electronic technology to be detrimental to the interest of or to lower the dignity of any organization or any person shall, on conviction be punished with imprisonment for a term which may extend to 5 years or with fine or with both.”¹¹

Also the Telecommunications Law 2017 “Whoever commits extorting, defaming, disturbing, or threatening to any person by using any telecommunications network shall, on conviction be punished with imprisonment for a term not exceeding two years or with a fine not exceeding one million kyats or with both.”¹²

This provision strengthens the legal framework against online abuse, providing specific consequences for those who misuse digital communication platforms to harm others.

A notable case involved journalist Swe Win, who was charged with defamation after making critical remarks about a prominent Buddhist monk on social media. His case drew international attention due to concerns about freedom of speech and the use of the law to suppress dissent and critical voices. Swe Win faced imprisonment, although the case was later dropped in 2020 after prolonged legal battles.

Another example is the case of Maung Saungkha, a poet and activist who was imprisoned in 2016 under Section 66(d) for defaming the president of Myanmar by posting a satirical poem on Facebook. This case raised questions about the balance between free speech and the use of telecommunications laws to protect public figures from criticism.

Both cases illustrate how the Telecommunications Law has been applied to penalize individuals using online platforms to allegedly defame or criticize others, sparking debates about its potential to stifle freedom of expression.

In Cyber Security Law 2025, “Any person convicted of having with dishonest intention committed or having with dishonest intention caused another person to commit any of cheating using cyber resources or electronically creating, modifying or altering information to harm another person or degrade his reputation, or electronically distributing such data shall be punished with imprisonment for a term of not less than 1 year and not more than 2 years, or with a fine of not less than MMK 5,000,000 and not more than MMK 20,000,000, or with both”.¹³

To constitute a crime, cyberbullying must involve intentional, knowing, or reckless behavior aimed at causing harm, distress, or fear to another person. This distinguishes deliberate online harassment from accidental or careless conduct. For instance, intentionally sending threatening messages, spreading false rumors, or sharing private information to humiliate

¹⁰ Section 4(b) of the Electronic Transactions Law, 2004.

¹¹ Section 34(d) of the Electronic Transactions Law, 2004.

¹² Section 66(d) of the Telecommunications Law, 2017.

¹³ Section 68 (e) & (f) of the Cyber Security Law, 2025.

someone clearly demonstrates criminal intent. Thus, criminal intent serves as the foundation for distinguishing punishable cyberbullying from protected online expression, ensuring accountability for those who knowingly exploit digital platforms to inflict psychological harm.

It involves the intentional use of technology—such as social media, messaging platforms, or email to threaten, humiliate, or emotionally harm another person. Many jurisdictions have enacted laws to criminalize such behavior, acknowledging that online abuse can lead to severe psychological trauma, social isolation, and even suicide. For example, in the United States, numerous states impose criminal penalties for willful online harassment or intimidation, while in the United Kingdom, the Malicious Communications Act 1988 and the Communications Act 2003 prohibit sending threatening or grossly offensive messages. Similarly, other countries, including Australia and India, treat cyberbullying as a punishable offense under their cybercrime or electronic communications laws. Cyberbullying is recognized as a serious crime due to its harmful impact on victims a

Some states have enacted laws targeted specifically at online conduct. This legislative approach fails to cover many prominent online cases of abuse. Online conduct will not amount to detaining or restraining the personal liberty of the victim. When a perpetrator is pretending to be another person, he is in a sense communicating about that person because anything he does in the guise of the victim indirectly communicates his views be they true or false about the victim. However, this conduct is not the same as writing something about the victim in the third person. A court might hold that the legislative intent of the statute was limited to comments about the victim made by a person other than the victim, rather than comments made in the guise of the victim.¹⁴

In law, defamation is an act of communication to a third party a false statement about a person, which causes damage to that person's reputation.

“Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person”.¹⁵

In South Korea, cyberbullying targeting high-profile celebrities is a serious problem, with several stars tragically taking their own lives due to online harassment. The devastating impact of cyberbullying often starts with just a few keystrokes, and many still recall the lives lost because of this harmful behavior. Social media users frequently label online abuse as "toxic," condemning the attackers for "hiding behind the keyboard." Unfortunately, this is not the first instance where a celebrity's suicide has drawn attention to the issue of cyberbullying in the country.

Cyberbullying can be considered a tort, which is a civil wrong that causes harm to another person. Even without specific laws, the actions taken during cyberbullying can be against the law and have their devices taken away, and may even have to pay their victims. The acts that underpin the cyberbullying might as well mean a traditional common law of tort regardless of whether they originated from online communication. Attention has focused so far on criminal law, tort law, and to some extent, civil rights law.

¹⁴ Jacqueline D. (2014). *Combating Cyber-Victimization, Case Western Reserve University School of Law*.pg-17.

¹⁵ Section 499 of the Penal Code, 1861.

Under tort law, cyberbullying may fall within categories such as defamation, invasion of privacy, or intentional infliction of emotional distress. For instance, spreading false information online that damages a person's reputation may constitute defamation, while publicly sharing private photos or messages without consent can amount to a violation of privacy. Even when the conduct does not meet the threshold of a criminal offense, victims of cyberbullying can pursue civil actions to obtain compensation or injunctions to prevent further harm. Courts in various jurisdictions have acknowledged that the emotional and reputational damage caused by online harassment is comparable to traditional tortious acts.¹⁶

By emphasizing that cyberbullying actions can lead to legal consequences, it underscores the potential for victims to seek redress through civil litigation, even in the absence of specific anti-cyberbullying laws. The reference to common law tort principles indicates that traditional legal frameworks can still apply to online behaviors, reinforcing the idea that harmful actions, regardless of their medium, can have serious legal implications.

Effective legal reform requires both national and international collaboration, combining criminal law with privacy protections and measures that account for the unique nature of online behavior. Legal frameworks must adapt to the speed and scope of digital interactions, and privacy protections for victims must be central to any reform to ensure justice without further victimization.

Suggestions

Cyberbullying and cyber victimization have become significant concerns in the digital age, raising questions about the adequacy of existing legal protections. The increasing prevalence of harmful online behavior calls for a comprehensive examination of the legal frameworks in place to safeguard victims. Current laws often fall short in addressing the unique nature of cybercrimes, particularly when it comes to the anonymity of offenders and the cross-border nature of the internet. A critical analysis of these legal protections is essential to identify gaps and propose necessary reforms. Strengthening legal mechanisms, enhancing enforcement, and promoting international cooperation are important steps to ensure victims of cyberbullying receive the justice and protection they deserve. This research aims to evaluate the effectiveness of existing legal frameworks and offer recommendations for improving the protection of cyber victims in the evolving digital landscape.

Conclusion

Cyberbullying refers to bullying that takes place via electronic communication devices, including cell phones, computers, social media, and other online platforms. Cyberbullying can affect anyone and may lead to severe health consequences such as the onset or worsening of mental health conditions, sleep disturbances, or even suicidal thoughts and self-harm. While there are laws aimed at preventing cyberbullying, it is important to recognize and address it when it occurs. Current legal frameworks primarily focus on criminal law, tort law, and, to some degree, the Electronic Transactions Law and Telecommunications Law. This paper proposes updates to these laws to enhance their effectiveness in tackling online abuse and suggests future regulatory directions or special law for cyberbullying is required. Additionally, developing extra-legal strategies offers the benefit of minimizing the time and financial burdens on victims.

¹⁶ Citron, D. K. (2014). Hate crimes in cyberspace. Harvard University Press. pg-123

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A LEGAL STUDY ON SETTLEMENT OF MATRIMONIAL DISPUTES UNDER KACHIN CUSTOM AND TRADITION

Su Lae Win¹

Abstract

This research aims to analyze the settlement of matrimonial disputes by Kachin custom and tradition, which has been rooted since the old days. In deciding their matrimonial disputes, Kachin referred to the *Salangs* (elders). The opinions of *Salangs* (elders) with regarding to the settlement of disputes were respected and followed among the disputants. The principles and opinions of the council of *Salangs* (elders) are gradually developed into Kachin custom and tradition up to present time. Settlement of matrimonial disputes under Kachin custom and tradition is immemorial, reasonable and not opposed to the natural justice. No one can deny that the source of customary law is the common custom of people. Hence, the court should take Kachin custom and tradition into consideration in deciding the matrimonial disputes between Kachin.

Keywords: Kachin, matrimonial disputes, custom and tradition.

Introduction

Kachin is an ethnic group and lives mostly in the northern part of Myanmar, in Kachin State. In Myanmar, each race has its own custom and tradition that governs their day to day relationship with one another. In fact, customs play a primary source of law because the personal laws in Myanmar are mainly based on ancient custom. Although there is no written historical record as a treatise with regard to Kachin custom and tradition, there is a strong memory among the member groups. It is because their custom and tradition are handed over in a verbal form from generation to generation. Section 13(1) of the Myanmar Laws Act (1898) provides that the marriage law has been based on the respective religion. Therefore, the Kachin matrimonial custom who professes in Christianity has been confused with the statutory laws relating to marriage and divorce. This research is to explore the settlement of matrimonial disputes by Kachin traditional means between Kachin who profess Christian and live in Kachin State. The research questions are (1) How Kachin custom and tradition are evolved? (2) Was settlement of matrimonial disputes under Kachin custom ancient, reasonable, in conformity with natural justice and not oppose to the public interest?

Material and Method

This paper uses a qualitative research design and explores Kachin custom with regard to the settlement of matrimonial dispute, judicial decisions and non-judicial decisions but prominent cases. Interviews with selected Kachin who get through or understand the custom well become an important matter in tackling research problem.

Findings

This research finds out that Kachin custom and tradition primarily based on long established custom. The traditional elders aim to conciliate and to reestablish a peaceful relation between the disputants. Moreover, this research indicates that settlement of matrimonial disputes under traditional means is more speedy and flexible than by court because it can be done without

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struggling and wasting time. In addition, it will further help to maintain their dignity as well as to restore peaceful relationship between the disputants. This research illustrates that settlement of matrimonial disputes under Kachin custom and tradition is fairness and not oppose to natural justice. Hence, dispute settlement by Kachin traditional means is in line with the Latin maxim 'Ubi jus ibi remedium.' This research shows that the traditional elders can adjust the amount of compensation based on the prosperity of the parties concerned. In addition, it is learnt that the aim of dispute settlement by Kachin traditional means is consistent with the Myanmar judicial maxim 'to make bigger case smaller and to make smaller case disappear.' Hence, settlement of matrimonial disputes under Kachin custom and tradition is reasonable.

Evolution of Kachin Custom and Tradition

Hanson stated that Kachin custom and precedent as handed down by tradition and interpreted by the chief and village council comprises the recognized law. Each case was decided on its own merits, but there were recognized rules to follow, and a generally accepted measure of punishments or compensation.² This proves that Kachin has had its own custom and tradition for the settlement of dispute as well as the amount of compensation since earlier times.

Trial by Ordeal

Carrapiett described that the form of ordeal practiced by Kachin. When going through the ordeal, each man was required to take the customary Kachin oath that 'may I be eaten by a tiger or die some other violent death' which had to stamp heavily on the ground with his right foot.

Carrapiett noted that the parties were sent into the jungle to cut down bamboos which contained water. Having done so, the bamboos were brought to the site of ordeal and cut open. The water from the bamboos was put, part into the pot and part into two hollow bamboos. Three fires were then started, one at each angel of a triangle. The pot of water was placed on the fire at the apex and left to boil. In it was a piece of lead. On the other fires which were about two feet apart were placed the bamboos. When the water boiled, the disputants were required to walk first one, and then the other, between the bamboos whose mouths were pointing towards each other. From the bamboos, drops of boiling water sputtered forth but did not scald the innocent man's legs. Having passed the bamboos both men were required to dip their hands into the boiling pot and took out the piece of lead. He who was innocent escapes scalding.³

According to personal communication, the interviewee said that the form of oath could be made by placing a sharp sword above one's head, blade facing downwards, and calling upon some great accident or calamity to befall one if lying.⁴

There are also other variations. Both parties placed some uncooked rice in a leaf and tied it into a packet. Each packet was marked clearly for identification. The parties placed these packets simultaneously into a pot of boiling water. After a sufficient interval, each party simultaneously took out his packet by means of a piece of bamboo. The packets were opened. He whose packet contained rice grains which stick, because of imperfect cooking, was declared the loser.⁵

² Hanson, Ola., (1913) *The Kachins: Their Customs and Traditions*. American Baptist Mission Press, Rangoon, p. 65.

³ Carrapiett, W.J.S., (1929) *The Kachion Tribes of Burma: For the information of Officers of the Burma Frontier Service*. Govt Printing and Stationary, Burma, p. 71.

⁴ Personal interview (Myitkyina, Kachin State, 9 January 2019).

⁵ Carrapiett, W.J.S., (1929) *The Kachion Tribes of Burma: For the information of Officers of the Burma Frontier Service*. Govt Printing and Stationary, Burma, p. 71.

A piece of lead was placed in a pot over a fire till it became molten. Each party took the customary oath, and was required to insert a stalk of *Hkundu* grass into the molten lead. He whose grass the lead sticks was declared the loser.⁶

Hanson also noted the other ordeal form that an egg was broken and defendant dipped the end of a stalk of elephant grass into the yolk; if any of the yellow adhered to the grass, he was guilty. If not, he was innocent. Sometime, the *Dumsa* (priest) conducted the proceeding. The contending parties sat facing each other with a long pole in his hand. The priest reciting his incantations implored the *Nat* of thunder to indicate the guilty. As he finished, the lightning, it might be from a perfectly clear sky, would strike out and killed the offender on the spot. According to water test, the accused and his friends stood on the side of a river and the accuser and his party stood on the opposite. Cattle, money or household goods were brought forth, and in the presence of witness, it was agreed that if the accused was proved innocent, his accuser must deliver all they had brought to him. If the opposite proved to be the case, he must lose all on his side. After due the ceremonies of the priest, the chief parties from both sides went down into the stream. The guilty found it impossible to put his head under the water, while he did it with ease if innocent.⁷

George Scott noted that a *Dumsa* (priest) was summoned and went to the jungle with his dah. After invocation, he cast this from him at random. The dah, which had become endued with supernatural power, hit a bamboo which, when it was cup open, was found to contain about a cup full of water. The water was put in a large pot over a fire and when it boiled, the accused had to put his hand into it. If he was innocent, he suffered no hurt.⁸ The foregoing points prove that Kachin tradition and Burmese (Myanmar) tradition are similar in that where there were no witnesses in cases, the parties might submit to trial by ordeal.

Dispute Settlement by Conciliation

With regard to dispute settlement in Myanmar, Dr. Than Tun noted the royal order which was issued by King Badon that 'mitigate the big case and forget the small one'.⁹ Hence, it can be construed that the main purpose of Myanmar judicial system is to mitigate the major case and cease the minor case among the disputants.

There is Myanmar maxim that *Dhammathat* was overruled by *Yazathat* and *Yazathat* was overruled by agreement.¹⁰ Hence, it can be construed that if the agreement was reached by conciliation, it would be legally binding between the disputants.

With regard to dispute settlement by conciliation, Hanson noted that any Kachin who wished to institute a suit should approach the nearest elder by word of mouth or by giving a present of liquor or by providing some presents. There was not expressly provided judge or no

⁶ Ibid.

⁷ Hanson, Ola., (1913) *The Kachins: Their Customs and Traditions*. American Baptist Mission Press, Rangoon, p. 143.

⁸ George Scott, J., & Hardiman, J.P., (1900) *Gazetteer of Upper Burma and The Shan States*. Part I, Volume I, Government Printing, Burma, p. 427.

⁹ Than Tun, Dr., (1989) *The Royal Orders of Burma A.D 1958-1885*. Part Nine, The Center of Southeast Asian Studies, Kyoto University, Kyoto, p. 275.

¹⁰ Aung Than Tun, ခေတ်လေးခေတ်မြန်မာ့တရားဥပဒေ [*Myanmar Law in Four Eras*] Kalaung Pyan Press, Yangon, 1968, p. 94.

court under Kachin customary law.¹¹ This proves that the dispute settlement by conciliation under Kachin custom and tradition has been practiced since ancient times. This fact made the British Government to uphold Kachin custom as Kachin customary law.

Leach also stated that Kachin idea was that disputes were settled by arbitration rather than arbitrary judgment. A lawsuit involved a debt and the settlement of debt was a matter for the *Kasa* (intermediaries) of the disputing parties. The judicial body of a village was a body of arbitrators rather than a bench of magistrates; its functions was to give a ruling as to what would be a fit and proper settlement of the issue in dispute.¹²

With regard to punishment for offences, Carrapiett noted that under Kachin custom and tradition, the punishment of whipping, imprisonment or death was never imposed by a *Duwa* (chief).¹³ Tegenfeldt also described that for every type of wrongdoing, compensation in terms of cattle or goods was the acceptance method of settlement.¹⁴

With regard to payment of compensation, Kawlu Ma Nawng stated that if the whole compensation was not paid up after the expiry of a year and the performance of the final peace ceremony, any remaining articles could be demanded slowly from the children or grand-children in the course of generations.¹⁵ Hence, it can be said that the aggressor as well as his family members are bound to pay compensation to the aggrieved family.

With regard to an appeal, Hanson also noted that the decisions of the chief and his adviser were just and equitable. If the parties concerned considered it unjust, they could appeal to the public to reconsider of the whole case.¹⁶ Hence, it can be said that the main purpose of Kachin custom and tradition is to achieve harmony and restore peaceful relationships among the disputants.

Hanson also noted that when the agreement was reached between the disputants, the contending parties ate and drank together, dipped their sword in the blood and took an oath that there was eternal peace between them. The losing side had to pay for the feast and there was a special bullock sacrificed by the *Padang nga* (winning side), to announce the joyous fact that they had been victorious.¹⁷ Hence, it is learnt that Kachin custom and tradition primarily based on long established custom.

Due to the influence of the British rule, there were some political, legal and social changes. The Penal Code (1860), the Evidence Act (1872) and the Criminal Procedure Code (1898) were applied to the upper Burma. In the social sphere, Indian Christian Marriage Act (1872) and Indian Divorce Act (1869) were extended to the members of hill-tracts in the Bhamo

¹¹ Hanson, Ola., (1913) *The Kachins: Their Customs and Traditions*. American Baptist Mission Press, Rangoon, p. 64.

¹² Leach, E.R., (1964) *Political System of Highland Burma: A Study of Kachin Social Structure*. The Athlone Press, London, pp. 184 and 185.

¹³ Carrapiett, W.J.S., (1929) *The Kachion Tribes of Burma: For the information of Officers of the Burma Frontier Service*. Govt Printing and Stationary, Burma, p. 30.

¹⁴ Tegenfeldt, Herman, G., (1913) *A Century of Growth: The Kachin Baptist Church of Burma*. William Carey Library, United State of America, p. 43.

¹⁵ Ma Nawng, Kawlu., (1944) *The History of the Kachins of the Hukaung Valley*. tr J.L. Leyden, Time of India Press, Bombay, p. 72.

¹⁶ Hanson, Ola., (1913) *The Kachins: Their Customs and Traditions*. American Baptist Mission Press, Rangoon, pp. 69 and 70.

¹⁷ Ibid.

and Myitkina District. The rules regulating the procedure for the trial of suit and other proceedings of civil nature entered into force in Kachin Hill.¹⁸

With regard to civil cases, if the disputant parties are members of a hill-tribe subject to the jurisdiction of the same headman, the main principles to observe in all civil cases are that no complicated procedure is necessary. In such a case, the Civil Procedure Code (1909) is not required and cases should possible be settled by the headmen and elders or by agreed arbitrators. If all the parties are members of hill-tribes subject to the jurisdiction of the different headman, the officer receiving the complaint should summon the parties and their headmen for the appointment of arbitrators. If one or more or even all the parties do not belong to a hill-tribe, the case must be tried by a regular court. The officer shall examine witnesses on oath and pass orders with his discretion.¹⁹ It is remarkable that during the British administration, the village headman as well as elders or agreed arbitrators could settle all civil cases in accordance with Kachin custom and tradition.

On 4 January 1948, the Union of Myanmar regained her independence from the British. According to the Constitution of the Union of Burma (Myanmar) 1947, the territory known as the Myitkyina and Bhamo District shall form a constituent unit of the Union of Burma (Myanmar) and be hereafter known as the Kachin State.²⁰ The President of the Union of Myanmar announced that Kachin includes Jinhaw, Atzi, Lashi, Maru, Yawyin (Lisaw) and Nung (Hkanunk, Rawang).²¹

A landmark challenge on Kachin matrimonial custom was initiated with the British Act, which directed the courts to award the personal matters in accordance with the personal law of the parties depending on their religion. One of these kinds of Act is the Burma (Myanmar) Laws Act (1989). Section 13(1) of the Myanmar Laws Act (1898) provides that the marriage law has been based on the respective religion. Therefore, the Kachin matrimonial custom who professes Christianity has been confused with the statutory laws relating to marriage and divorce.

The word 'customary law' means law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and belief that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws.²² Accordingly it can be said that although the customary law is based on a good ancient custom, every custom will not be a legal custom or customary law.

In the landmark case of *the Union of Myanmar v Nawkhun Zaw Bar*,²³ the term customary law was interpreted by the learned judge, Dr. Maung Maung that every customary law comprises the principles of justice and subtle. In addition, the Court highlighted the vital role of customary law. If the custom having been continuously observed for a long time to maintain security and peaceful relationship, it would obtain the force of law in the State. Every law is powerful if it is embodied in minds of humans. Therefore, the well-known customary laws which are naturally accepted by humans are more powerful than the laws. The case already mentioned proves that if the customs are reasonable and aim to maintain peaceful relationship, no one can deny the crucial

¹⁸ *The Kachin Hills Manual*, (1959) Supt, Govt. Printing and Staty, Union of Burma, Rangoon, pp. 14-15, 25-27, 96.

¹⁹ *The Kachin Hills Manual* (1959) Supt, Govt. Printing and Staty, Union of Burma, Rangoon, p. 187.

²⁰ The Constitution of the Union of Burma (Myanmar) 1947 s 6.

²¹ The Burma Gazette Extraordinary 1955.

²² Black's Law Dictionary (9th edition, 2009) 'customary law'.

²³ (1966) B.L.R (C.C) 1417.

role of tradition and custom. In this case, the court also emphasizes the principle of Myanmar judicial system, 'mitigate the big case and dismiss the small one.'

In *Sarael and 7 others v The Union of Myanmar*,²⁴ the court decided that the obsession cannot be said as a customary law even though such obsession is known as the customary law of particular group. All the customs cannot have the force of law because the courts will not enforce the unreasonable custom. The custom will be obtained the force of law where the rule has been used from time immemorial, is reasonable and not opposed to enactment of legislature. This case shows that the courts never recognize the local customs which are contrary to the statutory law as well as opposed to the natural justice.

According to Salmond, the local custom may be valid and operative as a source of law it must conform to certain requirements laid down by law. These are (i) reasonableness, (ii) conformity with statute law, (iii) observance as of rights and (iv) immemorial antiquity.²⁵

In 1973, Kachin State Cultural Department codified the rules which so called *Kachin Dhale Phyat Htone* (Kachin Custom and Precedent). This codification provides not only for the marital custom but also for the scale of compensation for each dispute.²⁶ According to *Kachin Dhale Phyat Htone* (Kachin Custom and Precedent), anyone can verbally file a suit to *Salang* (traditional elder). The disputants can select the influential elders to form the traditional judicial committee. Before making the decision, the committee investigates the fact of the case and makes an oral contract between the disputants that they will accept the decision of the traditional committee. When the agreement is reached, both parties will drink liquor and exchange gifts as a sign of peaceful relationship between them.²⁷ It is notable that Kachin matrimonial custom and tradition has also taken rooted since the early days and is still binding upon the person concerned. Accordingly, it can be said that the traditional judicial committee is the *ad hoc* decision making committee.

In 2017, a case was filed by a girl for the damages of her pregnancy to the Judicial Committee of Kachin Culture and Literature Association (*Kachin Yoyar Yone*).²⁸ In this case, the boy did not take responsibility when the girl told that she was conceiving a baby. He gave some medicines to abort her pregnancy. Even though the girl did not take the pill, she aborted, unfortunately. The boy admitted in the presence of the elders that they lived together; however, he never gave a love-letter and said anything about his love. The elders pointed out that the act of that man was a great wrong. Finally, the elders held that the man was ordered to pay 6 lakhs as compensation to restore her reputation, to make blessing and to end the suit. This case also shows that settlement of matrimonial disputes by Kachin traditional means is still applicable up to the present time because it is more flexible and speedy than court. This case also illustrates that the man is bound to pay compensation for his willful misconduct. Hence, it is notable that Kachin

²⁴ (1968) B.L.R (S.C.C.A.C) 1.

²⁵ Salmond, (1957) *Salmond on Jurisprudence*, Sweet & Maxwell, Limited 2 & 3 Chancery Lane, 11th edition, pp. 241-244.

²⁶ ကချင်လေ့ဖြတ်ထုံး (1973) [*Kachin Custom and Precedent*]. Kachin State Culture Series 1, Kachin State Culture Section, Department of Culture Shrine, Yangon.

²⁷ ကချင်လေ့ဖြတ်ထုံး (1973) [*Kachin Custom and Precedent*]. Kachin State Culture Series 1, Kachin State Culture Section, Department of Culture Shrine, Yangon, pp. 1 and 2.

²⁸ Decision by Judicial Committee of Kachin (Jinphaw) Culture and Literature Association, Myitkyina, (10 February 2017).

custom and tradition is in line with the Latin maxim ‘*Ubi jus ibi remedium*’ which means that there is no wrong without a remedy.

In the case of *Wa Yot Yaw v Faw Sone Htu*,²⁹ the appellant (husband) pleaded that he was an aggrieved one because the respondent was committing adultery with his wife. The appellant (husband) did not want to continue their marriage life, and he wanted to get back all the traditional bride price and the marriage feast, which cost him for the marriage ceremony. The wife admitted that having been guilty of adultery. In the presence of traditional committee, the appellant (husband) asked for compensation to the respondent, such as one elephant, one gong with ten spans, one gun, six *pasos*, one cote, one blanket, two pigs and fifty kyats for marriage feast. In this case, the elders pointed out that the adultery by wife was clear. Then, the elders conciliated the amount of compensation. The appellant asked for a cow to wash his face (which means to restore his reputation). Finally, the elders came to the conclusion that the respondent was ordered to pay one elephant, one gong with ten spans, one gun, six *pasos*, one coat, six blanket, two pigs, marriage feast and one cow. This case illustrates that although the adultery is a criminal offence and is punishable by the Penal Code (1861), the parties concerned can settle by conciliation to make the divorce and to pay the compensation to the aggrieved one. This case affirms that the settlement of matrimonial disputes by Kachin traditional means is consistent with the Myanmar judicial maxim ‘mitigates the big case and forgets the small one.’

One of the cases,³⁰ the applicant (wife) asked for a divorce to the Kachin traditional judicial committee on the ground that she could not live together her sister-in-law (her husband’s elder sister) in the same house. Then, she said that if she lived together with her, her marriage life would be ended. The respondent (her husband) contended that it was not possible to live separately because his elder sister was a sick one and he was the only person to care for her. He also urged that if his wife could not live together his elder sister under the same roof, it would lead to divorce between them. Finally, the traditional judicial committee came to the conclusion that the respondent (husband) was ordered to pay 47 lakhs as compensation. This case illustrates that the traditional elders can adjust the amount of compensation based on the prosperity of the parties concerned. It also indicates that if both parties are not able to live together as the spouse and both are willing to make a divorce, their marriage tie can be ended in accordance with Kachin custom and tradition. Hence, settlement of matrimonial disputes under Kachin custom and tradition is reasonable.

Similarly, the dispute arises when the applicant (wife) submitted a complaint to make a divorce to the Kachin traditional judicial committee.³¹ In this case, the applicant (wife) did not prove reasonable cause for a divorce. She said repeatedly four times in the presence of traditional judicial committee that she did not want to continue her marriage life; however, her husband said nothing. Finally, the elders decided that the wife was ordered to pay back all the bride price including a marriage ring paid to the bride, a tickle gold necklace paid to the bride’s mother and a pair of ear plug paid to bride’s elder sister. In addition, the applicant (wife) was ordered to pay

²⁹ Him Thar (1989) သွေးချင်းတို့ငှာနေထိုင်ခြင်း [Kachin State: The Residence of Our Kinsfolk] Sar Pay Beik Mam Press, Yangon, p. 222.

³⁰ Decision by Judicial Committee of Kachin (Jinphaw) Culture and Literature Association, Myitkyina, (9 October 2015).

³¹ Decision by Judicial Committee of Kachin (Jinphaw) Culture and Literature Association, Myitkyina, (2 May 2016).

back the entire marriage expenses to the husband's relatives. And then the traditional judicial committee fined the applicant (wife) a total of 3 lakhs for no fault divorce. This points out that Kachin custom and tradition recognizes divorce by mutual consent even though there is no reasonable cause to dissolve their marriage tie. Nevertheless, the person who seeks for a divorce without sufficient cause would pay traditional compensation. It also illustrates that settlement of matrimonial disputes under Kachin custom and tradition is consistent with justice and fairness.

On the other hand, the divorce of Kachin who profess Christian must adhere to the procedures of the Myanmar Divorce Act (1869). The said Act never allows divorce by mutual consent as Myanmar Customary Law and Mohammedan Law. If the parties fail to prove any matrimonial fault, there is no way to obtain a decree for divorce.

With regard to cruelty, Jenny noted that cruelty is a ground for divorce under Kachin custom and tradition. One of the cases, a man started beating his young wife after she became pregnant. Particularly after drinking, the man would physically and verbally abuse his wife, beating her so violently which caused her earrings to be ripped out of her ears. After one particular violent beating with a rope, the woman requested a divorce to an *ad hoc* traditional judicial committee. After discussion, the committee decided that the woman could get divorce from the man.³² The already mentioned case proves that cruelty is a ground for divorce under Kachin custom and tradition. It also illustrates that settlement of matrimonial disputes under Kachin custom and tradition is fairness and not oppose to natural justice.

With regard to statutory law, in the case of *Daw Ngwa Masa v U Lau Si*,³³ the respondent alleged his wife (appellant) with his father as well as his daily worker. Moreover, he committed physical violence and attempted to kill the appellant in the drain. The learned judge of Kachin State High Court pointed out that there was physical violence by the respondent which caused to mental violence. However, the judge remarked that there was no evidence that the respondent had been or was living in adultery with another girl. And the learned judge also pointed out that the decree of divorce cannot be upheld by the mere fact of cruelty under Section 10 of the Myanmar Divorce Act (1869). Finally, the decree on divorce passed by the Myitkyina District Court was dismissed by the Kachin State High Court. In this case, the court should not, to a large extent, make reference to the existing statutory laws instead of applying Kachin customs, which are reasonable and consistent with justice and fairness.

Conclusion

Before the arrival of the colonial legal system, there was already settlement of dispute by traditional means among Kachin. Kachin tradition and Burmese tradition are similar in that where there were no witnesses, the parties might submit to trial by ordeal. During the British Colony, the British Government upheld the village headmen as well as the elders to settle all civil cases and the petty criminal cases in accordance with Kachin custom and tradition. This research analyses that the elders always take into consideration to maintain the well-being of the community as well as to provide a satisfactory outcome between the disputants. Hence, settlement of matrimonial disputes under Kachin custom and tradition is reasonable, fairness and not oppose to natural justice.

³² Rouse, Jenny., (2007) *Salt Between Split Beans* . UNDP Access to Justice and Informal Justice System Research, Kachin State, p. 45.

³³ (High Court of Kachin State, Thu Jar, 30 April 2020) 5.

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LEGAL PROCESSES IN WINDING UP OF COMPANIES UNDER MYANMAR INSOLVENCY LAW 2020

Hnin Pwint Aye¹

Abstract

Winding up refers to the procedure through which a business ceases its operations and its assets are liquidated to settle debts and distribute any remaining funds to shareholders or creditors. This research explores the complexities inherent in the winding up proceedings of companies in Myanmar, with a particular emphasis on the legal structure dictating this process and its implications for corporate rescue and rehabilitation. The study aims to examine and define key legal aspects, including provisions, definitions, and regulations surrounding the winding up of companies. Additionally, it seeks to evaluate the effectiveness of the legal framework in addressing corporate rescue and rehabilitation during the winding up process. The outcomes of the research show that Myanmar's rehabilitation and restructuring regime provide a structured framework for companies suffering financial distress. The initiation of rehabilitation, whether voluntary, by a secured creditor, or through a court order, includes a crucial aspect: the imposition of a three-month moratorium during the rescue stage. This provides a protective shield against legal actions during the development of a rehabilitation plan, with certain improvements to the existing legal framework identified. This research highlights the strengths and limitations of Myanmar's legal framework for the winding up of companies, offering practical suggestions for enhancement. Through implementing these suggestions, Myanmar has the opportunity to fortify its insolvency framework, making it more adaptable, supportive, and conducive to successful corporate restructuring amidst financial challenges. Focusing on effective corporate governance and legal reforms contribute to a more resilient and sustainable business environment in Myanmar, fostering long-term prosperity and peace through improved insolvency practices.

Keywords: winding up, companies, rehabilitation, rescue, legal framework

Introduction

The winding up of a company is a controversial issue that requires a thorough understanding of the legal procedures and the company's financial records. This research focuses on the complexities of winding up proceedings in Myanmar Companies Law, 2017 and Myanmar Insolvency Law, 2020, emphasizing the importance of the legal framework in corporate rescue and rehabilitation. With the theme of research and innovation for peace, prosperity, and sustainability, the study aims to meticulously examine key legal aspects and evaluate the effectiveness of Myanmar's legal framework. By scrutinizing provisions, definitions, and regulations, the research provides insights into the structural underpinnings of business dissolution. It also offers practical suggestions for enhancing Myanmar's insolvency framework to make it more adaptable and supportive of successful corporate restructuring. Ultimately, this study seeks to foster a resilient and responsive legal environment in Myanmar, contributing to a sustainable business landscape and promoting long-term prosperity and peace.

Research Objectives

1. To descriptive the key legal provisions, definitions and regulations governing the winding up process of companies in Myanmar, with a focus on understanding the procedural aspects and legal requirements involved.

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2. To assess the effectiveness of the existing legal framework in Myanmar concerning company rescue and rehabilitation during the winding up process, aiming to identify strengths, weaknesses and potential areas for improvement in supporting distressed companies.

Research Method

The study employed a qualitative research design, integrating documentary legal description for the laws, rules, court decisions and legal precedents governing company winding up.

Research Questions

1. What is the legal framework for the winding up of companies in Myanmar, and how does it define and regulate the process?
2. How can the existing legal framework in Myanmar be improved to better address challenges related to company rescue and rehabilitation during the winding up process?

Definition of the Winding up of the Company in Myanmar

With regarding to the definition of the winding up, the process of closing a company, selling its asset and paying its debt.¹ In Myanmar, the winding up of companies is governed by two laws: the Myanmar Companies Law of 2017 and the Insolvency Law of 2020. Generally, the winding up process occurs under two circumstances (1) when a company is solvent and able to pay its debts, and (2) when a company is insolvent and unable to meet its financial obligations. The Insolvency Law applies to cases where companies, individuals, or small and medium enterprises are insolvent, unable to pay their debts, or seek rescue or rehabilitation.

In Myanmar, the establishment of a company is subject to the Myanmar Companies Law 2017, but a company must be dissolved only under the Insolvency Law, 2020. Because the provision of section 418(a) of Insolvency Law, 2020. Also, the Directorate of Investment and Company Administration (DICA) announced that insolvency proceedings, including winding up of companies, must be carried out under section 418 of the Insolvency Law, 2020, from the effective date of the Law. Upon the commencement of the Insolvency Law, the winding up of companies, incorporated micro, small, and medium enterprises (MSMEs), partnerships, and unincorporated MSMEs must be conducted in accordance with this Law, regardless of the provisions in Part V of the Myanmar Companies Law.²

Similarly, the Directorate of Investment and Company Administration (DICA) announcement, companies must state the relevant sections of the Insolvency Law from now on upon making a public announcement for liquidation. In addition, all companies must comply with the timeline set in the Insolvency Law and Rules for the winding up process. Moreover the Supreme Court of the Union has also issue application forms through notifications. By Myanmar Companies Online (MyCo)³.Correspondingly, section 3(g) of the General Clauses Law, 1973 prescribed that confirmation of the later promulgations is favored in the legal context when it contradicts previous promulgations. When there is a contradiction between previous

¹ Oxford Business Dictionary, Oxford University Press, 1st Edition, 2005, P.605.

² Section 418(a), Myanmar Insolvency Law, 2020.

³ Notification 998/2024 of the Supreme Court of the Union.

promulgation (Myanmar Companies Law, 2017) and a later promulgation (Myanmar Insolvency Law, 2020), the latter is favored and given preference in terms of confirmation.

Company Director Guide prescribed as a company can be wound up voluntarily either by way of member' or creditor' voluntary winding up. Both types of voluntarily winding up must initiate by a special resolution passed by the company's members at a general meeting. A members' voluntary winding up involves the liquidation of a company that is still solvent. The process is initiated when the company ceases business operations, and a general meeting of members is convened to approve a special resolution for voluntarily winding up the company. Before the meeting, the directors must submit an affidavit declaring that they have thoroughly reviewed the company's affairs and believe that the company will be able to settle its debts in full within three years from the start of the winding up process. This declaration must be backed by an auditor's report and filed with DICA before the notice of the general meeting is sent to members. At the meeting, members must pass the special resolution to voluntarily wind up the company. Within 10 days of the resolution being passed, the company must publish a notice in the gazette and a national newspaper that a special resolution has been passed to voluntarily wind up the company. A liquidator must be appointed to wind up the affairs of the company and file the required notification with DICA in accordance with the Companies Law. Once a liquidator is appointed, the directors will no longer have any authority to run the company.¹

The winding up of the company under Myanmar Insolvency Law has been seen in the case of Myanmar Economic Holdings Public Co., Ltd. vs Myanmar Brewery Co., Ltd.² Myanmar Economic Holdings Public Co., Ltd. is sued Myanmar Brewery Co., Ltd. for liquidation by court order under section 298(f) of the Myanmar Companies Law. Myanmar Economic Holdings Public Co., Ltd. signed a joint venture agreement with Kirin Holding Singapore Pte. Ltd., a subsidiary of Myanmar Brewery Limited with Myanmar Economic Holdings Public Co., Ltd. owning 49% of the share and Kirin Holding Singapore Pte. Ltd., holding 51% of the shares. Myanmar Brewery Limited has been paying annual profit distribution and company trade tax; income tax and special commodity tax up to the financial year 2019 but failed to pay the profit distribution and taxes due for the financial year 2020-2021. Although the Directors of Myanmar Economic Holdings Public Co., Ltd. has repeatedly discussed the failures, Myanmar Brewery Limited has been announced unilaterally that the distribution of profits has been suspended. Therefore, Myanmar Brewery Limited is sued to be liquidated by a court order. The main point to be examined in this case is whether the applicant company's application for liquidation by court order according to section 298(b) of Myanmar Companies Law, the court consider should admission or not. There are two Laws concerning company winding up in Myanmar, Myanmar Companies Law and Myanmar Insolvency Law. Insolvency proceedings, including winding up of companies, must be carried out under section 418 of the Insolvency Law from the effective date of the law. Application of the Insolvency Law is on the commencement of this Law, the winding up of companies, incorporated MSME's and partnerships and unincorporated MSME's must be carried out under this Law.

To initiate the liquidation process for a company, the initial step involves compiling a comprehensive list of its liabilities. The second step involves assessing the company's assets to

¹ Directorate of Investment and Company Administration, Company Director Guide, 2018, P. 26.

² Myanmar Economic Holdings Public Company Limited Vs Myanmar Brewery Limited, Yangon Western District Court, No.68/2021.

settle the liability, encompassing both physical assets and financial resources. The third requirement entails issuing a legally binding declaration affirming the company's ability to settle the debt by leveraging all assets and funds, fulfilling all financial obligations. Within the framework of company law, it is crucial for directors to proactively disclose a declaration of solvency stating that the company will be able to pay its debts but if there is an impossible situation for the company to pay the debt or if the statement that the debt cannot be published, then, it is necessary to take legal action. The purpose is to complete the winding up of the company after all debts are paid.¹

Therefore, it can be summarized that the winding up of companies in Myanmar is governed by the Myanmar Insolvency Law, 2020, outline distinct processes depending on the solvency or insolvency of the company with the Insolvency Law taking precedence in cases of insolvency or corporate rehabilitation. Voluntary winding up requires a special resolution passed by the company's members and adherence to legal procedures, including declarations of solvency and notifications to relevant authorities. Compliance with the provisions of both laws and the associated timelines ensures proper liquidation and dissolution of companies in Myanmar.

Modes of the Winding up of the Company

The winding up of a company registered under the Myanmar Companies Law may be either: (i) voluntary or (ii) by the Court.² A company may be wound up voluntarily under the following circumstances: when the company's constitution specifies a duration and that period expires, or if it provides for dissolution upon the occurrence of a certain event and that event takes place, when the company passes a resolution in a general meeting to wind up voluntarily, if the company resolves by special resolution to undertake voluntary winding up or in accordance with the circumstances outlined in Part V and Part VI that lead to a transition to winding up.³

Therefore, companies registered in Myanmar may be wound up voluntarily by their shareholders or creditors, or compulsorily through a court order, with voluntary winding up being the more common practice easier than the compulsory winding up. The relevant laws governing the company liquidation are the Insolvency Law, 2020 and the Insolvency Rules, 2020.

Voluntary winding up of the company

Companies registered in Myanmar can be voluntarily wound up by its shareholders or creditors. A statutory declaration of solvency is made when it is proposed to wind up a company voluntarily under the circumstances outlined in section 147(a) (i) or (ii) of Myanmar Insolvency Law, 2020. The majority of directors may, during a directors' meeting, issue a statutory declaration stating that they have conducted a thorough inquiry into the company's affairs and believe that the company will be able to pay its debts in full, along with any interest, within one year from the commencement of the winding up. However, this declaration has no effect under this Law if it is not made within three weeks prior to the resolution for winding up being passed and if it does not include a statement of the company's assets and liabilities as of the date the declaration is made. In the case of a public company or a wholly-owned subsidiary of a public company, the declaration must be supported by a report from the company's auditors. The declaration must be submitted to the Registrar. If a director makes a declaration under this

¹ Kyaw Zayar, (2020), *The Knowledge for the winding up of the company*, 1st edition, P.5.

² Section 145(b), Myanmar Insolvency Law, 2020.

³ Section 147(a), Ibid.

section without reasonable grounds to believe that the company can pay its debts in full within the specified period, they may be fined by the Registrar an amount not exceeding 1,000,000 kyats. Furthermore, if the company is wound up based on a resolution passed within three weeks of the declaration, and its debts are not fully paid within the specified period, it is presumed that the director lacked reasonable grounds for their opinion, unless proven otherwise.

If the declaration of solvency is not submitted to the Registrar within the timeframe set by the Rules, the company and any defaulting officers may face a fine from the Registrar of up to 100,000 kyats.¹

When making a statement that a director can make a statutory declaration of solvency, the official must send it to the registrar in time. "Registrar" refers to the Directorate of Investment and Company Administration, its successor, or any other Union level body or individual appointed to oversee the registration of companies. This entity is responsible for exercising the powers and performing the functions and duties assigned to the Registrar under the Companies Law or other applicable laws, as well as registering matters related to personal insolvency (including MSMEs) under this Law.²

During liquidation of a company, the shareholder has the right to appoint the liquidator in general meeting. A liquidator must be appointed at one on the day of the meeting to liquidate the company. In order to be able to make such an appointment, the company needs to prepare in advance. In a members' voluntary winding up, the company must appoint one or more liquidators during a general meeting to manage the winding up of the company's affairs and distribute its assets. The appointed insolvency practitioner must provide written consent to accept this role.³

One of the following individuals must be appointed as the liquidator, and their written consent must be submitted to the Court for the appointment to be valid: a nominee proposed by the applicant for the winding up order, or, if no nominee is designated, the Official Receiver must be appointed by the Court. If no insolvency practitioner is nominated, the Court is obligated to appoint the Official Receiver as the liquidator.⁴ Additionally, The District Courts of each State, Region, Self-Administered Division and Self-Administered Zone of the Union have the jurisdiction to wind up a company registered under the Myanmar Companies Law.⁵

Therefore, voluntary company winding up involves shareholders or creditors initiating the process. In the case of members' voluntary winding up, directors must make a statutory declaration of solvency, confirming the company's ability to pay its debts within a year. This declaration must be timely supported by an auditor's report for public companies in Myanmar.

Procedure for the voluntary winding up

The Board of Directors holds a meeting to pass a resolution to wind up the company and adopt the statutory declaration and the statement of the company's assets and liabilities according to Myanmar Insolvency Law, 2020 and Myanmar Insolvency Rules, 2020 prepared no longer than three weeks before the Board of Director meeting date and confirm that the company will be able to pay its debts in full within one year from its winding up commencement date. The shareholders of the company hold a general meeting to pass a special resolution for the company's winding up and appoint a liquidator who holds an Insolvency Practitioner Registration

¹ Section 151, Ibid.

² Section 2(z) (II), Myanmar Insolvency Law, 2020.

³ Section 152, Ibid.

⁴ Section 167(c), Ibid.

⁵ Section 159, Ibid.

Certificate. The liquidator is responsible for managing the company's affairs and distributing its assets during the liquidation process. Within two days of their appointment, the liquidator submits the statutory declaration and appointment notice to the Registrar of Directorate of Investment and Company Administration (DICA). Additionally, within five days from the notice date, the liquidator publishes the winding up notice in a Myanmar daily newspaper and sends the notice to all the creditors of the company together with Proof of Debt or Claim Form to claim for payment of debts. Once the liquidator is appointed, the authority of the company's directors is transferred to the liquidator. However, the company's corporate status and powers remain in effect until the completion of the liquidation, as stipulated in section 55(c) of the Myanmar Insolvency Law, 2020. The company must cease all business activities except those necessary for the winding up process. During liquidation, no legal actions, Court proceedings, or arbitration proceedings can be initiated against the company or its property unless authorized by a Court order. The liquidation must be completed within one year from its start date. If it extends beyond one year, the liquidator is required to submit an annual report to the Registrar each year until the process is finalized. Upon completion of the liquidation, the liquidator must prepare a final account detailing the conduct of the liquidation and the disposal of the company's property. The liquidator will then convene a general meeting of the shareholders to present the liquidation account and provide an explanation. A copy of the liquidation account, minutes of the general meeting, and other necessary documents must be submitted to the Registrar within one week following the meeting. The Registrar must register the liquidation documents immediately upon their receipt and register the completion of the company liquidation 3 months from the liquidation documents registration date provided in section 211(a), Myanmar Insolvency Law.

To conclude the winding up process of a company in Myanmar is a meticulous and legally regulated procedure aimed at the orderly dissolution of the business entity. As provided in the Insolvency Law and other relevant regulations, the process involves several crucial steps, including the appointment of a liquidator, the realization of assets, settlement of liabilities, and the distribution of remaining funds to shareholders. Throughout this intricate process, adherence to legal requirements and transparency is paramount to ensure fairness and protect the interests of creditors, shareholders, and other parties involved.

Winding up by the Court

Winding up by the Court, also known as compulsory winding up or liquidation is a legal process through which a company is brought to an end by order of the Court. This method of dissolution is typically initiated when a company is unable to meet its financial obligations or faces insurmountable financial difficulties. Unlike voluntary winding up, where the decision is made by the company's shareholders, winding up by the court involves a judicial intervention to ensure fairness and protect the interests of various stakeholders.

Circumstances in which company may be wound up by the Court in Section 161 of Myanmar Insolvency Law, 2020 provides that A company may be wound up by the Court under several circumstances: if the company has passed a special resolution to be wound up by the Court; if it fails to commence business within one year of incorporation or suspends its business for an entire year; if the company is insolvent; if the Court deems it just and equitable to wind up the company; or if the Court finds valid grounds of public interest. Public interest grounds include situations where the company has no directors or has conducted business or entered into

transactions with the intent to defraud its creditors or for any other fraudulent purpose.¹ It can be seen that if the court applied for the winding up of the company due to one of the above five factor.

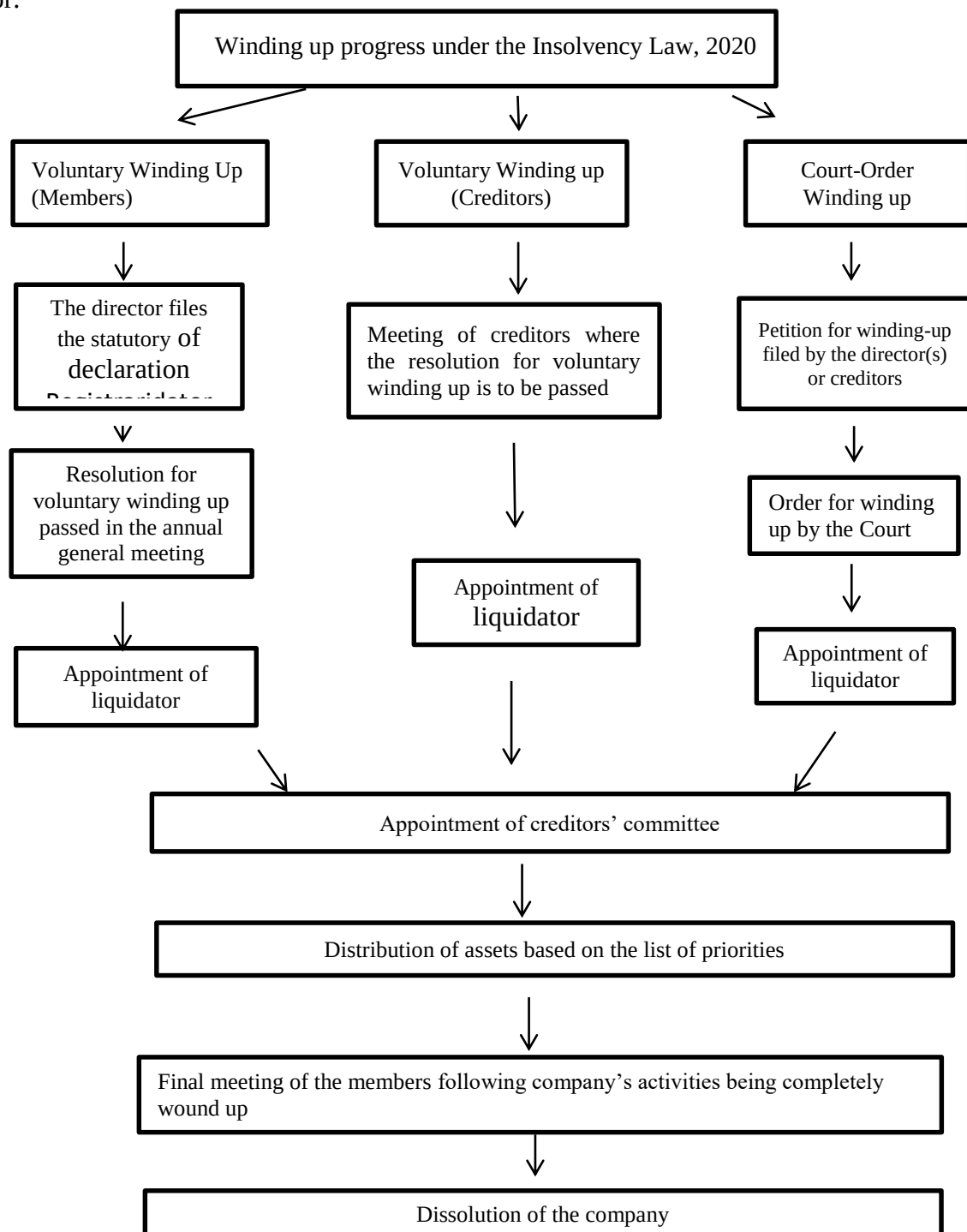
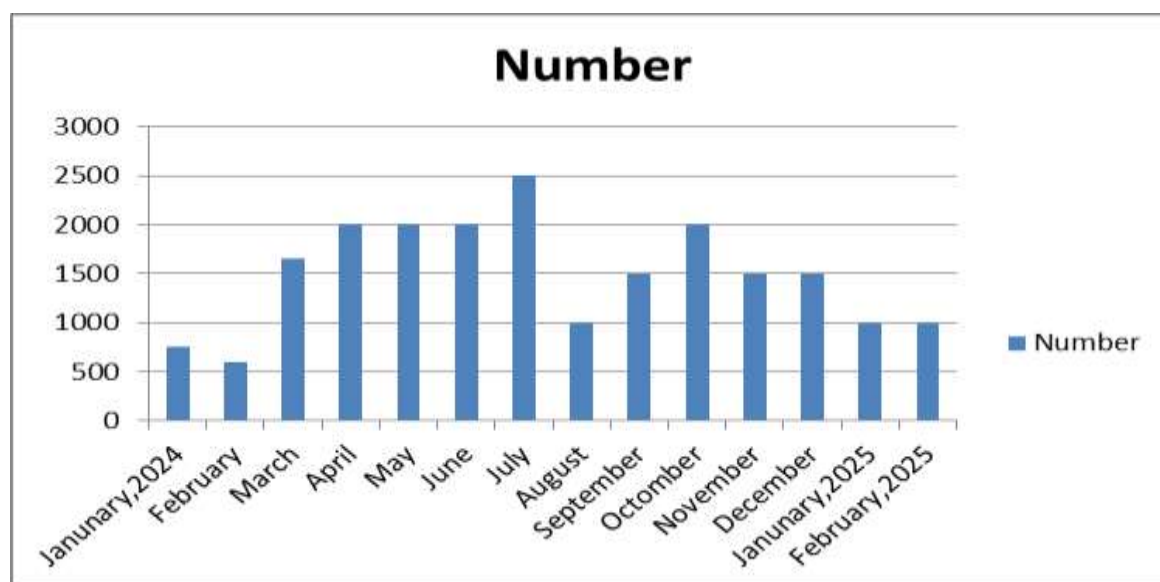


Figure 1. Winding up process²

¹ U Tun Tun vs Po Kaung Company Limited, 2024, Civil Miscellaneous Suit, No. 136. New Light of Myanmar, September 12, 2024.

² Notification No.1185/2023, Procedures for adjudication proceedings under the Insolvency Law, the Supreme Court of the Union.



Source: Notification from Directorate of Investment and Company Administration¹

Figure2. List of companies struck off from company registration by Directorate of Investment and Company Administration in 2024 and 2025

Corporate Rescue and Rehabilitation

The Insolvency Law permits companies facing insolvency to choose between liquidation and a new option, corporate rescue and rehabilitation. A company is unable to pay its debts as and when they become due will be declared insolvent. Insolvency proceedings in the form of rehabilitation or liquidation may be initiated when a company is declared insolvent. Corporate rehabilitation proceedings to rescue the company may be initiated by a company, its secured creditor(s) or by a rehabilitation order passed by the court. In the event that company rescue is not possible, the company may be liquidated either by a voluntary or court mediated winding up process. A company may also be directly liquidated without going through the rehabilitation phase. Such a petition for the direct winding up of a company without having to go through the rescue process may be filed before a court by the company's directors or creditors. It introduces a dedicated rescue and insolvency framework for micro, small, and medium enterprises, designed to simplify the rehabilitation and liquidation procedures, providing a more streamlined and cost-efficient system suited to micro, small, and medium enterprises.²

The objectives of the new corporate rescue and rehabilitation proceedings are as follows: to rescue the company as an ongoing entity, if the first objective cannot be achieved, to ensure that as much of its business as possible continues to operate, if neither of the first two objectives can be met, to secure a better outcome for the company's creditors as a whole than would occur if the company were to be wound up. These rehabilitation proceedings will be managed by a rehabilitation manager, an insolvency practitioner who must be registered under the Insolvency Law. This manager will implement a rehabilitation plan approved by the company's creditors. The rehabilitation plan represents a compromise between the company and its creditors and shareholders. If the rehabilitation proceedings conclude without creditors agreeing to a

¹ Notifications No. 3,5,9,13, 16,18,25,27,33,41,44, 47,58,62,69,73,80,84,85,87, 92,101,104,108,113,116,119, 122,126,129,137,149,150,155,161/2024 of Directorate of Investment and Company Administration.

² Section93, Myanmar Insolvency Law, 2020.

rehabilitation plan or if no plan is executed within the timeframe established by the Insolvency Law, the company will move to a creditors' voluntary winding up.¹

No corporate or personal insolvency has been reported yet under the Insolvency Law of Myanmar.² It follows that the objectives and process of MSME rehabilitation closely resemble those of corporate rescue and rehabilitation. However, there are a few notable differences that make the MSME rehabilitation process more flexible compared to corporate rescue and rehabilitation. Under the corporate rescue and rehabilitation process, the functions of the rehabilitation manager is to manage the affairs of the company and rehabilitation manager must take into his custody or under his control all the property to which the company is or appear to be entitled. The rehabilitation plan may be prepared by either the rehabilitation manager or any interested party. In certain specified situations, the rehabilitation manager bears personal liability for fulfilling the company's obligations. In contrast, under MSME rehabilitation process, the function of the rehabilitation advisor is principally to advise and assist MSME in the rehabilitation process. The rehabilitation plan must be prepared by MSME or by the rehabilitation advisor with the consent of MSME. The rehabilitation advisor is not personally accountable for any debts or liabilities of an MSME under rehabilitation.

Initiation of Rehabilitation Proceedings

Rehabilitation proceedings of a company which is unable to pay its debts begin with the appointment of a Rehabilitation Manager who may be appointed by the directors of the company, a secured creditor who holds security over all or the majority of a company's assets or by a rehabilitation order passed by a court provided in section 43 in Myanmar Insolvency Law, 2020. Rehabilitation Proceedings for corporates are divided into two phases: rescue stage where the Manager conducts a meeting with the creditors to discuss preparation of the rehabilitation plan (RP) and plan stage where the Plan that has been adopted is given due effect and the assets of the company are distributed as per the plan and the company is revived as a going concern.³

Rescue Stage

During rehabilitation proceedings, the Manager is deemed to be an agent of the company and must manage the affairs of the company and adopt reasonable measures to effectively revive the company. The Manager is required to conduct a meeting of the creditors, facilitate the appointment of a "Creditors Committee", float the Plan, and ensure that the Plan is acceptable to the creditors. The Manager assumes personal liability in respect of the debts incurred by the company during the rehabilitation process. A meeting of the creditors must be summoned by the Manager within 30 days of appointment to discuss the rehabilitation proceedings and deliberate on the plan (if already prepared). A Creditors Committee may be appointed through the mutual consensus of the creditors at this meeting. The primary objective of appointing the Committee of Creditors is to assist the Manager in preparation of the plan.⁴ This plan is a compromise between the company, its creditors and members. It may be prepared by the Manager or any other interested party. The plan must contain details of the company's property, the manner of the

¹ Section 94, Myanmar Insolvency Law, 2020.

² Thant Sin Lwin U, Director-General, of the Directorate of Investment and Company Administration (DICA), Myanmar Digital News, July 28, 2020.

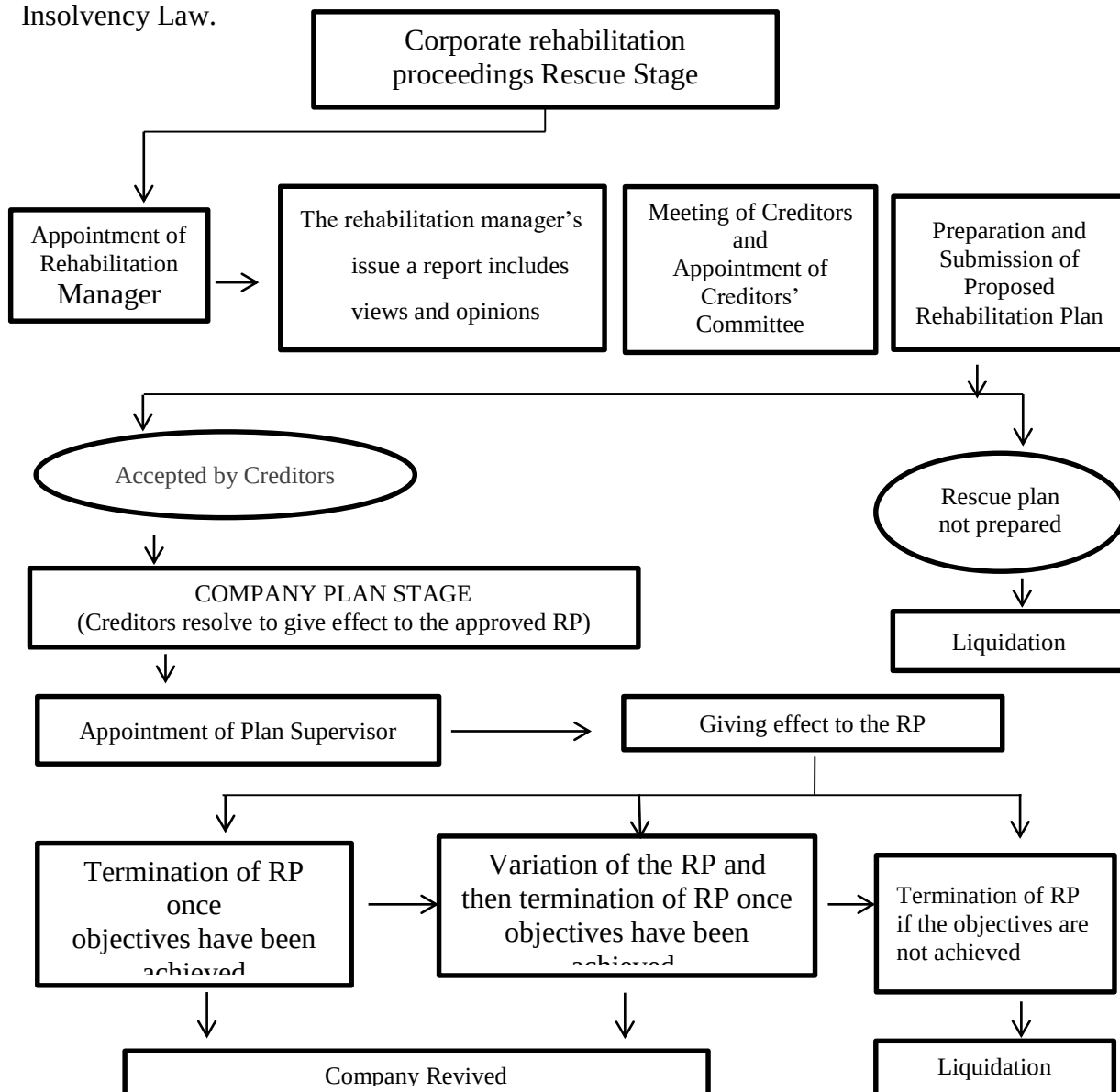
³ Section 40, Myanmar Insolvency Law, 2020.

⁴ Sections 51, 53, 61, 69, Ibid.

fulfillment of liabilities, order of payment priority, the responsibilities of the directors and other officers of the company to give effect to the plan and details regarding termination of the plan. Once the Plan has been accepted, the company will thus enter into the plan Stage.

Plan Stage

After acceptance of the plan, the company will have to appoint a plan Supervisor (“Supervisor”) to ensure its due implementation. The Supervisor will give effect to the plan, ensure that the terms mentioned in the plan have been met, the claims of the creditors have been duly fulfilled and this will conclude the plan Stage. In the event that objectives mentioned in the plan are not achieved, it should be altered accordingly at a meeting of the creditors and the plan so altered should be enforced. If alteration of the plan is not possible then the company will move to the liquidation phase and will have to be wound up provided in chapter 4 of Myanmar Insolvency Law.



Source: The New Myanmar Insolvency Law of 2020: An Overview¹

Figure 3. The corporate rescue and rehabilitation proceedings

¹ Nishant Choudhary and Arijeet Nandi, *An Overview of the New Myanmar Insolvency Law of 2020*, www.pioneersindevelopingasia.com.

Table 1. Restructuring & Insolvency Regime in Myanmar

Myanmar	Areas
Rehabilitation and Restructuring Regime	Rehabilitation process can be initiated voluntarily, by a secured creditor and by an order of the Court
Eligible Companies	All companies incorporated in Myanmar
Scope of Moratorium	During the rescue stage of the rehabilitation process, the rehabilitation manager is given three months to develop a feasible rehabilitation plan.
Invocation of Moratorium	The moratorium is automatic. Any action intended against the company during the rescue stage of the rehabilitation process may only be initiated with the Court's permission.
Territorial effect of Moratorium	Within the territorial of Myanmar
Rescue Financing	The Myanmar Insolvency Law does not have any provision that deals with rescue financing
Approval of Plan	The rehabilitation plan is presented to the creditors at a meeting called by the rehabilitation manager. The plan is approved if a majority of the creditors vote in favor of it. The required majority consists of creditors whose claims amount to at least 50% of the total claims of those voting, as well as creditors who represent at least 50% of the total number of creditors present at the meeting.
Binding	The rehabilitation plan is binding on all unsecured creditors, regardless of their presence at the creditors' meeting or whether they voted in favor of the plan. Secured creditors are allowed to realize or manage their secured property unless the rehabilitation plan addresses that secured property and the secured creditor have voted in favor of the plan
Approval of plan without creditors' meeting	The approval of plan is not possible without the approval of the creditor at creditors' meeting

Therefore, it would be seemed that the restructured insolvency regime in Myanmar is a complex and evolving framework that plays a critical role in the country's economic development. While the legal framework for restructuring and insolvency is established under existing laws. In the majority of instances such as Neo Image Service Corporation Limited, One Stone Company Limited¹ companies are wound up through voluntary winding up and winding up by court is extremely rare. There have been little reported cases of corporate or personal insolvency in the High Courts of the Yangon² and Mandalay³ Regions. It suggests that the need for further development and implementation to ensure a successful corporate restructuring and rehabilitation process in Myanmar. Addressing these areas could enhance the regime's effectiveness and support the country's broader economic growth efforts.

Table 2. Areas implement a successful corporate restructuring and rehabilitation

Areas	Strengths	Weaknesses	Findings
Rehabilitation and Restructuring Regime	Multiple Initiators: Myanmar allows for the initiation of the rehabilitation process voluntarily by the company, by a secured creditor with majority security, or by a Court order.	Limited Initiators: Myanmar permits multiple initiators for rehabilitation, but gaps exist when neither the company nor a secured creditor takes the lead in starting the process.	Mediation as Alternative Dispute Resolution
Scope of Moratorium	Defined Timeframe: Myanmar's moratorium is tied to a specific stage in the rehabilitation process, giving a clear timeline for action and decision-making. Protection from Legal Actions: The moratorium protects the company from legal proceedings and enforcement actions, providing a breathing space to work on a rehabilitation plan	Restrictions on Asset Disposal: The prohibition on selling or disposing of assets except in the ordinary course of business may limit flexibility in generating funds for restructuring.	Flexible Duration: Consider allowing flexibility in the duration of the moratorium based on the complexity of the case, with provisions for extensions if needed. Asset Management Guidelines: Provide clear guidelines on asset management during the moratorium to balance financial stability with the

¹ Gazette of the Republic of the Union of Myanmar, No.39, Vol.78, September 26,2025,Printing and Publishing Department, Ministry of Information.www.moi.gov.mm.

² Interview with Kyaw Kyaw, U, Managing Director, the High Court of Yangon Region, Yangon, 30 April 2024.

³ Interview with Khin San Myint, Daw, Judge of the High Court of Mandalay Region, Mandalay, 30 August 2024.

Areas	Strengths	Weaknesses	Findings
			need for restructuring.
Rescue Financing	Myanmar's law grants administrators the right to prepare and propose compromise plans, providing some degree of flexibility in addressing financial distress.	Lack of Rescue Financing Provisions: Myanmar does not specifically address rescue financing, which can limit options for financially distressed companies. Capital Increasing Mechanisms: Myanmar Insolvency Law do not provide clear mechanisms for increase capital during the rehabilitation process, Many ASEAN countries especially Laos which allows for capital increases through various means.	Clarify Capital Increasing Methods: Detailing procedures for increasing capital during rehabilitation by increasing values of the shares, making a creditor to a shareholder, increasing a number of shares and loan.

The above mentioned are areas could enhance the regime's effectiveness and support the country's broader economic growth efforts. Moreover, according to the World Bank Ease of Doing Business Report 2020,¹ Myanmar was ranked 165th out of 190 countries, an improvement of six places compared to its 2019 position. One of the key criteria assessed in this ranking was the process of resolving insolvency, which takes into account factors such as the duration, cost, outcome, and recovery rate of commercial insolvencies, as well as the strength of the legal framework.

Research Findings

The research finds that winding up a company in Myanmar can be initiated by shareholder resolution, however, to protect minority shareholders, a provision should be added to allow those representing one-tenth of the share capital to request dissolution in cases of severe majority abuse. This would act as a safeguard when majority abuse persists despite existing provisions. Additionally, the Insolvency Law, 2020 must ensure its positive impacts through effective implementation, including court-sanctioned mediation, flexible moratorium durations, and mechanisms for increasing capital. These measures align with legal frameworks that promote economic stability and sustainable corporate governance in Myanmar.

¹ The World Bank Ease of Doing Business Report, Comparing Business Regulation in 190 Economic, 2020, World Bank Group, P.4.

Conclusion

The research on winding up companies in Myanmar highlights the importance of a balanced legal framework for managing liquidation and supporting corporate rescue and rehabilitation. While Myanmar's framework shows potential, it needs improvements like effective insolvency law implementation, court-sanctioned mediation, and flexible moratoriums. Strengthening these areas can enhance corporate restructuring and contribute to sustainable economic growth.

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TRADEMARK PROTECTION UNDER REGISTRATION SYSTEM IN MYANMAR

Zin Mar Wai¹

Abstract

Intellectual Property Rights (IPRs) play a key role in supporting a developing, market-oriented economy. This paper explores Myanmar's transition from a declaration-based trademark system to a modern first-to-file registration framework under the 2019 Trademark Law. The reform is essential for aligning with international standards, including the TRIPS Agreement and the Paris Convention. Although the new law provides a framework for substantive examination, there is many legal and administrative challenges in its practical implementation faces. This study examines transitional issues such as the appointment of representatives or agents, determining effective filing dates, particularly for pre-existing marks, and streamlining registration procedures. This paper indicate that successful implementation depends not only on legal provisions but also on strengthening public and administrative awareness and establishing clear, efficient administrative rules to address practical obstacles and ensure effective, nationwide trademark protection in Myanmar.

Keywords: Trademark, Protection and Intellectual Property.

Introduction

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of others.² A trademark protects brand names and logos used on goods and services. Trademarks also guarantee the quality of the goods bearing the mark and, through advertising, help create and maintain a demand for the product. Under the Trademark Law 2019, the term of a registered mark shall be 10 years from the submission date of the registration application. The renewal for a further 10-years period will require prescribed renewal fees.³

The term 'trademark' includes any word, name, symbols or device or any combination thereof.

- (1) used by a person, or
- (2) which a person has a bona fide intention to use in commerce.⁴

In *Gaw Kan Lye v. Saw Kyone Saing*, trade mark is meant that the mark must be capable of distinguishing a particular person's goods from somebody else's by indicating that it was manufactured by that particular person, and not simply any manufacture of the type of goods.⁵

A trademark is an image, logo, group of words, or some combination of these things, that is used to distinguish the product of one manufacturer from another.

The function of a trademark is to indicate the origin of goods or services. The definition of a Trademark refers to the use of a mark for the purpose of indicating 'a connection in the

¹ Department of Law, Bago University.

² WIPO, (2020) *What is intellectual property*, 2nd edition, Switzerland, Geneva, p.12.

³ <https://cyber.harvard.edu/metaschool/fisher/domain/tm.htm>.

⁴ ABA Defending Liberty Pursuing Justice, (2009) *What is a Trademark*, 3rd edition, Washington, D.C, United State, p-5.

⁵ 1939, Y.L.R, p-488.

course of trade' between the goods or services and the purpose of denoting quality would be inadequate use.⁶

The function of trademarks in the modern economy are dictated by the sheer size of the market and the distancing of suppliers from customers. Distinctive marks are indispensable tools for the identification of goods or services. Moreover, in a society increasingly obsessed with style, image, and celebrity, brand names are invaluable marketing tools, and businesses invest significantly in the development, marketing, and protection of their brands and marks.⁷

The primary function of a trademark is to indicate origin. However, trademarks also serve to guarantee the quality of the goods bearing the mark and, through advertising, serve to create and maintain a demand for the product.⁸

Trademarks play a vital role in shaping successful businesses and fostering trust in the marketplace because they identify and differentiate goods or services, build brand recognition and reputation, protect consumers from confusion, provide marketing and advertising tools, offer a competitive advantage, and function as valuable intellectual property assets.⁹

A trademark serves the purpose of identifying the source or the origin of goods. Trademark performs the following four functions

- It identifies the product and its origin.
- It proposes to guarantee its quality.
- It advertises the product. The trademark represents the product.
- It creates an image of the product in the minds of the public particularly the consumers or the prospective consumers of such goods.¹⁰

Therefore, the function of trademark refers to the part of the mark that informs consumers about product characteristics. And then, trademarks help consumer to take rational decisions about the purchase of a product or service.

Materials and Methods

A qualitative method is used in this research. Analytical research methodology is also used. Data is gathered from all trademark-related legislation and international conventions. Additionally, certain information is gathered by looking through cases, papers, books, and websites.

Findings

A representative needs to correctly fill in the required information in the registration forms (TM1 and TM2). A representative will fill TM1 and TM2. TM1 must be completed with details about the goods and services of the trademark owner. In TM2, it is required to indicate

⁶ WIPO, (1988) *Background Reading Material on Intellectual Property*, Switzerland, Geneva, p-163.

⁷ Amanda Michaels and Andrew Norrjs, (2014) *A Practical Guide to Trade Mark Law*, 5th edition, Oxford, United Kingdom, p-7.

⁸ John A. Marzall, (March 15 1950) *General Information concerning Trade-Marks*, Chicago, United States, p-1.

⁹ <http://uollb.com>.

¹⁰ <https://www.advocatekhoj.com>.

that a representative is acting as a representative for the trademark owner. If a representative fails to submit the required data and application fees for registration on time, the trademark owner cannot get a filing date promptly. As a result, a dispute may arise between the owner and the representative. Previously, there was no protection for the same mark on the different products in Myanmar. After the Trademark Law 2019 comes into force, the owner of the mark is protected by the same mark on the different products. Myanmar's current status regarding the Madrid System poses a significant challenge for domestic businesses, requiring separate applications in each foreign jurisdiction and creating unnecessary costs and administrative burdens. Acceding to both the Madrid Agreement and Protocol would allow trademark owners to secure protection in all member countries through a single International Registration (IR), synchronizing procedures and saving time and resources.

Trademark Protection under Registration System

The new Trademark Law revamps the current trademark registration and protection policy in the country. The trademarks registered under the old system are to be re-filled. A "first-to-file" system will be adopted under the new law for trademark registration and protection, unlike the "first-to-use" system followed earlier. Trademark Registration in Myanmar under the soft-opening period has commenced from October 01, 2020. The soft opening period is expected to last for a period of six (6) months i.e. till March 31, 2021, thereby allowing existing trademark holders to re-file applications for their marks(s).¹¹

In order to enjoy the rights of a registered mark under Trademark Law, any applicant may apply to the Registrar for the registration of a mark in accordance with the prescribed regulations. The applicant for the registration of a mark:

- (a) may write the registration application in Myanmar or English.
- (b) must translate the Myanmar Language application into English or Vice versa if the Registrar requests so.
- (c) must write a statement that the translation under subsection (b) is true and correct and sign it.¹²

The applicant for the registration of a mark shall:

- (a) include the following in the application:
 - (1) an application for registration;
 - (2) name and address of the person or legally formed organization applying for registration;
 - (3) name citizenship scrutiny card number, and address of the agent or representative if the applicant entrusts an agent or representative with this matter.
 - (4) a clear and complete description of the mark;
 - (5) name and type of goods and /or services for which a request for registration is made and the category of international mark classification to which it belongs.¹³

¹¹ <https://www.khuranaandkhurana.com>.

¹² Section 15 and 16 of the Trademark Law, 2019.

¹³ Section 17 (a) of the Trademark Law, 2019.

If the trademark owner submits an application by himself or herself, he or she should use TM1 form. If the trademark owner asks his representative to apply for registration, his representation should fill TM2 form.

A dossier of trademark registration in Myanmar includes the following documents:

Trademark registration declaration TM2: The trademark registration declaration must be completed accurately and fully, including the following information:

- Name and address of the applicant
- Trademark type
- Trademarks (including description and sample)
- List of goods or services
- Trademark Use Statement in Myanmar
- Power of attorney (if the applicant is through a representative organization)

The trademark template should be clear and visible, including colors if the trademark is colored.

A copy of the applicant's identity card or passport (if the applicant is a foreigner): This copy must be notarized.

The trademark registration fee in Myanmar varies according to the type of trademark and the number of categories of goods or services.

In addition to the requirements in subsection (a), the following must be attached to the application if necessary;

- (1) if the application is made for a legally forward organization, the registration number, type and country of said organization;
- (2) if the applicant requests the right of priority, an application for the right of priority together with sufficient evidence proving that he has the right of priority, and description;
- (3) if the applicant requests the right of priority for trade exhibitions, an application for the right of priority for trade exhibitions together with sufficient evidence proving he has the right of priority for trade exhibitions, and description;
- (4) if the mark is registered at the document's registration office, documentary evidence proving such registration;
- (5) other requirements stipulated by the Agency and the Department from time to time.¹⁴

The date on which the Department has received a complete application under subsection (a) of Section 17 and the stipulated fee is deemed as the date of submission of the application for registration in the Union.¹⁵

(a) An applicant for the registration of a mark;

- (1) may, after paying the prescribed fee, apply to the Registration if he wishes to amend the application, translation, and documentary evidence due to text

¹⁴ Section 17 (b) of the Trademark Law, 2019.

¹⁵ Section 18 of the Trademark Law, 2019.

errors or other errors which may be corrected, before the Registrar of an application or before the Agency marks a decision on the appeal case against the decision of the Registrar.

- (2) may apply for the withdrawal of the application for the registration of a mark.
- (3) may, after paying the prescribed fee, request the Registrar for amendment by separating any application which includes multiple goods or services into more than one new application or to limit or decrease, without increasing, the submitted list of goods or services.

- (b) the date of submission of the separate registration applications made under item (3) of subsection (a) shall be the date of submission of the original application.¹⁶

In order to register a mark, the applicant;

- (a) may request, if the following conditions are met for the registration of a mark when the failure to comply within the stipulated period of time results in the loss of rights connected to the relevant mark application;
 - (1) submitting a request within 60 days from the date of withdrawal due to the failure to comply within the stipulated period;
 - (2) attaching all explanations, information or requirements with regards to the failure to comply within the stipulated period;
 - (3) describing sufficient reasons for the failure to comply within the stipulated period in the request;
 - (4) paying the prescribed fee;
- (b) If a request to restore the rights related to the request under subsection (a) was made during the period of appeal, the Register must suspend the request under subsection (a).¹⁷

An owner of a registered mark may;

- (a) after paying the prescribed fee to the Department, request the Registrar to issue a certified copy of the registration certificate of the mark in cases of damage or loss of the original.
- (b) after paying the prescribed fee, request the Registrar to revise writing errors and other errors which can be corrected under Trademark Law, as well as nationality and address, in the registration records.¹⁸

Myanmar needs to be a signatory to both the Madrid Agreement and the Madrid Protocol in order to use the Madrid System. Myanmar will have the same impact as if it had registered in every country covered by the Madrid Treaty if it files an International Registration (IR) in WIPO. Because there is no need to submit a separate application in each nation, time and money will be saved. Myanmar needs to sign the Paris Convention as well. Priority in Myanmar can also be claimed by an applicant who has already registered their mark in a Paris Convention country or submitted an overseas application.

Article 6 of the Paris Convention, 1883 provides that the conditions for the filing and registration of trademark shall be determined in each country of the Union by its domestic legislation. However, an application for the registration of a mark filed by a national of a country

¹⁶ Section 21 of the Trademark Law, 2019.

¹⁷ Section 24 of the Trademark Law, 2019.

¹⁸ Section 29 of the Trademark Law, 2019.

of the Union in any country of the Union may not be refused, nor may a registration be invalidated, on the ground that filing, registration, or renewal, has not been effected in the country of origin. A mark duly registration in a country of the Union shall be regarded as independent of mark registered in the other countries of the Union, including the country of origin.¹⁹

Article 19 of the TRIPS Agreement provides that if use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reason based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use. When subject to the control of its owner, use of a trademark by another person shall be recognized, as use of the trademark for the purpose of maintaining the registration.²⁰

If there is no opposition to the application for mark registration, or if the oppose withdraws the opposition, or if the opposition is rejected, the Registration Officer shall notify the applicant to pay the registration fee within 60 days from the notice. If the payment is not made within the specified time limit, the application shall be deemed abandoned. Otherwise, the Registration Officer shall record the registration and issue a mark registration certificate to the applicant.²¹

Therefore, the establishment of a comprehensive trademark registration and protection system under the New Trademark Law allows the trademark owners or brand owners to have their intellectual property rights when conducting businesses in Myanmar.

The term of a registered mark shall be 10 years from the submission date of the registration application. After this period, the applicant may renew the term of registration for 10 years at a time.²²

If the owner of a mark wishes to renew the term of mark registration, he must carry out according to the following:

- (a) the renewal of the term of registration must be the term by paying the prescribed fees.
- (b) After the expiration of the term of registration, the renewal application can be made within the grace period of six months. If the renewal application is submitted within this period, the applicant must pay the prescribed registration fee and overdue fee.²³

The renewal term is effective starting from the date of expiration of the previous term. Examine the application for the renewal of the term of registration and grant the renewal for a term of 10 years if the application meets the criteria for renewal and make a public announcement in a manner that is consistent with stipulations. Suspend the registration of the

¹⁹ Articles 6(1), (2) and (3) of the Paris Convention for the Protection of Intellectual Property Rights, 1883.

²⁰ Articles 19 (1) and (2) of the Agreement on Trade-Related Aspects of Industrial Property Rights, 1994.

²¹ <https://www.lincolnmyanmar.com>.

²² Section 34 of the Trademark Law, 2019.

²³ Section 35 of the Trademark Law, 2019.

registered mark if the owner of the registered mark has not paid the renewal fees within the grace period of six months.²⁴

Initial registration and each renewal of registration, of a trademark shall be for a term of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.²⁵

Therefore, Trademark duration is limited up to 10 years. After that, it can renew within 6 months prior to the expiration of the registration. And then, without using mark after registration will have to be used for the specified product or services within three years from the registration date.

Practices for the Trademark Protection under Registration in Myanmar

The Trademark Law, 2019 was passed by the Parliament of the Republic of Union of Myanmar on 30th January 2019. It will become effective when the President announces its effective date. It adopts the “first to file” principle of trademark protection. The Ministry of Commerce (MOC) and the Department of Intellectual Property (DIP) are the main government offices in charge of trademark registration. The trademarks already registered before the effective date of the Trademark Law 2019 will not be automatically recognized and protected under the Trademark Law 2019. The Department of Intellectual Property (DIP) will announce the Soft Opening Period (SOP) for owners of the registered trademarks to re-file them. The Soft Opening Period (SOP) will last for at least 6 months plus possibly 6 additional months.²⁶

On 1 April 2023, the Ministry of Commerce (MOC) released Announcement No. 1/2023, which follows Order No. 63/2023, for the second phase registration, and on the 26th of the same month, the new trademark registration system, launched under the supervision of the Department of Intellectual Property (DIP), began accepting registrations. During this phase, only existing trademark registrations may be applied for either by a mark’s owner, in person or by his/her agent, at the Department of Intellectual Property DIP’s head office (Nay Pyi Taw) or the branch office (Yangon), or through the online electronic trademark filing. The Department of Intellectual Property (DIP) plans to issue notifications and announcements with relation to the trademark registration, based on the situation of the electronic filing system and requirements of the applicants in order to facilitate the application process.²⁷

In conjunction with the 5 April Announcement and discussions with the Department of intellectual property in Myanmar, the key takeaways are as follows:

Implementation of the new Trademark Law in Myanmar

The implementation of the new trademark registration system entails the following phases:

Phase I (1 October 2020 to 31 March 2023): During Phase I of the soft opening period, only Registered/Used Marks are eligible for filing. All trademark applications filed during this period will be given a "common filing date," which is likely to be the first day of the grand opening (to be confirmed).

²⁴ Section 36(a), (b) and (d) of the Trademark Law, 2019.

²⁵ Article 18, Agreement on Trade – Related Aspects of Intellectual property Rights, 1994.

²⁶ <https://www.lawplusltd.com/2020/08/tm-regis-use-and-enforcement-in-myanmar/>

²⁷ <https://www.charltonsmyanmar.com/trademark-registration-in-myanmar//z>

Given that the Trademark Rules were still in the draft stage during Phase I, applicants were unable to submit the TM-2 Form (Appointment of Representative) or make payment of the official fee for Phase I applications.

Phase II (1 April 2023 to 25 April 2023): We are presently in Phase II. During Phase II of the "soft opening period," the new trademark registration system will still accommodate Registered/Used Marks **secured prior to 1 April 2023**.

All trademark applications filed during this period will also be given a "common filing date," which is likely to be the first day of the grand opening (to be confirmed).

It is mandatory to submit the notarized TM-2 Form (Appointment of Representative) and the official fee payment at the time of filing the Phase II application under the new electronic system.

Phase III (from 26 April 2023): The grand opening of the new trademark registration system will take place during Phase III. All applications for New Marks will bear the filing dates of the applications, i.e., the date on which the MIPD receives the complete application (including the notarized TM-2 Form and stipulated official fee).

Common filing date

Phase I and Phase II applications will be given a "common filing date." Based on our unofficial discussions with the MIPD, the "common filing date" has yet to be determined. It is, however, likely that the "common filing date" will be the first day of the grand opening of the new trademark registration system, i.e., 26 April 2023.

Submission of TM-2 Form (Appointment of Representative) and payment of official fees

For Phase I applications, applicants may proceed to submit the notarized TM-2 Forms and make payment of the outstanding official fees between now and 31 May 2023.

For Phase II applications, the notarized TM-2 Form and official fee payment must be submitted on the date of filing between 1 April 2023 and 25 April 2023. Therefore, the last day for lodging any Phase II application is 25 April 2023.

If the TM-2 Form and official fee payment are not submitted during the stipulated timelines above, the relevant Phase I or Phase II applications will not be given the "common filing date."

In cases of late submission (after 31 May 2023) of the notarized TM-2 Form and official fee payment, the relevant Phase I applications will instead bear the filing dates on which the MIPD receives the complete application (i.e., the notarized TM-2 Form and stipulated official fee) instead.

New Marks

Applications for New Marks will be accepted starting from the grand opening on 26 April 2023.

In respect to Phase I applications, trademark practitioners and rights owners were previously of the impression that the notarized TM-2 Form (Appointment of Representative) and official fee payment must be submitted by 25 April 2023, i.e., a day before the date of the grand opening of the trademark registration system.

The 5 April Announcement was thus well received by trademark practitioners and rights owners, given that there is now significantly more time (up till 31 May 2023) to submit the notarized TM-2 Form and official fee payment for Phase I applications.

Phase II applicants will need to hasten their applications, as the last day for filing the applications is 25 April 2023.²⁸

Per Section 18 of the Trademark Law of Myanmar, the date of submission of a complete application, along with the prescribed fee, is deemed as the filing date of the trademark application in Myanmar.

Sections 31 to 33 address the right of priority, which grants applicants a six-month period to apply for registration in Myanmar following an initial application in a Member State of the Paris Convention or the World Trade Organization.²⁹

For filing of used trademark and filing requirements, trademarks already used in Myanmar without registration can also be filed during the Soft opening period. The filing requirements include a notarized Power of Attorney (POA) from the applicant to a Myanmar representative (if the applicant is not a Myanmar citizen); a scanned copy of business license of the applicant; a copy of advertisements of the used trademark; a specimen of the used trademark in the 'jpg' format; a list of goods/services and the classes under the Nice Classification; the name, home or office address, email address and telephone number of the applicant. The Department of intellectual property may order submission of other documents during the application examination stage.

For filing of new trademarks and meeting filing requirements, trademarks not already registered in Myanmar before the effective date of the Trademark Law, 2019 can be filed with the Department of Intellectual Property after the Soft opening period. The filing requirements are the name, address, telephone number and email address of the applicant; a notarized Power of Attorney from the applicant to a Myanmar representative if the applicant is not a Myanmar citizen; a specimen of the trademark in the 'jpg' format; a complete and clear description of the trademark; and a list of goods/services and their classes under the Nice Classification.³⁰

The Nice Agreement is an international classification of goods and services that is used for the registration of marks.

There are 45 classes: for example, computers and electronic goods are classified under Class 9; mineral water, juices and soda are classified under Class 32; clothing, headgear and footwear come under Class 25.³¹

Section 23 of the Trademark Law of Myanmar outlines a comprehensive and structured process for the examination of trademark applications. The Examiner will examine the application to determine if it meets the provisions of Section 13 and includes the necessary information as per Section 17. If necessary, revisions are required, the applicant will be notified, and failure to comply within 30 days may result in application withdrawal. It is noted that no

²⁸ <https://insightplus.bakermckenzie.com/bm/intellectual-property/myanmar-trademark-updates-grand-opening-of-the-trademark-registration-system-on-26-april-2023>

²⁹ <https://www.charltonsmyanmar.com/trademark-registration-in-myanmar/>

³⁰ <https://www.lawplusltd.com/2020/08/tm-regis-use-and-enforcement-in-myanmar/>

³¹ European Commission, (2020) *Guide to Trade Mark protection in South-East Asia*, Publications Office of the European Union, Luxembourg, p-8.

explicit timeline is provided for completing a substantive examination for a trademark application in Myanmar.

In India, there was a case registration matter in which the petitioner denied the receiving the information of Registration by email. But if the registration department informed the applicant (petitioner) by email, whether he actually knew or not, the registration department would deem that he knew. It is the starting time of registration in Myanmar and similar case, *Ramya S. Moorthy v. Registrar of Trade Marks and Others case*, will happen in future. So, that case should be studied. The petitioner approached the Madras High Court challenging the wrongful abandonment of its applications by the Trademarks office (TMO) on 28th April 2023 in the case of *Ramya S. Moorthy v. Registrar of Trade Marks and Others (W.P. (IPD). Nos. 3 & 4 of 2023)*. The petitioner's applications were abandoned by the Trademarks office (TMO) as it failed to file the counter statements (CS) within two months' statutory period. As per TMO's records, the notices of opposition (NOP) were transmitted by email to the petitioner on 19th January 2023. The petitioner contended that CS could not be filed as the NOP was never served upon them. The deadline to file the CS commences only upon receipt of the actual document. The TMO countered that the service of NOP by e-mail is deemed to be proper service upon dispatch and relied upon the internal document to establish dispatch of the NOP to the petitioner on 19th January 23 and the status was reflected as "success". The interesting issue before the court was if the time to file the CS commences from the date of transmission of the document sent by TMO or receipt of email by the petitioner? The court finally decided that the time for filing CS would only run from the date of receipt of the e-mail and the document of transmission of the NOP relied upon by the TMO does not qualify as evidence of receipt by the petitioner. The court quashed the abandonment orders passed by TMO and restored the two applications allowing the petitioner to file the counter statements.³²

Section 13 of the Trademark Law of Myanmar highlights the characteristics of a mark that constitute ***absolute grounds for refusal***. Marks lacking distinctiveness or containing indications of goods or services' type, quality, origin, or other characteristics may be ineligible for registration. Additionally, marks that may be detrimental to public order, reputation, beliefs, or the Union's traditions or that copy or imitate certain protected symbols and marks are also subject to refusal.

Exceptions: However, the Trademark Law provides exceptions for certain circumstances. If the mark's distinctiveness is known among consumers due to prior use or if the applicant is exclusively using the mark within the commercial area of Myanmar in good faith, the grounds for refusal may not apply.

Section 14 of the Trademark Law of Myanmar addresses ***relative grounds for refusal***, which may render a mark ineligible for registration. Such grounds include marks that mislead consumers by being identical or similar to already registered marks or marks for which registration has been applied beforehand for similar goods and services. Marks that infringe upon others' intellectual property rights or harm the individual rights of any person or legally formed organization may also face refusal.³³

Before Trademark Law comes into force, under the Registration Act: (a) the owner of a mark registered at the Office of the Registration of Deeds or the owners of the actual use of a

³² <https://www.legal500.com/developments/thought-leadership/a-round-up-of-trademark-cases-of-2023/>

³³ <https://kenfoxlaw.com/trademark-registration-in-myanmar-under-new-trademark-law-10-things-to-know>

mark in the channel of commerce of the State although they are not registered, shall apply to register under this Law if they want to enjoy the rights of a registered mark; (b) the rights of priority use shall be enjoyed for a mark registered or unregistered at the Office of the Registration of Deeds which is the mark of the actual use in the channels of commerce of the State during a prescribed period in respect of goods or services.³⁴

Myanmar's 2019 Trademark Law clearly provides in Section 93 that to secure trademark protection rights, the owner of the mark must register it. Once registered, the mark's owner gains the exclusive legal right to stop anyone else from using the same or a confusingly similar mark. Registration also makes it possible for the owner to license his trademark, giving others permission to use it. Importantly, any use of the mark without the owner's permission can lead to both civil and criminal prosecution.

Finally, owners of a well-known mark gain a substantial business advantage under the 2019 Law, as registration extends protection not only to identical or similar goods and services but also to those that are completely different.

Therefore, if the owner of the mark wants to enjoy rights relating to their marks, they need to register their marks because the Trademark Law 2019 is the first to file system.

In the past, before the Grand opening period, there was a soft opening period, during which a grace period was given. Now, it is a Grand Opening period, new trademarks are being accepted by the Intellectual Property Department registration. If old trademarks submitted registration in soft opening period, they would get registration earlier than new trademarks.

Whoever commits any of the following acts on the commercial purposes without the consent of the right holder shall, on conviction, be punished with imprisonment for a term not exceeding three years or with a fine not exceeding five million kyats, or with both: counterfeiting a mark;

- (i) applying a counterfeit mark to goods or using it in connection with services;
- (ii) possessing any materials or implements, the predominant use of which is likely to be to counterfeit a mark or applying a counterfeit mark to goods.³⁵

Whoever commits any of the following acts on the commercial purposes shall, on conviction, be punished with imprisonment for a term not exceeding two years or with a fine not exceeding five million kyats, or with both:

- (i) dealing or possessing in counterfeit mark goods;
- (ii) importing into or exporting from the State, counterfeit mark goods.³⁶

Whoever commits any act of section 87, after a prior conviction for the same offence, shall be punished with imprisonment for a term from a minimum of three years to a maximum of three years to a maximum of ten years, and shall also be liable to a fine not exceeding ten million kyats.³⁷

Whoever uses a sign of flag or emblem which is particularly protected under international treaties to which the State is a contracting party as a mark for the commercial purposes shall, on

³⁴ Section 93 of the Trademark Law 2019.

³⁵ Section 87 (a) of the Trademark Law 2019.

³⁶ Section 87 (b) of the Trademark Law 2019.

³⁷ Section 88 of the Trademark Law 2019.

conviction, be punished with imprisonment for a term not exceeding three years or with a fine not exceeding five million kyats or with both.³⁸

Whoever removes, destroys, deforms or adds the registered mark with intention to adversely affect the owner shall, on conviction, be punished with imprisonment for a term not exceeding one year or with a fine not exceeding three million kyats or with both.³⁹

Whoever commits any of the following acts shall, on conviction, be punished with imprisonment for a term not exceeding one year or with a fine not exceeding two million kyats or with both:

- (a) irregular issue or causing to issue the certificate of a registered mark;
- (b) irregular entering or causing to enter dishonestly in the register;
- (c) violation of the prohibition of Section 52.⁴⁰

More foreign investments can be obtained through the enforcement of trademark law; new employment opportunities may arise through the development of human resources; high productivity can be improved through the transfer of advanced technologies; and numerous benefits, including an increase in living standards due to the emergence of innovations in the industrial sectors, can be obtained by the equitable sharing of benefits between creators and users.

In Myanmar, civil enforcement of trademark rights is currently confined to a single court, the Kyauktada District Court in Yangon Region. This centralization can result in substantial delays and protracted proceedings, as the court must handle all trademark infringement cases nationwide. The limited judicial capacity, coupled with procedural formalities, poses practical challenges for rights holders seeking timely and effective remedies. Consequently, this situation underscores the need for broader judicial accessibility and procedures to enhance the efficiency of trademark enforcement in Myanmar. Moreover, Myanmar's limited technological infrastructure can lead to considerable delays in the identification and verification of trademarks.

To sum up, by properly registering trademark, the economy of our country will definitely grow, and foreign investments will continue to increase. Encouraging sustainable economic growth in our own and other nations is goal 8 of the UN Sustainable Development Agenda. This paper is written in line with goal 8 of the UN Sustainable Development Agenda. By increasingly protecting trademark owners, the innovation of trademarks will emerge and our country can build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation in line with goal 9 of the United Nations.

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³⁸ Section 89 of the Trademark Law 2019.

³⁹ Section 90 of the Trademark Law 2019.

⁴⁰ Section 91 of the Trademark Law, 2019.

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Annex 1

Trademark Application Form 1 (TM1 Form)



Ref.

အမှတ်တံဆိပ်မှတ်ပုံတင် လျှောက်ထားခြင်း
 APPLICATION FOR REGISTRATION OF MARK

TM-1

သို့

မှတ်ပုံတင်အရာရှိ
 မူပိုင်ခွင့်ဦးစီးဌာန
 စီးပွားရေးနှင့်ကူးသန်းရောင်းဝယ်ရေးဝန်ကြီးဌာန

- ဤလျှောက်လွှာပါ ဖော်ပြချက်များသည် အမှတ်တံဆိပ် မှတ်ပုံတင်ပေးရန် အတွက်တောင်းဆိုချက်ဖြစ်ပါသည်။
 (This is a request for registration of the mark reproduced in this form.)

ရုံးသုံးအတွက်သာ (For Office Use Only):

1 လျှောက်ထားသူ (APPLICANT)

☐ လျှောက်ထားသူတစ်ဦးထက်ပိုပါကအကွက်ထဲတွင် အမှတ်အသားပြုပြီးနောက်ထပ် စာရွက်အသုံးပြုပါ။
 [If there is more than one applicant tick off this box and use an additional sheet]:

☐ လူပုဂ္ဂိုလ် (Natural Person) ☐ တရားဝင်ဖွဲ့စည်းထားသောအဖွဲ့အစည်း (Legal Entity)

* အမည် (Name):

နိုင်ငံသားစိစစ်ရေးကတ်ပြားအမှတ်/နိုင်ငံကူးလက်မှတ်အမှတ်/အဖွဲ့အစည်း(ကုမ္ပဏီ)မှတ်ပုံတင်အမှတ် (NRC No. /Passport No/ Organization (Company)Registration No):

* လိပ်စာ အပြည့်အစုံ (Full Address):

နိုင်ငံ (Country)

* တယ်လီဖုန်းနံပါတ် (Telephone Number):

အီးမေးလ်လိပ်စာ (Email Address):

လျှောက်ထားသူသည် လူပုဂ္ဂိုလ်ဖြစ်လျှင် အောက်ပါတို့ကို ဖော်ပြပါ -

နိုင်ငံသားစံယူထားသည့် နိုင်ငံအမည် (State of nationality) :

အမြဲတမ်းနေထိုင်ရာ နိုင်ငံအမည် (State of domicile):

ကူးသန်းရောင်းဝယ်ရေး(သို့မဟုတ်)စီးပွားရေးလုပ်ငန်းတည်ထောင်ထားသည့် နိုင်ငံအမည် (State of the industrial or commercial establishment) :

Source: Department of Intellectual Property in Myanmar (<https://ipd.gov.mm>)

Annex 2

Trademark Application Form 2 (TM2 Form)



သို့

မှတ်ပုံတင်အရာရှိ
မူပိုင်ခွင့်ဦးစီးဌာန
စီးပွားရေးနှင့်ကူးသန်းရောင်းဝယ်ရေးဝန်ကြီးဌာန

Ref. _____

ကိုယ်စားလှယ်ခန့်အပ်လွှာ
(APPOINTMENT OF REPRESENTATIVE)

TM - 2

၁	လျှောက်ထားသူ/ ကန့်ကွက်သူ/ အခွင့်အရေးရရှိသူ/ အကျိုးသက်ဆိုင်သူ (Applicant/ Opposer/ Right Holder/ Any Interested Person)
	အမည် _____ (Name) နေရပ်လိပ်စာ _____ (Address) တယ်လီဖုန်းနံပါတ် _____ (Telephone number)
၂	ကိုယ်စားလှယ် (Representative)
	အမည် _____ (Name) နိုင်ငံသားစိစစ်ရေးကတ်ပြားအမှတ် _____ (Number of National Scrutiny) တယ်လီဖုန်းနံပါတ် နှင့် အီးမေးလ်လိပ်စာ _____ (Telephone number and Email address) ☐ ကိုယ်စားလှယ်တစ်ဦးထက်ပိုပါက အပိုစာရွက်ဖြင့် ပူးတွဲဖော်ပြပါ။ (Note: If there is more than one representative, describe attached additional sheets. ပူးတွဲပါ ကိုယ်စားလှယ်များကိုလည်း ဤတောင်းဆိုချက်ပါ အမှတ်တံဆိပ်အတွက် ခန့်အပ်ထားသည့် တာဝန်များအတိုင်း ဆောင်ရွက်ခွင့်ပြုပါသည်။ (Representatives in the attachment is permitted to act as the appointed functions for the mark in this request.)
၃	ကိုယ်စားလှယ်၏လုပ်ငန်း (Business of Representative)
	လုပ်ငန်းအမည် _____ (Business Name) လုပ်ငန်းဆောင်ရွက်သည့် လိပ်စာအပြည့်အစုံ _____ (Business Address)

Source: Department of Intellectual Property in Myanmar (<https://ipd.gov.mm>)

STRENGTHENING INTELLECTUAL PROPERTY ENFORCEMENT FOR MSMEs: THE ROLE OF MYANMAR'S INTELLECTUAL PROPERTY COURTS

Ei Ei Thae¹

Abstract

Myanmar has enacted essential intellectual property (IP) legislation, comprising the Industrial Design Law, the Trademark Law, the Patent Law, and the Copyright Law. Notwithstanding these developments, the efficient execution and enforcement of these laws continue to pose challenges. Enforcement mechanisms in Myanmar comprise civil and criminal actions against intellectual property infringements, as well as border enforcement to mitigate counterfeit goods. Furthermore, court-facilitated mediation provides a time-efficient and economical method for settling intellectual property conflicts. This article seeks to assess the efficacy of Myanmar's intellectual property laws and enforcement procedures via IP Courts, with specific emphasis on their influence on Micro, Small, and Medium Enterprises (MSMEs). It examines the efficacy of these laws in fostering innovation and competitiveness among MSMEs and evaluates the impact of specialized IP courts on enhancing IP enforcement. The study uses qualitative research approach. The study aims to pinpoint deficiencies and obstacles in existing enforcement techniques, evaluate the influence of specialist IP courts on judicial efficiency, and provide recommendations for enhancing IP enforcement procedures. This study will provide significant recommendations for policymakers and practitioners regarding the improvement of intellectual property protection and enforcement. Furthermore, it will establish a basis for subsequent study on the convergence of intellectual property law, economic development, and support for micro, small, and medium enterprises, potentially impacting the formulation and implementation of intellectual property policies in analogous situations.

Keywords: Micro, Small and Medium Enterprises (MSMEs), Intellectual Property (IP), Intellectual Property Right (IPR), Intellectual Property Court (IP Court)

Introduction

Governments in both developed and developing nations have utilized intellectual property as a significant policy instrument to attract investments in knowledge generation and innovation, fostering economic growth, stimulating investment from abroad and assistance for small and medium enterprises (SMEs).² These goals may only be achieved if they are supported by a well-functioning IP legal ecosystem, which, in turn, includes effective IP protection and enforcement mechanisms, providing certainty for IP right holders.³ Moreover, considering the economic importance and the legal intricacies related to intellectual property rights amid ongoing technological advancements, the advantages of establishing a specialist intellectual property court are increasingly acknowledged worldwide. Many countries have either established or have been considering the introduction of various forms of such court.⁴ However, the implementation of such specialized IP courts faces key challenges, including limited funding for infrastructure

¹ Department of Law, Naypyitaw State Academy

² International Chamber of Commerce Commission on International Trade and Business Action to Stop Counterfeiting and Piracy, *Intellectual Property: Powerhouse for Innovation and Economic Growth*, 2011.

³ European Commission, *A Balanced IP Enforcement System Responding to Today's Societal Challenges COM*, 2017.

⁴ International Chamber of Commerce, *Adjudicating Intellectual Property Disputes*, 2016. Retrieved from <https://iccwbo.org/content/uploads/sites/3/2016/04/ICC-report-on-Specialised-IP-Jurisdictions.pdf>.

and training, inadequate judicial capacity to manage complex IP disputes, all of which hinder efficient case management and effective IP enforcement.¹ Despite these obstacles, the specialized IP courts are seen as an essential step toward enhancing the environment of respect, safeguarding, and enforcement of intellectual property rights.²

The Myanmar's Sustainable Development Plan for 2018-2030 outlines how the government intends to boost creativity and innovation to transform the economy. This involves supporting research and improving IP protection. Myanmar has a way to go to achieve this goal and strengthen its IP system. In 2019, the Industrial Design Law, the Trademark Law, the Patent Law, and the Copyright Law were passed, and these new IP laws came into effect in 2023 and 2024 respectively. These laws signify a substantial advancement in the modernization of Myanmar's intellectual property system. Furthermore, these laws empower the Supreme Court of the Union to establish an Intellectual Property Court (IP Court) for the adjudication of cases concerning infringements of intellectual property rights. According to these laws, the Supreme Court of the Union delegated jurisdiction of the IP Court to the relevant courts for adjudicating intellectual property disputes.

Compared with other developing ASEAN countries such as Thailand and Vietnam, however, Myanmar's IP court system remains in its early stages. Thailand's Intellectual Property and International Trade Court, established in 1997, operates efficiently with experienced judges and consistent procedures,³ while Vietnam recently created IP divisions in its major courts under the 2024 judicial reforms to improve expertise and consistency.⁴ Myanmar's IP courts, designated in 2023, offer specialized adjudication of intellectual property disputes, providing clarity and predictability for IP rights holders and businesses (MSMEs). However, they still face challenges such as limited funding, insufficient judicial training, and weak enforcement mechanisms, emphasizing the need for greater institutional development and capacity building. This study primarily addresses the jurisdiction and functions of Myanmar's IP Courts in enhancing intellectual property enforcement for MSMEs.

Research Methods

The study gathers data concerning the present status of MSMEs, intellectual property, intellectual property laws, and specialized intellectual property jurisdictions, analyzes the data, and seeks to derive conclusions from it. The study is based on publicly available data and did not engage stakeholders through systematic questionnaires.

Research Question

- (1) How might the implementation and enforcement of intellectual property rights (IPR) in Myanmar, especially via specialist IP courts, improve the competitiveness, creativity, and legal protection of micro, small, and medium-sized firms (MSMEs)?

¹ Rochelle C. Dreyfuss, *Specialized Adjudication*, Notre Dame Law Review, 2013, pp. 981-983.

² Commission on Intellectual Property Task Force on Specialized IP Jurisdictions, International Chamber of Commerce, *Report on Specialized IP Jurisdictions*, 2016.

³ Intellectual Property and International Trade Court in Thailand. Retrieved from <http://www.thailandcourt.com/intellectual-property-and-international-trade-court-in-thailand>.

⁴ Vietnam's Intellectual Property Legal Framework. Retrieved from <http://www.kenfoxlaw.com/vietnams-intellectual-property-legal-framework-opportunities-and-challenges-for-foreign-investors>.

Discussion

Importance of Intellectual Property for MSMEs

Like other developing countries, micro, small, and medium enterprises (MSMEs) hold a crucial position in Myanmar's economy, contributing about 36 percent of the GDP (Gross Domestic Product). In fact, roughly 90 percent of the businesses in Myanmar are MSMEs and they employ about 70 percent of the workforce. While foreign direct investment (FDI) is important for Myanmar's economic prosperity, investment alone cannot ensure its economic sustainability and stability. MSMEs are considered the backbone of any country's economic sustainability and stability, and Myanmar is not an exception. Although agriculture still contributes the most to GDP (approximately 41 percent), the contributions of the industrial and service sectors have been increasingly steadily. MSMEs are expected to play a critical role in expanding these contributions.¹ Since Micro, Small and Medium Enterprises (MSMEs) are the driving force for the socio-economic development of the country, the Government of Myanmar supports the development of MSMEs and encourages MSMEs to grow in a sustainable way. In 2015, the Small and Medium Enterprises Development Law was enacted, and this law defines the ways in which the Government of Myanmar is supporting SMEs, and contains SME definition. "Small enterprise" is those with between 30-300 permanent employees or with between 50-500 million Kyats in capital investment.² "Medium enterprise" is defined as having between 60-600 permanent employees or between 500-1000 billion in capital investment.³

To do business successfully, an entrepreneur always needs to consider both, (1) the internal strength of the enterprise and its business model and (2) the external conditions that the enterprise is facing. One of the most essential factors for success of an MSME and any enterprise is technology and innovation: technology hereby refers to the way, means and tools to generate the product or service. Innovation means to carry out the processes in MSME in a new way. In an ideal scenario a technologically highly specialized MSME may develop and protect a technological innovation through intellectual property protection (IPP).⁴ The IP protection supports MSMEs in building a business identity through effective branding strategies. It safeguards innovation by securing patents, utility models, and trade secrets. Additionally, it protects creative works through design rights and copyright. Intellectual property protection also deters competitors from replicating products or services. MSMEs gain access to valuable technologies via IP information and licensing agreements, enabling them to reduce unnecessary research and development costs. Moreover, it enhances the company's value by managing and valuing IP assets, while also providing broader access to venture capital and alternative financing options.⁵

The significance of intellectual property protection (IPP) to enterprises has escalated, as seen by the steadily rising volume of intellectual property rights filings. The report from the Commission on Intellectual Property Task Force regarding Specialized IP Jurisdictions,

¹ Hillol Bala, *Micro, Small and Medium Enterprises (MSMEs) in Myanmar: Success Factors and Future Outlooks*, 2016.

² Section 2 (a), the Small and Medium Enterprises Development Law, 2015.

³ Ibid, Section 2 (b).

⁴ Felix Christian Haas, *SME Toolkit*, Department of SME Development, Ministry of Industry, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, 2018, pp. 9-15.

⁵ <https://www.altacit.com/ip-management/msmes-and-intellectual-property-rights>.

International Chamber of Commerce, identifies the justification for the specialization process as the rapid progression of the global innovation-driven economy, the rising importance of intellectual property protection for enterprises, and the escalating number of applications and registrations for intellectual property rights. As a consequence of the increase in IP rights filings the number of IPR-related disputes has also raised. All these developments have raised entrepreneurial and public awareness of the importance of IP rights and their enforcement, which in turn has fed back into the filing activity. Furthermore, the increase in awareness has prompted deeper consideration regarding the effectiveness, fairness, and consistency of court proceeding for IPR-related disputes.¹ The total rise in IPR-related activities not only signifies the increasing significance of IPRs in economies but also reinforces a heightened awareness and subsequent expansion in the demand for IPRs.²

The enforcement of intellectual property rights is consequently a primary focus and warrants considerable contemplation over its efficacy, fairness, and consistency. One way of addressing the challenges is to set up specialised IP rights jurisdictions (SIPRJs), in order to resolve IPR-related disputes more efficiently, faster, with better quality, higher consistency and more predictability of outcomes in the eyes of the system's stakeholders.³

Consequently, intellectual property (IP), as intangible assets, is a crucial determinant of corporate competitiveness in the global economy. Intellectual property is a fundamental approach for ensuring a return on investment in innovation, especially pertinent to micro, small, and medium-sized firms (MSMEs). Intellectual property (IP) not only assists micro, small, and medium enterprises (MSMEs) in safeguarding their ideas from competitors, but it may also serve as a crucial source of cash flow through licensing agreements or the sale of IP, in addition to being a vital element in attracting investors. Despite the constraints of time and resources faced by MSMEs, recognizing the value of intellectual property to enterprises is essential. IP infringement is one of the most common concerns for businesses, and could lead to loss of business, revenue, reputation and competitive advantage, unless proactive steps are taken to protect IP and deter potential infringers.⁴

Intellectual Property Protection in Myanmar

In 2001, Myanmar became the 176th member of the World Intellectual Property Organization (WIPO). Earlier, in 1994, Myanmar had already signed onto the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. As a member of the World Trade Organization (WTO), the country is obliged to comply with and implement the provisions of this agreement. With increasing global attention on Myanmar's growing economy and its efforts to reform an outdated legal framework, finding effective ways to safeguard intellectual property rights has become essential. To meet its international obligations and engage more actively in the area of intellectual property, the government has introduced several key laws, including the Industrial Design Law, the Trademark Law, the Patent Law, and the Copyright Law, all enacted in 2019. Despite these legal reforms, Myanmar is continuing to improve its regulatory system by

¹ <https://iccwbo.org/news-publications/policies-reports/adjudicating-intellectual-property-disputes-an-icc-report-on-specialised-ip-jurisdictions>.

² The European Union Office for the Protection of Intellectual Property, Specialised IP Rights Jurisdictions in the Member States, 2018, p. 2.

³ The European Union Office for the Protection of Intellectual Property, Specialised IP Rights Jurisdictions in the Member States, 2018, p. 2.

⁴ South-East Asia IPR SME Helpdesk - IP Factsheet: Myanmar, 2016, p. 1.

strengthening enforcement, raising public awareness about the significance of intellectual property, and refining the registration process. Furthermore, the country is enhancing collaboration with global organizations and other stakeholders to tackle intellectual property challenges more efficiently. Table 2 summarizes Intellectual Property protection in Myanmar.

Intellectual property rights (IPRs) serve as important assets for both businesses and individuals, offering safeguards for innovation, technological advancements, brand identities, and artistic creations. However, securing intellectual property rights does not ensure they won't be violated, making the enforcement of these rights vital for the success of inventors, business owners, and artists.

Table 2: Intellectual Property Protection in Myanmar

Category	Description	Duration of Protection	Registration Requirement
Trademark	A trademark serves as a unique identifier for the goods or services provided by a specific business, differentiating them from competitors.	10 years, with the possibility of unlimited renewals	Required through the Department of Intellectual Property, Ministry of Commerce.
Copyright	Copyright protects original creative works, including literature, music, and art.	Lists for the lifetime of the creator plus 50 years posthumously.	May be required through the Department of Intellectual Property, Ministry of Commerce.
Industrial Design	Industrial design encompasses the visual and aesthetic elements of functional objects, which can include three-dimensional shapes or two-dimensional designs like patterns and colors.	5 years, renewable for two additional terms.	Required through the Department of Intellectual Property, Ministry of Commerce.
Patent	Patent protects new inventions that are useful, innovative, and applicable in industry.	20 years, subject to annual maintenance fees.	Required through the Department of Intellectual Property, Ministry of Commerce.
Utility Model	Utility model refers to minor inventions that represent technical innovations, such as a new design for a product, a novel arrangement of its components, or enhancements to a part of a product that improve its utility or functionality.	10 years	Required through the Department of Intellectual Property, Ministry of Commerce.

Intellectual Property Enforcement in Myanmar: Intellectual property rights hold little value without proper enforcement. Intellectual property (IP) enforcement involves taking legal steps when IP rights are violated, aiming to halt the infringement, prevent future violations, and address the damages caused. The significance of IP enforcement varies depending on the stakeholder. For businesses, it serves as a vital legal tool to safeguard their investments and maintain fair competition. For consumers, it ensures product safety and quality. For governments, it helps secure revenue for essential public services and fosters a stable business environment to attract investments. The 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is the only international treaty that thoroughly addresses IP enforcement. Its Part III outlines the minimum legal requirements for IP enforcement. World Trade Organization (WTO) members have the flexibility to implement the TRIPS Agreement's provisions in a way that balances private and public interests. The remedies under the TRIPS

Agreement include provisional measures, civil and administrative enforcement, border controls, and criminal enforcement.

Civil and administrative enforcement: Civil and administrative processes and solutions are legal tools used to resolve intellectual property violations through civil or administrative bodies.¹ The TRIPS Agreement provides that a right holder must be able to initiate fair and equitable civil judicial procedures against an infringer of IP rights covered under the Agreement. The Courts must be empowered to provide three types of solutions: injunctions that require a party to cease infringing activities, compensation for the harm caused by the violation, and additional remedies, such as the elimination of infringing products from the marketplace or their destruction, under specified conditions.² In Myanmar, the right holder may file not only a civil case in the Intellectual Property (IP) Court but also a civil miscellaneous case for his grievance in the IP Court to order provisional measures.³ Moreover, a person who disagrees with a decision of the Intellectual Property Agency⁴ or a suspension order issued by the Director General of the Customs Department⁵ may apply for judicial review to the relevant IP Court. In civil suits for IPRs infringements, there are three types of remedies that may be passed by the IP Courts: injunctions, damages, and other remedies.

Provisional measures refer to interim actions implemented by a court or administrative body before a final judgment is made. These measures aim to prevent the infringement of intellectual property rights, such as stopping unauthorized goods from entering the market or safeguarding evidence related to alleged infringements. WTO members are obligated to provide swift and effective provisional enforcement in two main scenarios: first, to prevent IP rights violations, particularly by keeping infringing goods out of distribution channels, including after customs clearance; and second, to secure crucial evidence in cases of suspected infringement. In certain cases, such as when delays could lead to irreparable harm or evidence destruction, these measures must be applied without notifying the alleged violator.⁶ In Myanmar, although a civil case is not yet instituted by the right holder, first and foremost, he can seek an order or orders for provisional measures.⁷

Criminal enforcement: Criminal enforcement serves as legal tools to combat IP violations, particularly in cases of trademark counterfeiting and copyright infringement. According to the TRIPS Agreement, such measures are mandatory only when these offenses are committed willfully and on a commercial scale. While member states can choose to apply criminal procedures to other forms of IP infringement, they are not required to do so.⁸ With regard to the infringement of IPRs in Myanmar, the right holder may file a criminal case in the IP

¹ <https://www.wipo.int/en/web/ip-enforcement>.

² https://www.wto.org/english/tratop_e/trips_e/ipenforcement_e.htm.

³ Section 67 of the Industrial Design Law, 2019; Section 67 of the Trademark Law, 2019; Section 96 of the Patent Law, 2019; Section 73 of the Copyright Law, 2019.

⁴ Section 65 of the Industrial Design Law, 2019; Section 66 of the Trademark Law, 2019; Section 94 of the Patent Law, 2019; Section 59 of the Copyright Law, 2019.

⁵ Section 72 of the Trademark Law, 2019; Section 68 of the Copyright Law, 2019.

⁶ https://www.wto.org/english/tratop_e/trips_e/ipenforcement_e.htm.

⁷ Section 67(a) of the Industrial Design Law, 2019; Section 77(a) of the Trademark Law, 2019; Section 96(a) of the Patent Law, 2019; Section 73(a) of the Copyright Law, 2019.

⁸ https://www.wto.org/english/tratop_e/trips_e/ipenforcement_e.htm.

Court.¹ When adjudicating criminal cases under the IP Laws, penalties that may be passed by the IP Courts against the accused imprisonment or monetary fines that are substantial enough to act as a deterrent, and are aligned with the severity of similar crimes. In appropriate cases, remedies must also include seizure, forfeiture and destruction of the infringing goods and of materials and equipment used to produce them.

Border controls: Border controls refer to actions taken at entry points to prevent infringing goods from entering the market. According to the TRIPS Agreement, these measures allow intellectual property (IP) rights holders to work with customs officials to block infringing goods, such as counterfeit trademark or pirated copyright items, from being distributed. The enforcement of these measures is obligatory only in cases involving counterfeit trademarks or pirated copyrights. Generally, the IP rights holder must submit a request for action to customs authorities, as they are not required to act on their own accord, although countries can opt to allow customs to initiate such actions themselves, the right holder must request the customs authorities to take action. The Myanmar Customs Department is a governmental agency of the Ministry of Finance. Customs provide examination and investigation on goods imported and exported in accordance with existing laws, rules and regulations and take action against incompliance; they work in co-operation and co-ordination with other allied law enforcement agencies and support the development of trade and national economic development. The Sea Customs Act, 1878 also prohibits export or import by land or sea of goods bearing a counterfeit mark. The remedies are confiscation of the goods and a fine. Custom officers are authorized to stop and search any person, vessel or vehicle on the grounds of reasonable suspicion.

The Role of the Specialized IP Courts in IP Enforcement

By becoming parties to the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the signatories acknowledge the significance of properly safeguarding and enforcing intellectual property rights (IPR).² Under Article 41 (5) of the TRIPS Agreement, countries have no requirement to establish a legal framework for the enforcement of intellectual property rights that shall be different from the general enforcement of laws. Consequently, nations have the autonomy to determine which judicial entities are authorized to address intellectual property disputes and whether it is appropriate to establish specialized IP courts for adjudicating IP disputes. In other words, the creation and effective functioning of a specialized IP Court is a policy-driven decision which aims at encouraging innovation and investment, raises greater awareness of IP rights and signals governmental priorities in this respect.³

IP Courts and the worldwide trend toward specialization: Recognizing that intellectual property (IP) assets are crucial tools for driving innovation and promoting growth of the global economy and involve legal complexities, numerous countries have either implemented or are contemplating the establishment of specialized courts. Despite the global trend toward specialization, specialized IP courts can differ significantly in their scope depending on the

¹ Section 67(b) of the Industrial Design Law, 2019; Section 77(b) of the Trademark Law, 2019; Section 96(b) of the Patent Law, 2019; Section 73(b) of the Copyright Law, 2019.

² Preamble of the Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995.

³ Jacques de Werra, Specialised IP Courts: Issues and Challenges, Global Perspectives for the Intellectual Property System, Issue Number 2, CEIPI-ICTSD, 2016, p. 17.

jurisdiction. Their roles also vary, with some serving as trial courts and others as appellate bodies, empowered to review lower court decisions.¹

A number of studies on specialized IP courts² suggest that the establishment of specialized courts may have a range of positive outcomes. One of the main advantages of the establishment of a specialized IP court is that it signals to the public that the state is interested in and will protect intellectual property. This may increase faith in the IP system as a whole and in turn encourage investment and innovation.³ Another positive outcome envisaged by the creation of a specialized court is that it is more capable of keeping abreast of developments in its specific areas of law than the non-specialized courts.⁴ In addition, the increase in the level of judicial expertise may result in less reliance on technical experts in decision making, which, in turn, improves the quality and impartiality of such decisions.⁵ Moreover, greater consistency and more uniform judicial practice is another outcome as IP disputes would be adjudicated by the judges, each possessing a greater level of experience and expertise in such disputes.⁶ Case outcomes may therefore become more predictable. This, in turn, may improve business confidence, reduce the caseload for IP courts and the duration of the proceedings. Moreover, it may enable parties to settle their disputes because it may be possible to predict the likely outcome of the dispute due to the consistent application of IP rules.⁷

Ensuring uniformity in legal proceedings is essential as it reduces ambiguity and improves the predictability of case outcomes. This clarity results in a reduction in litigation, as prospective litigants may more readily discern cases devoid of substance. Companies are more certain that their innovative investments will be protected, allowing them to develop their company plans more efficiently, so promoting economic growth. Established and coherent case law from the rulings of IP Courts can be incorporated into practice guidelines for examiners, as it facilitates the extraction of prevailing case law when fewer courts adjudicate on identical problems. Enhanced practice guidelines elevate the rigor in the allocation of intellectual property rights titles. Consequently, the confidence of IP rights practitioners and holders improves as their IPR will eventually be supported in legal settings. This reduces the likelihood of future legal

¹ Yuri Fancher Machado, Maria Eduarda de O. Borrelli Junqueira, and Weixian Zhu, *IP Courts and the Worldwide Trend toward Specialization*, published in *Landslide*, Vol. 16, No. 3, 2024, the American Bar Association.

² Heike Gramckow and Barry Walsh, *Developing Specialized Court Services: International Experiences and Lessons Learned*, 2013, Legal Vice Presidency, the World Bank; World Intellectual Property Organization (WIPO), *Advisory Committee on Enforcement, Mechanisms to Resolve Intellectual Property Disputes in a Balanced, Holistic and Effective Manner*, 2016; International Intellectual Property Institute/US Patent and Trademark Office (IIPI/USPTO), *Study on Specialised Intellectual Property Courts*, 2012; International Chamber of Commerce (ICC), *Commission on Intellectual Property Task Force on Specialised IP Jurisdictions*, Report on Specialised IP Jurisdictions, 2016; Jacques de Werra, *Specialised Intellectual Property Courts – Issues and Challenges*, Global Perspectives for the Intellectual Property System, 2016, CEIPI/ICTSD publication series 2; European Union Office for the Protection of Intellectual Property (EUIPO), *Specialised IP Rights Jurisdictions in the Member States*, 2018.

³ International Intellectual Property Institute/US Patent and Trademark Office (IIPI/USPTO), *Study on Specialised Intellectual Property Courts*, 2012 (n 13) 6.

⁴ Jacques de Werra, *Specialised Intellectual Property Courts – Issues and Challenges*, Global Perspectives for the Intellectual Property System, 2016, CEIPI/ICTSD publication series 2 (n 15) 24.

⁵ *Ibid*, 24.

⁶ *Ibid*, 25.

⁷ *Ibid*.

disputes and simplifies the process for small and medium-sized businesses to safeguard their intellectual property rights without incurring high court costs.¹

The court's specialized knowledge is considered crucial in disputes concerning intellectual property rights, as they are often called upon to make rulings on applications for prompt and effective temporary relief through provisional measures. IP expertise and knowledge may also be boosted by fostering opportunities to improve the transparency of judicial processes and by allowing the participation of third parties. This can be achieved, for example, by allowing submissions of *amicus curiae* briefs in intellectual property litigation, as well as making IP case rulings accessible through online databases.²

When establishing a specialized IP court, it is essential to consider potential disadvantages. First, specialized courts may have a limited scope, focusing heavily on intellectual property issues and potentially overlooking other important aspects such as contract law or competition law in disputes. Second, accessibility could be a concern since these courts might be located in a single area, making it difficult for individuals in remote regions to access justice. Third, countries may encounter various challenges during the creation of such courts, such as the need for substantial investment in human resources and the development of specialized procedural laws. Addressing these challenges is crucial to ensure the efficient operation of specialized IP courts.³

Choosing the optimal option for the organizational and procedural framework of an IP judiciary necessitates a meticulous assessment of multiple factors, including determinations regarding specific structural components. The form of an IP judiciary typically aligns with specific policy objectives and encompasses many foundational issues. For example, the UK's IPEC was created to offer a more accessible and convenient platform for SMEs. The structure of specialized IP courts varies significantly across jurisdictions. In some countries, independent specialized IP courts function either at the trial or appellate levels. In the UK, the specialized IP Court includes trial-level courts such as the Patents Court, the IPEC, and the Chancery Division of the High Court. In other regions, IP disputes are handled by specialized IP divisions within civil or commercial courts.⁴

A general model for creating a specialized intellectual property (IP) judiciary does not exist. The diverse array of global legal systems indicates that a singular methodology for establishing an effective intellectual property court system, which promotes innovation and societal advantages, is non-existent. Before deciding whether to invest in a specialized IP court, it is recommended to assess the volume of IP-related cases currently pending or anticipated under a new legal framework. If the number of cases is minimal and regular courts can handle them

¹ International Intellectual Property Institute/US Patent and Trademark Office, Study on Specialised Intellectual Property Courts, 2012; <http://iipi.org/2012/05/>

² Mechanisms to Resolve Intellectual Property Disputes in a Balanced, Holistic and Effective Manner, WIPO/ACE/11, p. 36.

³ Jacques de Werra, Specialised Intellectual Property Courts – Issues and Challenges, Global Perspectives for the Intellectual Property System, 2016, CEIPICTSD publication series 2 (n 15) 26.

⁴ Olga Gurgula, Maciej Padamczyk, and Noam Shemtov, Specialised IP Judiciary: What Are the Key Elements to Consider when Establishing or Reforming an Effective IP Court, GRUR International, 2021, p. 208.

efficiently, the need for a specialized court diminishes. A cost-effective alternative could be the creation of a specialized IP division within the existing judicial system.¹

The Specialized IP Courts in the United Kingdom (Case Study): This case study examines the practical implementation and concrete results of specialized intellectual property courts, notably for micro, small, and medium-sized firms (MSMEs), with a focus on the jurisdictional specialization of IP rights in the UK, specifically in England and Wales. Historically, the expenses associated with intellectual property (IP) litigation in the UK were deemed too burdensome for small and medium-sized firms (SMEs). In 2010, numerous improvements were implemented in the Intellectual Property Enterprise Court (IPEC). Following the 2009 Intellectual Property Court Users Committee's report and the 2010 Jackson Review on civil litigation costs, significant changes were made to the IPEC (formerly known as the Patents County Court until October 2013). These reforms were designed to enhance access to justice for SMEs by simplifying court procedures, reducing litigation costs, and accelerating claim resolution at both the IPEC's multi-track and small-claims levels. The goal was to better distinguish the cases handled by IPEC from those heard in the High Court and Patents Court (PHC), allowing the IPEC to focus on less complex cases and offering quicker resolutions with capped recoverable costs and damage awards.²

The Intellectual Property Enterprise Court (IPEC) is established to offer justice for small and medium-sized businesses (SMEs) and individuals facing intellectual property disputes, such as those related to patents, trademarks, designs, copyright, and passing off. The court handles cases that are shorter, less complicated, and of lower value than those suited for the Patents Court or the Chancery Division. IPEC is structured with distinct procedures, financial thresholds, and cost regulations. It offers two tracks: the multi-track and the small claims track. The multi-track can handle claims with damages up to £500,000, and cost awards are proportional to the case's complexity, capped at £50,000. The small claims track deals with cases valued at up to £10,000, with limited cost awards. Procedures in the IPEC follow CPR Part 63 and Practice Direction 63, with specific guides for both the multi-track and small claims track.³

A 2015 evaluation determined that the amendments had predominantly succeeded in enhancing access to justice for diverse rights holders across all categories of intellectual property. This encompassed not only small and medium-sized organizations (SMEs) and people but also medium and big corporations. The Intellectual Property Enterprise Court (IPEC) is crucial in protecting and enforcing intellectual property rights in the UK, especially for smaller enterprises and individual creators who may lack the resources to pursue legal recourse through alternative means.

IP Courts of Myanmar: Establishment and Jurisdiction

Myanmar's judiciary is dedicated to guaranteeing equal access to justice for all individuals. It strives to maintain fairness and adhere to the rule of law, ensuring that every

¹ A joint project between the international Intellectual Property Institute (IPI) and the United States Patent and Trademark Office (USPTO), Study on Specialized Intellectual Property Courts, 2012, p. 10.

² The European Union Office for the Protection of Intellectual Property, Specialised IP Rights Jurisdictions in the Member States, 2018, p. 19.

³ [Work of the Intellectual Property Enterprise Court - Courts and Tribunals Judiciary](https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/business-list-general-chancery/intellectual-property-list/intellectual-property-enterprise-court-ipeec). Retrieved from <https://www.judiciary.uk/courts-and-tribunals/business-and-property-courts/business-list-general-chancery/intellectual-property-list/intellectual-property-enterprise-court-ipeec>.

citizen has the opportunity to seek legal recourse.¹ The judiciary in Myanmar is dedicated to upholding the highest standards of justice and integrity for all individuals appearing in court. One of its core responsibilities is maintaining and enforcing the rule of law.² Both the former Judicial Strategic Plan (2018-2022) and the current one (2023-2027) by Myanmar's Supreme Court aim to outline and put into action strategies for court specialization, with an emphasis on intellectual property (IP) and commercial disputes. The earlier plan focused on assessing various models for specialized courts, and a dedicated commercial branch was created within the Yangon Western District Court to handle commercial cases, including IP-related issues, after the implementation of IP laws. The current plan builds on these efforts, establishing a specialized IP branch in a district court following the enactment of IP laws, while also enhancing procedural guidelines for IP cases.

Formation of Intellectual Property Courts: The judiciary's primary responsibility is to deliver justice whenever citizens seek it from the appropriate courts. Courts established under Myanmar's 2008 Constitution and the 2010 Union Judiciary Law include the Supreme Court of the Union, Regional and State High Courts, District or Self-Administered Division/Zone Courts, Township Courts, and other legally established courts such as Juvenile Courts, Municipal Courts, Traffic Courts, and Intellectual Property Courts.³

"Intellectual Property Court" means the court established by the Supreme Court of the Union under the law to adjudicate intellectual property matters or the court conferred jurisdiction and authority of such court.⁴ The power and authority to establish Intellectual Property Courts is conferred by the IP Laws to the Supreme Court of the Union. Therefore, the Supreme Court of the Union:

- (a) may establish the Intellectual Property Courts in any appropriate places and appoint judges to adjudicate on the criminal or civil cases with respect to intellectual property matters;
- (b) may confer the jurisdiction and authority to the judges appointed under subsection (a) to adjudicate on the intellectual property matters;
- (c) may confer the jurisdiction and authority of the Intellectual Property Courts to the appropriate courts to adjudicate on the intellectual property matters before the establishment of the Intellectual Property Courts under subsection (a);
- (d) shall confer the jurisdiction and authority to the Intellectual Property Courts that have jurisdiction over appeal and revision cases against any judgment, order and decision made by the Intellectual Property Courts;
- (e) shall confer the jurisdiction and authority to the appropriate Intellectual Property Courts to adjudicate on the cases under section 65 of the Industrial Design Law/section 66 of the Trademark Law/section 94 of the Patent Law/section 59 of the Copyright Law.⁵

In Myanmar, prior to the formation of an independent Intellectual Property Court, the Supreme Court of the Union established IP Courts as a specialized branch within existing courts

¹ Judicial Strategic Plan (2018-2022), the Supreme Court of the Union of Myanmar.

² Judicial Strategic Plan (2023-2027), the Supreme Court of the Union of Myanmar.

³ Annual Report (2023), the Supreme Court of the Union, 2023, p. 18.

⁴ Section 2 (r) of the Industrial Design Law, 2019; Section 2 (u) of the Trademark Law, 2019; Section 2 (t) of the Patent Law, 2019; Section 2 (nn) of the Copyright Law, 2019.

⁵ Section 66 of the Industrial Design Law, 2019; Section 67 of the Trademark Law, 2019; Section 95 of the Patent Law, 2019; Section 63 of the Copyright Law, 2019.

by delegating the jurisdiction and authority of the IP Court to the relevant courts following the implementation of IP Laws.

Jurisdiction of the Intellectual Property Courts: The IP Laws including the Industrial Design Law, the Trademark Law, the Patent Law, and the Copyright Law were passed by Pyidaungsu Hluttaw in 2019. Currently, the State Administration Council Notification Nos. 82/2023, 217/2023, 218/2023, and 106/2024 have brought the Trademark Law, the Industrial Design Law, the Copyright Law, and the Patent Law into force respectively. After the enforcement of IP Laws, the Supreme Court of the Union issued the notifications that conferred the jurisdiction and authority of the Intellectual Property Courts to the courts mentioned in these notifications (Table 2).

Table 2: Jurisdiction of the Intellectual Property Court ¹

Jurisdiction of the IP Court	Competent Court
Criminal original jurisdiction ² to try the criminal cases filed under the IP Laws	- Court of Self-Administered Division - Courts of Self-Administered Zones - District Courts
Jurisdiction to try the appeals/revisions filed against the criminal judgments, orders or decisions passed by the Court of Self-Administered Division, Courts of Self-Administered Zones and District Courts ³	High Courts of Regions/States
Civil original jurisdiction ⁴ to adjudicate on (a) Civil suits with regard to IPRs infringements (b) Applications for provisional measures ⁵	Kyauktada District Court
- Jurisdiction to adjudicate on the appeals/revisions against judgments, orders and decisions passed in the civil suits by the IP Court ⁶ - Judicial review on (a) Applications against the decision of the Intellectual Property Agency ⁷ (b) Applications against the suspension order issued by the Director-General of the Customs Department ⁸	The High Court of the Yangon Region

¹ The Supreme Court of the Union Notification Nos. 235/2023, 236/2023, 237/2023, 238/2023 and 239/2023 dated on 24-3-2023; The Supreme Court of the Union Notification Nos. 961/2023, 962/2023, 963/2023, 963/2023, and 965/2023, dated on 27-10-2023; The Supreme Court of the Union Notification Nos. 955/2023, 956/2023, 957/2023, 958/2023 and 959/2023 dated on 27-10-2023; The Supreme Court of the Union Notification Nos. 689/2024, 690/2024, 691/2024, 692/2024 and 693/2024 dated on 3-6-2024.

² Section 66(c) of the Industrial Design Law, 2019; Section 67(c) of the Trademark Law, 2019; Section 95(c) of the Patent Law, 2019; Section 63(c) of the Copyright Law, 2019.

³ Section 66(d) of the Industrial Design Law, 2019; Section 67(d) of the Trademark Law, 2019; Section 95(d) of the Patent Law, 2019; Section 63(d) of the Copyright Law, 2019.

⁴ Section 66(c) of the Industrial Design Law, 2019; Section 67(c) of the Trademark Law, 2019; Section 95(c) of the Patent Law, 2019; Section 63(c) of the Copyright Law, 2019.

⁵ Section 67(a) of the Industrial Design Law, 2019; Section 77(a) of the Trademark Law, 2019; Section 96(a) of the Patent Law, 2019; Section 73(a) of the Copyright Law, 2019.

⁶ Section 66(d) of the Industrial Design Law, 2019; Section 67(d) of the Trademark Law, 2019; Section 95(d) of the Patent Law, 2019; Section 63(d) of the Copyright Law, 2019.

⁷ Section 65 of the Industrial Design Law, 2019; Section 66 of the Trademark Law, 2019; Section 94 of the Patent Law, 2019; Section 59 of the Copyright Law, 2019.

⁸ Section 72 of the Trademark Law, 2019; Section 68 of the Copyright Law, 2019.

The Supreme Court of the Union has designated the Kyauktada District Court with original jurisdiction to adjudicate civil proceedings concerning intellectual property rights infringements and applications for provisional measures, while criminal cases under the relevant IP laws are to be tried by the District Courts or Courts of the Self-Administered Division or Zones. Furthermore, the High Courts of the Region or State possess appellate competence to review appeals or revisions concerning criminal judgments, orders, and decisions rendered under the pertinent Intellectual Property Laws by the District Courts or Courts of the Self-Administered Division or Zones. The High Court of Yangon Region possesses appellate jurisdiction over the IP Court to adjudicate civil appeals or revisions, as well as the authority to conduct judicial reviews of applications contesting decisions made by the Intellectual Property Agency and suspension orders issued by the Director-General of the Customs Department.

Procedures for adjudicating IP cases in the Intellectual Property Courts: Pursuant to the announcement relating to the enforcement of IP Laws and the jurisdiction of IP Courts, the Supreme Court of the Union has consequently issued the procedures for adjudication of proceedings under the Trademark Law by Notification No. 240/2023 dated 24-3-2023, the procedures for adjudication of proceedings under the Industrial Design Law by Notification No. 960/ 2023 dated 27-10-2023, the procedures for adjudication of proceedings under the Copyright Law by Notification No. 973/2023 dated 27-10-2023, and the procedures for adjudication of proceedings under the Patent Law by Notification No. 694/2024 dated 3-6-2024. In addition to these procedures, the Case Management Procedures (2018) ¹ shall be applied to carry out the effective case management. By applying these procedures, it can achieve the results such as fair resolution of disputes, being able to adjudicate in a timely manner, and costs so on.

While adjudicating on the cases with respect to intellectual property matters, the Intellectual Property Court may apply the provisions in the Evidence Act, the Code of Criminal Procedure and the Code of Civil Procedure and other relevant existing laws if it is not provided expressly in the IP Laws in respect of the enforcement actions for infringement of IPRs.² In the stipulated Courts that are empowered to try the IP-related cases, witnesses, domestic and international, who cannot appear before the Court can testify using court technology.³ By complying with the instructions of the Supreme Court of the Union regarding taking testimony by video or audio communication and applying for permission to testify via video or audio communication,⁴ it can achieve the benefits such as making the court users more accessible to justice in IP cases, being able to try as scheduled, etc.

Settlement of IP Infringements by Alternative Dispute Resolution (ADR): IPRs infringement cases may be amicably solved with the intervention of a third party. It is also mentioned in the IP Laws of Myanmar that the disputes on industrial design⁵, trademark right⁶, patent⁷, and copyright or related rights⁸ between the two parties may be settled by means of mutual consultation amicably or arbitration or judicial proceedings. Civil suits concerning IP

¹ The Supreme Court of the Union Notification No. 649/2018 (1. 8. 2018).

² Section 74 of the Industrial Design Law, 2019; Section 86 of the Trademark Law, 2019; Section 104 of the Patent Law, 2019; Section 81 of the Copyright Law, 2019.

³ Tin Nwe Soe, Intellectual Property Courts for Intellectual Property Disputes. Retrieved from <http://www.moi.gov.mm>.

⁴ The Supreme Court of the Union Notification No. 5/2021.

⁵ Section 80 of the Industrial Design Law, 2019.

⁶ Section 104 of the Trademark Law, 2019.

⁷ Section 113 of the Patent Law, 2019.

⁸ Section 95 of the Copyright Law, 2019.

infringements are classified as commercial suits; thus, the parties can resolve their disputes expeditiously and economically through personal negotiation and agreement at the mediation center located in the High Court of Yangon Region prior to the commencement of the trial.

Consequently, Myanmar's court prioritizes equitable access to justice, upholding the rule of law, and fostering integrity. The establishment of specialized Intellectual Property (IP) Courts is integral to this commitment, as stated in the Judicial Strategic Plans. The courts, authorized by the 2019 IP legislation, has jurisdiction over civil and criminal cases, with the Kyauktada District Court addressing civil matters and district courts managing criminal cases. The Supreme Court has implemented procedural norms to ensure speedy and equitable case resolution, incorporating facilities for remote testimony. Alternative dispute resolution procedures, such as arbitration and mediation, offer expedited and more economical solutions for resolving intellectual property issues.

Findings

Intellectual property rights (IPR) are essential for the development and competitiveness of MSMEs in Myanmar, as they safeguard inventions and create income opportunities via licensing. Myanmar's legal system, encompassing the Industrial Design Law, Trademark Law, Patent Law, and Copyright Law, provides safeguards; nonetheless, enforcement is a considerable challenge. The specialist intellectual property courts have been instituted to resolve these matters, providing proficiency and effectiveness in managing intellectual property disputes. Nonetheless, apprehensions over time and expenses persist. Micro, Small, and Medium Enterprises (MSMEs), vital to Myanmar's economy, frequently lack the capacity to properly utilize these protections, rendering education and outreach imperative. Enhancing IPR enforcement via more accessible judicial procedures and alternative dispute resolution methods, such as court-led mediation, can stimulate innovation, attract foreign investment, and promote economic growth.

Recommendations

To strengthen the safeguarding and enforcement of intellectual property (IP) rights for MSMEs in Myanmar, some critical measures should be contemplated. Initially, enhance the capabilities of intellectual property courts by allocating resources for specialized training for judges and legal practitioners to augment their proficiency in managing intricate intellectual property issues. Secondly, enhance knowledge and accessibility of intellectual property protection procedures among micro, small, and medium enterprises (MSMEs) through educational and outreach initiatives, ensuring that businesses comprehend the significance of safeguarding their ideas. Third, establish more efficient and transparent enforcement tools, encompassing civil, criminal, and border actions, to deter intellectual property infringement. Ultimately, advocate for mediation and alternative conflict resolution techniques to provide economical and expedited solutions for MSMEs, alleviating the strain on the formal judicial system.

Conclusion

Intellectual Property Rights (IPR) are crucial for the growth and sustainability of Micro, Small, and Medium-sized Enterprises (MSMEs), particularly in developing economies such as Myanmar. Robust intellectual property protection not only secures innovations and strengthens competitive advantage but also offers significant cash prospects through licensing and sales. Notwithstanding Myanmar's advancements in creating a complete intellectual property legislative

framework, encompassing the Trademark Law, Industrial Design Rights Law, Copyright Law, and Patent Law, considerable obstacles persist in enforcement and implementation.

The enforcement techniques, encompassing civil lawsuits, criminal measures, border enforcement, and mediation, are essential for safeguarding intellectual property rights (IPR). The efficacy of these interventions depends on their execution and the resources allocated for their implementation. The TRIPS Agreement establishes an international benchmark for intellectual property protection and enforcement, seeking to mitigate piracy and counterfeiting while promoting innovation and enticing foreign investment.

The creation of specialized intellectual property courts in Myanmar signifies a crucial advancement in improving judicial efficiency and efficacy in adjudicating intellectual property disputes. These courts, possessing specialized knowledge and efficient procedures, have the capacity to enhance the entire intellectual property enforcement framework. However, they also pose issues about expense, accessibility, and jurisdictional limits. To tackle these problems, it is essential for Myanmar to consistently enhance its intellectual property protection and enforcement policies. This entails utilizing technology, enhancing resource distribution, and promoting improved integration of specialized intellectual property tribunals within the overarching judicial framework. By doing so, Myanmar may enhance its support for MSMEs, foster sustainable economic growth, and establish a more favorable climate for innovation and investment. Future research ought to investigate the enduring effects of these actions on MSMEs and contemplate the creation of more economical and accessible IP enforcement procedures to further improve the IP ecosystem in Myanmar and analogous emerging economies.

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SERIOUS AND NON-POLITICAL CRIMES UNDER INTERNATIONAL LAW

Swe Swe Than¹

Abstract

Serious and non-political crimes under international law emphasize its importance for extradition, mutual legal assistance and the suppression of transnational crime. While many legal systems exclude political offenders from extradition to protect legitimate political activity, states also recognize that grave offenses such as murder, terrorism, trafficking and other violent or organized crimes must not be shielded by claims of political motivation. The study analyzes treaty provisions, state practice and relevant judicial decisions to clarify how international law defines and interprets serious and non-political crimes and how this distinction affects international cooperation. The findings highlight the need for consistent legal standards to prevent the misuse of political offense exceptions and to ensure accountability for offenders who pose significant threats to international peace, security and public order.

Keywords: serious crimes, non-political crimes, human rights, accountability and prosecution

Introduction

Serious and non-political crimes play a central role in international law, particularly in areas such as extradition and mutual legal assistance, where states must distinguish between legitimate political offenses and grave acts that threaten public order and international security. While political offenders are often protected from extradition, international law requires that individuals who commit serious crimes cannot evade accountability by claiming political motives. This distinction is essential for ensuring effective international cooperation, preventing safe havens for offenders and promoting consistent state practice. As the organizational structure, the research highlights the international legal framework, classification of crimes, accountability and prosecution for crimes and the involvement of international communities.

Methods

This paper is designed by using qualitative research style, literature review, selecting the articles from the related international conventions and instruments and as well as secondary information from academic papers.

International Legal Framework

Serious and non-political crimes under international law refer to grave offenses that threaten the peace, security, and fundamental rights of the international community. These crimes are not committed for political purposes and often include acts such as genocide, crimes against humanity, war crimes, terrorism, human trafficking, and drug trafficking. The legal framework regulating these crimes is based on treaties, customary international law, judicial decisions, and the practice of international and national institutions. This section outlines the key legal instruments, principles, and enforcement mechanisms that govern the prosecution and prevention of these crimes at the international level.

Article 1F of the Convention relating to the Status of Refugees, 1951 and the 1967 Protocol set the principal standard for excluding individuals involved in serious or non-political

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crimes from refugee protection. Serious non-political crimes under Article 1F(b) encompass grave common-law crimes such as murder, rape, or armed robbery that are devoid of legitimate political purpose and serious enough to engage international concern. This distinction aligns with Article 1(3) of the UN Charter which promotes human rights and justice.²

United Nations Conventions on Transnational Organized Crime known as the Palermo Convention (UNCTOC), 2000 provides the legal framework to combat crimes such as: human trafficking, drug trafficking, money laundering, and corruption. Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000 which supplements the UNCTOC defines trafficking in persons and provides the basis for international cooperation to prevent and combat this non-political crime.³

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, defines drug trafficking as a non-political crime and establishes a framework for international cooperation in extradition and mutual legal assistance in cases of drug-related offenses.⁴ United Nations Convention Against Corruption, 2003, State parties require to criminalize the act of bribery, both domestically and transnationally, as a non-political crime.⁵ The Convention Against Torture (CAT) mandates states to prosecute individuals accused of committing acts of torture. Obliges states to either prosecute the alleged torturer or extradite the individual to a state willing to prosecute.⁶

Non-political crimes concern international law when they meet any transnational crimes, a crime becomes a concern of international law when: it is committed in more than one country, it involves perpetrators or victims of different nationalities, it affects multiple jurisdictions and it requires international cooperation to investigate and prosecute. For examples: human trafficking, drug smuggling and cybercrime, etc. These crimes are addressed by treaties like the United Nations Convention against Transnational Organized Crime, 2000. Some non-political crimes violate fundamental norms of international law that are binding on all states. Non-political crimes may become an international law issue if they threaten regional or global stability.

Classification of Crimes

The classification of crimes under international law is essential for distinguishing between political and non-political crimes and for determining which acts constitute serious violations that attract international responsibility. Crimes are generally classified according to their nature, scope, and the level of harm they cause to individuals and the international community. Generally, international law recognizes several broad categories international crimes. The principal categories of serious crimes recognized under international law include genocide, crimes against humanity, war crimes, and crimes of aggression. These offenses are regarded as *jus cogens* crimes because they violate fundamental principles of international law and exemption.

² James C. Hathaway and Michelle Foster, *The Law of Refugee Status*, 2nd Edition, Cambridge University Press, 2014, P. 500.

³ Article 3, Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000.

⁴ Article 3, United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

⁵ Article 15, United Nations Convention Against Corruption, 2003.

⁶ Article 7(1), Convention Against Torture, 1984.

Serious Crimes

A presumption of serious crime might be considered as raised by evidence of commission of any of the following offences: homicide, rape, child molesting, wounding, arson, drugs traffic, and armed robbery. However, the presumption should be capable of rebuttal by evidence of mitigating factors, some of which are set out below. The following offences might also be considered to constitute serious crimes, provided other factors were present: breaking and entering burglary; stealing, theft and simple robbery; receiving stolen property; embezzlement; possession of drugs in quantities exceeding that required for personal use; and assault.⁷

Serious crime shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or more serious penalty. A group of three or more persons, existing for a period that acts in concert with the aim of committing one or more serious crimes. These crimes committed by structured groups engaged in criminal activities that are transnational in nature.⁸ Serious crime was defined in the Article 2 of the United Nations Convention Against Transnational Organized Crime; where the offence is transactional nature and involves an organized crimes group.⁹

Arguably also the crimes mentioned in Article 1F(a) of the 1951 Refugee Convention are necessarily extremely serious, to the extent that there is no basis for any weighing of the severity of potential persecution against the gravity of the conduct which amounts to a war crime, a crime against peace, or a crime against humanity.¹⁰

Non-Political Crimes

Determining whether a crime is political or non-political already been considered, the nature and purpose of the offence require examination, including whether it was committed out of genuine political motives or merely for personal reasons or gain, whether it was directed towards a modification of the political organization or the very structure of the State and whether there is a close and object.¹¹

The political element should in principle outweigh the common law character of the offence, which may not be the case if the acts committed are grossly disproportionate to the objective or are of an atrocious or barbarous nature.¹² A very serious crime, such as murder, may be accepted as political if the regime against which it is committed is repressive and offers no scope for freedom of expression and the peaceful change of government or government policy. Under such a regime the claimant might be found to have had no other option to bring about political change.¹³

⁷ James C. Hathaway and Michelle Foster, *The Law of Refugee Status*, 2nd Edition, Cambridge University Press, 2014, p. 391.

⁸ Article 2, United Nations Convention Against Transnational Organized Crime, 2000.

⁹ Article 3, United Nations Convention Against Transnational Organized Crime, 2000.

¹⁰ James C. Hathaway and Michelle Foster, *The Law of Refugee Status*, 2nd Edition, Cambridge University Press, 2014, p. 378.

¹¹ Guy S. Goodwin-Gill and Jane McAdam with Emma Dunlop, *The Refugee in International Law*, 4th Edition, Oxford University Press, 2021, p. 400.

¹² Ibid.

¹³ Guy S. Goodwin-Gill and Jane McAdam with Emma Dunlop, *The Refugee in International Law*, 4th Edition, Oxford University Press, 2021, p. 398.

A very serious crime, such as murder, may be accepted as political if the regime against which it is committed is repressive and offers no scope for freedom of expression and the peaceful change of government or government policy. Under such a regime the claimant might be found to have had no other option to bring about political change. On the other hand, if the regime is a liberal democracy with constitutional guarantees of free speech and expression, it is very difficult to think of any crime, let alone a serious one, which would consider to be an acceptable method of political action.¹⁴

In the *Re Castioni Case*, the Court ruled that Castioni, despite being involved in a politically motivated assassination attempt, could be extradited as the offense was not considered a "political offense" under the law, but rather a "common crime" attempted murder.¹⁵ International law recognizes political violence as part of legitimate political resistance and generally exempts political offenses from extradition, especially when they arise from oppression or resistance to unjust governments. Thus, the decision runs contrary to the international legal principles that protect political offenders and freedom of political expression.

Non-political crimes concern international law when they meet any; transnational Crimes, a crime becomes a concern of international law when: it is committed in more than one country, it involves perpetrators or victims of different nationalities, it affects multiple jurisdictions and it requires international cooperation to investigate and prosecute. For examples: human trafficking, drug smuggling and cybercrime, etc. Non-political crimes related to criminal activities of the organized groups and gangs, but the ground also applies to serious crimes committed by individuals not related to such groups. Some particularly relevant examples of serious non-political crimes include kidnapping, trafficking for the purposes of sexual exploitation and drug trafficking etc. The political aspect apart, the phrase 'serious non-political crime' is not easy to define given the different connotations of the term 'crime' in different legal systems.¹⁶

Under the Article 1F(b) of the 1951 Refugee Convention, there are three points at which assessments have to be made when deciding exclusion; first, whether there are serious reasons for considering that the individual in question has committed the offence; secondly, whether the crime is serious, considered with due regard to context and individual circumstances; and thirdly, whether it is non-political. None of these points of assessment is sealed off from any other, and each impact on every other, for no serious non-political crime exists in a vacuum, whatever national legislation or executive certification may provide.¹⁷

Addressing serious non-political crimes under international law is crucial for several reason. First, the transactional nature of these crime necessitates collaborative efforts among countries, as isolated actions are often insufficient. Second, prioritizing, preventing and cooperation protects human rights and fostering a more just international society.

Accountability and Prosecution for Crimes

Accountability for serious and non-political crimes is an essential element in maintaining international peace, security, and justice. Individuals who commit such crimes are held

¹⁴ Ibid.

¹⁵ *Castioni V United Kingdom*, A.C 149,H.L,1891.

¹⁶ European Union Agency for Asylum, Guidance Note, Serious (non-political) Crime, 2021, p.22.

¹⁷ Guy S. Goodwin-Gill and Jane McAdam with Emma Dunlop, *The Refugee in International Law*, 4th Edition, Oxford University Press,2021, p.378.

responsible for their actions, regardless of their political affiliations or the reasons behind their conduct. Accountability for non-political crimes such as murder, drug trafficking, human trafficking, and organized crimes is governed by both domestic criminal laws and international instruments. Whether an individual who has committed serious crimes or serious non-political crimes can be extradited depends on the specific terms of extradition treaties between the countries involved as well as the nature of the crime.¹⁸

Extradition is the legal process through which one country formally requests the surrender of an individual to face criminal charges or serve a sentence in the requesting country.¹⁹ Individuals face criminal charges elsewhere; the alleged act must generally be a crime in both the requesting state and the state where the person is located. If a country has no law against a specific act, it typically cannot extradite someone for committing that act because it doesn't constitute a crime domestically.²⁰ Many states refuse to extradite offenders or cooperate fully due to political interests, sovereignty concerns, lack of resources, or the political offense exception in extradition law. Example If state A wants to extradite someone for an act that is illegal in state A but entirely legal in state B, state B usually cannot hand over the individual under the standard of extradition treaties. Accountability for serious and non-political crimes requires both legal frameworks and practical mechanisms to ensure enforcement.

Many states fail to effectively prosecute or extradite offenders, often prioritizing national interests over international obligations. The absence of uniform standards and the lack of mutual trust between states further undermine accountability efforts. Strengthening international cooperation, improving information-sharing, and enhancing the capacity of domestic legal systems are essential to ensure that perpetrators of serious and non-political crimes do not evade justice and that international law fulfills its protective. Therefore, international law prioritizes the effective prosecution of serious non-political crimes to safeguard global security and justice.

The prosecution of serious and non-political crimes under international law is a critical aspect of ensuring justice, upholding the rule of law, and preventing impunity. These crimes often characterized by their severity and impact on individuals or communities, require legal mechanisms for accountability at both the national and international levels.²¹

The prosecution of serious and non-political crimes under international law is essential for enforcing accountability, ensuring justice for victims, and deterring future violations. The prosecution of serious and non-political crimes under international law is essential to ensuring justice, deterring future violations, and upholding the rule of law. Such crimes, due to their grave nature, demand accountability mechanisms that transcend national borders.²²

The enforcement of serious non-political crimes under international law requires not only the existence of substantive legal norms, but also effective mechanisms of application and enforcement. Without these mechanisms, accountability remains hollow and implementation

¹⁸ Schabas, W. A, *An Introduction to the International Criminal Court*,. Cambridge University Press, 5th Ed, 2017, p. 202-203.

¹⁹ Ibid.

²⁰ Hilly Moodrick & Even Khen, *Mutual Legal Assistance and Dual Criminality*, *Journal of Intenational Criminal Justice*, Vol.23, Issue.1,2025, pp.87-106.

²¹ Mégret, F, *The International Criminal Court and the International Criminal Tribunals: The Battle for Accountability*, Oxford University Press, 2005, pp. 98-102.

²² Mégret, F, *The International Criminal Court and the International Criminal Tribunals: The Battle for Accountability*, Oxford University Press, 2005, pp. 98-102.

ineffective. States must incorporate obligations under international law into domestic legal systems and establish jurisdiction to prosecute or extradite perpetrators.²³ To ensure that serious, non-political crimes under international law are truly addressed, States and international systems must ensure robust application through domestic legal frameworks, jurisdictional reach, recognition of crimes and effective enforcement through judicial processes, cooperation, compliance.

International law and domestic law complement each other in ensuring accountability for serious, non-political crimes. Domestic law allows states to prosecute offenders directly, providing immediate enforcement and justice within their jurisdiction. While domestic law offers enforceability, international law provides legitimacy and a global safety net, though it relies on state cooperation and can be affected by political considerations. Together, they create a dual system that strengthens prosecution and accountability for the gravest offenses.

Human Rights Perspective on Crimes

The relationship between human rights and serious and non-political crimes is multifaceted. International law strives to uphold human dignity even when dealing with individuals accused or convicted of heinous offenses. Whether in the context of exclusion from refugee protection or the prosecution of crimes such as terrorism, trafficking, or murder, international human rights law imposes limits to ensure that justice systems remain fair, humane, and accountable. International human rights instruments universally guarantee the right to a fair trial, which must be afforded to all individuals, including those accused of serious or non-political crimes. The right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law.²⁴

Serious and non-political crimes, such as murder, rape, trafficking, and other offenses of a grave nature, raise complex issues when examined through the lens of human rights law. While international legal frameworks allow for the exclusion of individuals who commit such crimes from refugee protection or immunity under humanitarian law, human rights obligations continue to apply regardless of the seriousness of the crime. This section outlines the key human rights considerations that must be balanced in the context of serious and non-political crimes, focusing on exclusion, prosecution, and state responsibilities.²⁵

In the case of Prosecutor V Jean-Paul Akayesu, the tribunal found Akayesu guilty of genocide, crimes against humanity and rape and sexual violence. These crimes were committed with the specific intent to destroy Tutsis and systematic attack on the Tutsi civilian population. Akayesu was sentenced to life imprisonment for his role in the genocide and related crimes.²⁶

Persons charged with serious crimes are entitled to due process and the right to a fair trial. This principle safeguard against arbitrary punishment and wrongful convictions is a cornerstone of international human rights law, ensuring due process protections for individuals prosecuted for

²³ Laura M. Olson, "Re-enforcing Enforcement in a Specialized Convention on Crimes Against Humanity" in *Forging a Convention for Crimes against Humanity*, Cambridge University Press, 2011, pp. 323-344.

²⁴ Nowak, M., U.N. Covenant on Civil and Political Rights: CCPR Commentary, 2nd ed., N.P. Engel, 2005, pp. 321–336.

²⁵ Nowak, M., U.N. Covenant on Civil and Political Rights: CCPR Commentary, 2nd ed., N.P. Engel, 2005, pp. 321–336.

²⁶ Prosecutor V Jean-Paul Akayesu, ICTR-96-4-T, 1998.

any crime including serious and non-political crimes. The International Covenant on Civil and Political Rights (ICCPR) recognizes the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law.²⁷

The Convention Against Torture prohibits the use of torture under any circumstances, including in the prosecution and punishment of serious criminals. No exceptional circumstances whatsoever may be invoked as a justification for torture.²⁸ Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.²⁹ No State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.³⁰ The prohibition of torture is one of the few absolute rights under international law, and its violation cannot be justified under any circumstances.³¹

The Pinochet case ruled that, Pinochet could be extradited to face charges of genocide, crimes against humanity and torture. Sovereign immunity does not apply to torture and crimes against humanity, meaning that even former head of State could be prosecuted for such crimes. This decision was a victory for universal jurisdiction, reinforcing the principle that serious crimes like torture must be prosecuted, regardless of where occurred or who committed them.³² It was contrary to international law because it rejected the long-standing doctrines of immunity and non-intervention in favor of individual accountability for gross human rights violations. Even former heads of state can be held responsible under international criminal law.

The protection of human rights applies universally to both serious crimes and non-political crimes, including ordinary offenses like theft or murder. Core principles like the right to a fair trial, protection from torture and inhuman treatment, due process, and equality before the law must be upheld for all accused individuals, regardless of the gravity or type of crime. This ensures that even when prosecuting the most serious offenders, justice respects human dignity. However, these protections can create practical limitations for authorities, such as challenges in detention, investigation, or evidence collection, requiring a careful balance between enforcing the law and safeguarding fundamental rights.

The Involvement of International Communities

The international community has played a crucial role in developing legal mechanisms and institutional frameworks to address serious and non-political crimes under international law. These crimes include, but are not limited to, genocide, war crimes, crimes against humanity, terrorism, human trafficking, drug smuggling, and transnational organized crime. One of the most significant contributions of the international community is the development of international criminal justice mechanisms.³³

²⁷ Article 14, International Covenant on Civil and Political Rights, 1966.

²⁸ Article 2(2), The Convention Against Torture, 1984.

²⁹ Article 15, The Convention Against Torture, 1984.

³⁰ Article 3(1), *Ibid*.

³¹ Rodley, N. S., *The Treatment of Prisoners under International Law*, Oxford University Press, 3rd Ed., 2009, pp. 67–72.

³² *R v Bow Streer Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte*, No.3, AC 147(HL), 2000.

³³ Schabas, W. A., *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone*. Cambridge University Press, 2006, pp. 25–29.

The UN Charter emphasizes promoting and encouraging respect for human rights and fundamental freedoms.³⁴ The Security Council to determine the existence of any threat to peace, breach of the peace, or act of aggression and to take measures to maintain or restore international peace and security, this has been used to refer cases to international tribunals.³⁵ States require establishing jurisdiction over acts of torture committed in any territory under their jurisdiction or by their nationals.³⁶

In the Tadic case, the trial chamber II found Dusko Tadic guilty of crimes against humanity and war crimes and in a separate sentencing judgement, sentenced him 20 years of imprisonment. The Appeal Chamber denied Dusko Tadic's appeal on all grounds. It held that an act carried out for the purely person motives of the perpetrator constitute a crime against humanity.³⁷

International conventions provide a framework for addressing non-political transnational crimes. These crimes include the United Nations Convention against Transnational Organized Crime (2000), also known as the Palermo Convention, which aims to combat organized crime and its manifestations such as human trafficking, migrant smuggling, and corruption.³⁸ The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention), which enhances international cooperation in the fight against drug trafficking. The International Convention for the Suppression of the Financing of Terrorism (1999), which obliges states to criminalize terrorist financing and improve intelligence sharing and asset freezing mechanisms.³⁹

These conventions have been instrumental in harmonizing national laws and creating standards for extradition, mutual legal assistance, and information sharing. Organizations such as INTERPOL and the United Nations Office on Drugs and Crime (UNODC) support global efforts to combat serious and non-political crimes. INTERPOL facilitates transnational police cooperation, providing a platform for intelligence exchange and issuing red notices for international fugitives. The UNODC, in particular, assists countries in legislative reform, capacity building, and technical assistance in areas such as anti-corruption, terrorism prevention, and border control.⁴⁰

These institutions facilitate transnational cooperation to combat crimes such as human trafficking, drug smuggling, and cybercrimes that while often non-political in nature, have serious implications for international peace and security. International treaties provided legal frameworks for cooperation mutual legal assistance, and extradition. However, the effectiveness of these mechanisms is often undermined by weak international cooperation and extradition challenges. This weakens global efforts to hold perpetrators accountable, allowing impunity to persist. Strengthening trust, harmonizing extradition laws, and enhancing state commitment to international obligations are therefore crucial for more effective enforcement of international criminal law.

³⁴ Article 1(3), The Charter of the United Nations, 1945.

³⁵ Article 39, The Charter of the United Nations, 1945.

³⁶ Article 5, Convention Against Torture, 1984.

³⁷ The Prosecutor v Dusko Tadic, ICTY, IT-94-1-A, 1999.

³⁸ UNODC, Delivering Justice: UNODC Annual Report. 2010, pp. 14–19.

³⁹ Saul, B, Defining Terrorism in International Law. Oxford University Press, 2006, pp. 45–47.

⁴⁰ UNODC, Delivering Justice: UNODC Annual Report. 2010, pp. 14–19.

Conclusion

Overall, the examination of serious and non-political crimes under international law highlights the continuing importance of a well-structured legal framework that guides states and international bodies in identifying and responding to these offences. By clarifying the categories of crime and establishing obligations for investigation and prosecution, international law strengthens accountability mechanisms and reduces opportunities for impunity. The integration of human rights principles ensures that responses to such crimes prioritize the protection of victims while maintaining fairness and due process for the accused. At the same time, the active involvement of the international community including cooperation in extradition, information-sharing, and support for international judicial institutions remains essential for the effective enforcement of norms. Together, these elements underscore the collective responsibility of states and international actors to uphold justice and reinforce law in addressing serious and non-political crimes.

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LEGAL PROTECTION OF MARINE PROTECTED AREAS

Khine Nyunt Oo¹

Abstract

In order to conserve marine biodiversity, control human activity, and protect ecosystems from environmental concerns including pollution, overfishing, and climate change, it is important that Marine Protected Areas (MPAs) be legally protected. This study examines the national and international legal frameworks that regulate marine protected areas (MPAs), evaluating their efficacy, methods of enforcement, and difficulties in maintaining compliance. In order to improve the protection of these crucial ecological zones, it also emphasizes the significance of fusing sustainable development objectives with marine conservation legislation and fostering more collaboration among stakeholders.

Keywords: Marine Protected Areas (MPAs), marine conservation, sustainability, biodiversity, marine ecosystems, regulatory mechanisms.

Introduction

In order to protect marine ecosystems and biodiversity, laws, rules, and international agreements are examined in the legal study of Marine Protected Areas, or MPAs. MPAs are essential for maintaining vital habitats, preserving threatened species, and encouraging the sustainable use of maritime resources. This area of research focuses on the legal frameworks that control the establishment, administration, and enforcement of these protected zones, striking a balance between the preservation of the environment and commercial endeavors like shipping, fishing, and tourism. Comprehending the legal aspects of marine protected areas (MPAs) is imperative in order to guarantee efficacious marine conservation and tackle the obstacles presented by pollution, overfishing, and climate change.

Method of Study

Combination of the descriptive and analytical legal research methods are applied in this research. The primary data of the research comes from international conventions, regional agreements and national legislation. Secondary data is literary books, online resources and cases study. The paper employs a comparative legal analysis to evaluate conventions against Myanmar National Laws, identifying gaps in enforcement.

Definition of Marine Protected Areas

Any region of the open ocean or coastal zone that has been granted some degree of protection in order to control the use of resources and ocean space or to save species and habitats that are threatened or endangered can be broadly referred to as a marine protected area. On the other hand, the International Union for the Conservation of Nature and Natural Resources (IUCN) definition of an MPA is likely the one that is used the most frequently worldwide, “Any area of intertidal or subtidal terrain, together with its overlying water and associated flora, fauna,

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historical and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment.”²

The definition of MPAs is “An area within the maritime area for which protective, conservation, restorative or precautionary measures, consistent with international law have been instituted for the purpose of protecting and conserving species, habitats, ecosystems or ecological processes of the marine environment.”³

Coral reefs, salt marshes, mangroves, offshore reefs, seamounts, and ice- covered places are only a few of the many biotopes included on the global list of MPAs. MPAs can be created for a variety of reasons, including as preserving fish populations, controlling tourism operations, minimizing disputes between various resource users, and safeguarding marine species and habitats.⁴

There are two main groups into which MPA-related concerns can be divided. MPAs created to safeguard the maritime environment fall under the first type. It is necessary to record at least five MPA-related concepts (1) clearly defined area. (2) ice- covered area; (3) special areas; (4) particularly sensitive sea areas; and (5) specially protected areas. The maritime environment is intended to be protected against vessel- source pollution by clearly defined areas, ice-covered areas, special areas, and particularly sensitive sea areas. By safeguarding the maritime environment, these MPA- related concerns will help to maintain diversity even though they do not directly involve the conservation of marine biological diversity. Marine spaces are shielded from land- based marine pollution by specially protected areas.⁵

The second category consists of MPAs that are directly related to the conservation of marine biological diversity. These MPAs can be further classified into two subcategories: species-specific MPAs, which aim to protect particular marine species, like marine mammals, in a given area. MPAs in this subcategory are essentially consistent with the conventional species-specific approach, and examples are provided by:

- the 1990 Agreement on the Conservation of Seals in the Wadden Sea,
- the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS),
- the 1999 Agreement Establishing a Sanctuary for Marine Mammals," and
- the Inter-American Convention for the Protection and Conservation of Sea Turtles.”⁶

The second subcategory consists of MPAs, such as the Rio Convention, which aim to preserve endangered or uncommon species' habitats, unusual or fragile ecosystems, and other marine life in a particular region.⁷

² Julian Roberts, (2007), Marine Environment Protection and Biodiversity Conservation

³ Yoshifumi Tanala, (2019), The International Law of the Sea, Third Edition, p-418.

⁴ Julian Roberts, Marine Environment Protection and Biodiversity Conservation, (2007), *The Application and Future Development of the IMO's Particularly Sensitive Sea Area Concept*, p-29. p-30.

⁵ Yoshifumi Tanala, (2019), The International Law of the Sea, Third Edition, p-418.

⁶ Yoshifumi Tanala, (2019), The International Law of the Sea, Third Edition, p-418

⁷ Article 2 of the Rio Convention, 1992, the United Nations Conference on Environment and Development, A/CONF.151/26.

In Myanmar, established in 1993 and managed by the FD's Nature and Wildlife Conservation Division (NWCD), the Meinmahla Kyun Wildlife Sanctuary of the Ayeyawady was created in a low, flat delta area that is home to a large number of mangroves. Established in 1970 in the Ayeyawady, the NWCD is in charge of the Thamihla Kyun Wildlife Sanctuary. However, there is a significant maritime component to the conservation efforts conducted there, which are supervised by the DoF. In addition to the Irrawaddy dolphin, the refuge is home to populations of Green, Loggerhead, and Olive Ridley turtles. Established in 1928 and under the FD's jurisdiction, Moscos Island Wildlife Sanctuary in Taninthayi Region is home to four of Myanmar's five marine turtle species and Indo-Pacific finless porpoises, but mostly the island's terrestrial portion is protected.⁸

In addition to Lampi Marine National Park, the Myeik Archipelago is establishing three Locally Managed Marine Areas (LMMAs). LMMAs are a traditional method of managing community-based fisheries and are often administered locally by coastal communities. LMMAs are not specifically intended to maintain marine biodiversity; rather, they are a tool for managing fisheries.⁹

Importance of Marine Protected Areas

There are three goals in mind when establishing Marine Protected Areas. They are

- (1) The aim is to preserve and replenish the biodiversity found in a region's ecosystems. The majority of national wildlife refuges and marine sanctuaries are a few examples.
- (2) One way to do this would be to safeguard historical items, like a shipwreck. A few national marine sanctuaries, state and national parks, and historic monuments may fall under this category.
- (3) The region would be managed to facilitate the extraction of living resources (plants, fish, and shellfish, among others) that rely on the protected areas' habitat for purposes such as feeding, mating, spawning, and other activities. A few wildlife refuges and specific fishing locations could serve as examples.¹⁰

An area of the ocean where human activity is restricted by the government is known as a marine protected area (MPA). Numerous MPAs permit uses of the land that do not harm the ecosystem. Some have fishing bans. Some don't even permit visitors to enter the region. Because of the numerous risks that the ocean and its inhabitants face MPAs have been formed. Overfishing, littering, water pollution, and climate change are some of the threats facing the ocean. Numerous fish, marine animals, and other sea creatures have had population declines as a result of these dangers. There are numerous names for marine protected areas, such as no-take zones, marine parks, marine conservation zones, marine reserves, and marine sanctuaries.¹¹

MPAs protect biodiversity, build resilience, improve fisheries, and serve as a backup plan in the event that other approaches to fisheries management fail. They safeguard and rebuild threatened species' habitats. These are locations for research and teaching. They can draw tourists and give local populations another source of income. The reserves have the power to

⁸ Marine Conservation in Myanmar, Current knowledge and research recommendations, p- 63

⁹ Biodiversity in Myanmar, including Protected Areas and Key Biodiversity Areas, Supplement to MCRB's Briefing Paper on Biodiversity, Human Rights and Business, 2018, p-6.

¹⁰ <http://marineprotectedareas.noaa.gov>, National Marine Protected Areas Center.

¹¹ <https://education.nationalgeographic.org/resource/importance-marine-protected-areas/>

revive vital operations like carbon capture and water purification. Furthermore, they are crucial in preserving and reviving the big, ancient fish that have historically served as the main agents of procreation and population replenishment. Longer-living animals have the capacity to bear more offspring. They cannot be brought back by traditional fisheries management; only reserves can. The greater the number of larval and adult progeny, the greater their dispersal.¹²

Thus, MPAs are vital not only for environmental protection but also for supporting food security, climate adaptation, and sustainable development in Myanmar.

Legal Provisions for Marine Protected Areas

MPAs have mostly been established in territorial seas where they may be enforced by the appropriate authorities. Conversely, MPAs have been established in exclusive economic zones and international waters.

According to Article 2(1) of the Ramsar Convention, every Contracting Party is required to identify a suitable wetland on its soil so that it can be added to a List of Wetlands of International Importance. The Contracting Parties are required to develop and carry out their plans in a way that prioritizes protecting the wetlands listed on the List and, to the greatest extent feasible, using wetlands wisely within their borders in compliance with Article 3(1). Articles 1(1) and 2(1) may apply to such wetlands, which may include offshore areas. Approximately 48% of the Ramsar sites that have been officially recognized have coastlines, and these sites may have marine elements.¹³

The 1972 Convention for the Protection of the World Cultural and Natural Heritage (hereafter the World Heritage Convention) also contains a notion connected to MPAs. In addition to habitats of "threatened species of animals and plants of outstanding universal value from the point of view of science or conservation," this convention strives to safeguard cultural and natural heritage. According to Article 11(1), each State Party is required to provide the World Heritage Committee with an inventory of all the assets that comprise its territory's outstanding universally valuable cultural and natural heritage. The Committee will then create the "World Heritage List," a list of properties that are a part of both the natural and cultural heritage. A marine site is one of several World Heritage sites.¹⁴

According to Article 61 of the UNCLOS, Coastal states are responsible for preventing overexploitation of the living resources inside their EEZs. It offers the foundation for naming MPAs to control and preserve marine life. Coastal states have the authority to control the use of marine resources, including through MPAs. Within their EEZs, coastal nations have the authority to impose more stringent protection regulations for marine animals, including MPAs.¹⁵

These clauses permit international collaboration in the establishment of MPAs in fields outside of national borders. All states must take the required actions for their citizens, or work with other states to take such actions, to preserve the high seas' living resources.¹⁶ States will collaborate to manage and conserve living resources in high seas regions. To take the required

¹² <https://www.americanprogress.org/article/marine-protected-areas-help-fisheries-ocean-ecosystems>

¹³ Yoshifumi Tanala, (2019), *The International Law of the Sea*, Third Edition, p-419.

¹⁴ Yoshifumi Tanala, (2019), *The International Law of the Sea*, Third Edition, p-419.

¹⁵ Article 65 of the United Nation Convention on the Law of the Sea, 1982, 3067 (XXVIII), the United Nations General Assembly on November 16, 1973.

¹⁶ Article 117, *Ibid*.

steps to conserve the living resources in question, states whose citizens exploit the same living resources or other living resources in the same area must engage in discussions. To do this, they will, when necessary, work together to create regional or subregional fisheries organizations.¹⁷ States must take into account how conservation efforts will affect ecosystems and the interdependence of species.¹⁸

States have an obligation to safeguard and maintain the marine environment under UNCLOS. This serves as the official foundation for MPAs in areas within national control (high seas) and outside of it (territorial waters, EEZs).¹⁹ Pollution from different sources must be prevented, reduced, and controlled by the states. It emphasizes the preservation of endangered, threatened, or unusual species' habitats as well as rare or delicate ecosystems. The designation of MPAs as a mechanism to accomplish these environmental protection objectives is common.²⁰ According to Article 197 of the UNCLOS, States must work together to safeguard and conserve the marine environment, including MPAs created by regional agreements, either directly or through international organizations.

To maintain and preserve the marine environment and to avoid, reduce, and regulate marine pollution, states must:

- (a) support programs of scientific, educational, technical, and other assistance to developing States, either directly or via capable international organizations. Among other things, this support will involve:
 - (i) educating their scientific and technical personnel;
 - (ii) facilitating them to take part in important international programs;
 - (iii) providing them with the facilities and equipment they require;
 - (iv) increasing their ability to produce such equipment;
 - (v) offering guidance on and building facilities for monitoring, research, education, and other programs;
- (b) give developing nations, in particular, the help they need to minimize the effects of significant events that could seriously pollute the maritime environment;
- (c) Offer suitable support, particularly to developing nations, about environmental assessment preparation.²¹ It promotes collaboration in offering poor nations scientific and technical support for marine conservation, which aids in the creation of MPAs.

By its specific circumstances and capacities, each Contracting Party shall: (a) create national plans, programs, or strategies for the conservation and sustainable use of biological diversity, or modify existing plans, programs, or strategies for this purpose, indicating, among other things, the measures outlined in this Convention that are pertinent to the Contracting Party in question; and (b) incorporate, to the greatest extent feasible and as appropriate, the

¹⁷ Article 118, Ibid.

¹⁸ Article 119, Ibid.

¹⁹ Article 192, Ibid.

²⁰ Article 194, Ibid.

²¹ Article 202, of the United Nation Convention on the Law of the Sea, 1982, 3067 (XXVIII), the United Nations General Assembly on November 16, 1973.

conservation and sustainable use of biological diversity into pertinent sectoral or cross-sectoral plans, programs, and policies.²² National biodiversity strategies may incorporate MPAs.

Each Contracting Party is required to identify biodiversity components that are crucial for conservation and sustainable use, such as marine species and habitats, as well as monitoring activities that could significantly harm marine biodiversity. Setting parts for MPA designation is aided by this method.²³

As far possible and appropriate, each contracting party shall create a system of protected areas or areas where special measures are required to conserve biodiversity;

Provide guidelines for the selection, establishment, and management of protected areas; encourage the preservation of ecosystems, natural habitats, and viable species populations; and respect, preserve, and uphold conservation-related knowledge, innovations, and practices of indigenous and local communities.²⁴

Under Article 9 of the Convention on Biological Diversity, 1992, the conservation of marine biodiversity outside of its natural habitats must be supported by each contracting party in addition to in-situ conservation measures, which may include MPAs. States must encourage the implementation of socially and economically sound incentives, such as MPAs, to enhance biodiversity protection.²⁵

Contracting parties shall take all reasonable steps to avoid the introduction and spread of pests that damage plants or plant products, including invasive alien species. The National Plant Protection Organizations (NPPOs) are in charge of risk assessment, surveillance, and management strategies for invasive species that impact plants.²⁶

In order to support the preservation of wetlands and control invasive species that jeopardize the biological integrity of the wetland, contracting parties must develop and carry out their plans.²⁷ Contracting party encourages action from all parties to protect migratory species that are in danger of extinction, including invasive species that could imperil these species.²⁸

The obligation of the contracting parties is to prevent ships from discharging hazardous pollutants or effluents into the marine environment. The implementation of MARPOL protections in and around MPAs is based on this legal foundation.²⁹ Article 3 of the MARPOL, 1973, explains that the Convention is applicable to all ships, regardless of flag, and to sea regions that are under the Parties' jurisdiction. This international application ensures that MPAs can be protected from international maritime activity under MARPOL rules. It is illegal to discharge in a way that violates MARPOL. The national laws of the parties must forbid such discharges.³⁰ Provides the legal reasons to sanction pollution in or around MPAs, particularly where Special Areas are involved.

²² Article 6 of the Convention on Biological Diversity, 1992, A/RES/65/161 General Assembly.

²³ Article 7, Ibid

²⁴ Article 8, of the Convention on Biological Diversity, 1992, A/RES/65/161 General Assembly

²⁵ Article 11, Ibid

²⁶ Article 1&4 of the International Plant Protection Convention, 1951.

²⁷ Article 3.1 of the Ramsar Convention on Wetlands, 1971.

²⁸ Article 3 of the Convention on the Conservation of Migratory Species of Wild Animals, 1979.

²⁹ Article 1 of the International Convention for the Prevention of Pollution from Ships, 1973, IMO Resolution MEPC. 176 (58).

³⁰ Article 4, Ibid

Within their jurisdiction, coastal governments have the authority to implement MARPOL regulations, such as port state control and ship inspection or detention.³¹ This article gives coastal states the authority to sue ships that pollute MPAs or the areas around them.

In the case of *Mauritius v. United Kingdom*³², establishing a Marine Protected Area (MPA) around the Chagos Archipelago, a collection of islands in the Indian Ocean, was the source of the conflict. Therefore, it was unanimously determined that the United Kingdom had violated Articles 2(3), 56(2), and 194(4) of the United Nations Convention of the Law of the Sea by establishing the MPA around the Chagos Archipelago. Article 194(4) says that "States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in accordance with this Convention." This arbitration award is about how to interpret and apply that article. The tribunal came to the conclusion that the UK had breached its UNCLOS responsibilities by creating the MPA. However, the tribunal was unable to resolve the more general issue of sovereignty over the Chagos Archipelago since it was outside its jurisdiction.

In the Tubbataha Reef Natural Park Incident (Philippines, 2013)³³ case, A U.S. Navy minesweeper, the USS Guardian, ran aground on Tubbataha Reef in January 2013, causing damage to about 2,345 square meters of coral. The sailboat allegedly broke local environmental rules, entered the restricted area without the required clearance, and disregarded park officials' warnings, according to Philippine authorities. In compensation, the U.S. Navy gave the Philippine government about 87 million Philippine pesos, or about \$1.97 million. The money was set aside for further conservation initiatives in Tubbataha as well as the repair of the damaged reef.

Although MPAs are being included in more and more treaties pertaining to the preservation of marine biological diversity, there is still debate on their efficacy. There must be a minimum of three difficulties recognized from a legal perspective." The first barrier is the absence of connections between MPAs for the purpose of controlling marine pollution and conserving marine biological diversity. The preservation of marine biological diversity is contingent upon the prevention of contamination to the environment. Because land-based pollution mostly affects coastal waterways, which are places with significant biological variety, regulation of land-based pollution is especially crucial.³⁴

However, marine biological diversity cannot be protected from marine pollution by MPAs established only for the purpose of conserving marine biological diversity. It is therefore necessary to integrate the management of marine pollution with MPAs in order to preserve marine biological diversity. That being said, MPAs typically do not have the authority to regulate marine pollution. Climate change's detrimental effects on marine biological diversity present the second challenge. Changes in the atmosphere and temperature have an impact on the maritime environment. However, MPAs by themselves are unable to stop the negative effects of climate

³¹ Article 5 of the International Convention for the Prevention of Pollution from Ships, 1973, IMO Resolution MEPC. 176 (58).

³² Case No 2011-03, 2010, ICJ.

³³ G.R. No. 206510, September 16, 2014, The Supreme Court of the Philippines

³⁴ Yoshifumi Tanala, (2019), *The International Law of the Sea*, Third Edition, p-429.

change on marine ecological diversity. Therefore, in order to stop the loss of marine biological diversity, climate change prevention is also required.³⁵

Third, there's no denying that one of the main dangers to the richness of marine life is fishing. Treaties pertaining to the conservation of marine biological diversity do not encompass the control of fisheries, with rare exceptions. Conversely, treaties pertaining to fisheries do not prioritize the preservation of marine biological diversity. There is a disjunction between the two legal spheres as a result. To effectively protect marine biological diversity, there will be a greater need for positive coordination between MPAs and fisheries control.³⁶

Myanmar is a signatory to a number of significant international agreements, such as UNCLOS in 1996, CBD in 1994, Ramsar in 2005, CITES in 1997, and regional ASEAN frameworks, which serve as the legal and regulatory framework for the establishment and administration of Marine Protected Areas.

The primary law controlling protected areas is the Biodiversity and Conservation of Protected Areas Law (2018), nevertheless, it needs to define the definitions of MPAs, zoning systems, and particular provisions for maritime ecosystems. The Ministry of Natural Resources and Environmental Conservation (MONREC) is authorized to establish protected areas.³⁷ However, there are no marine-specific categories or management procedures specifically mandated, leaving room for uncertainty over jurisdiction over jurisdiction and enforcement at sea. Although Section 13 of the Conservation of Biodiversity and Protected Areas Law, (2018) outlines forth management duties for conservation and sustainable use, it makes no specific regulations for fishing, navigation, or coastal development in maritime zones, hence ministerial directives are used to carry them out.

According to section 3(b) of the Myanmar Fisheries Law 1991, amended in 2011, Provides that the Department of Fisheries (DOF) has the power to create fishery management areas, which could include MPAs to manage fish stocks and marine ecosystems. Prohibits destructive fishing methods such using poison or dynamite, which could seriously affect MPAs and the marine creatures they safeguard. To prevent overexploitation of MPA resources, the DOF is empowered to control fishing activities within specified zones.³⁸ To preserve biodiversity, MOECF is authorized to designate marine zones as environmentally protected areas. It is stipulated that an Environmental Impact Assessment (EIA) procedure shall be established and applied to any project that can have an impact on MPAs.³⁹ Institutional overlap results from the weakness of an established coordination mechanism between DoF and MONREC for collaborative maritime area management. General rules for regulating fishing activities and creating fishery conservation zones are included in the Fisheries Law (1990, updated 2019); however, MONREC coordination procedures are required for the management of maritime biodiversity and protected areas.

The Ministry of Natural Resources and Environmental Conservation, formerly the Ministry of Environmental Conservation and Forestry, is in charge of establishing regulations for

³⁵ Yoshifumi Tanala, (2019), *The International Law of the Sea*, Third Edition, p-429.

³⁶ Ibid

³⁷ Section 9, of the Conservation of Biodiversity and Protected Areas Law, 2018.

³⁸ Section 17 and 21, Myanmar Fisheries Law 1991

³⁹ Section 10 and 13 of Environmental Conservation Law, 2012.

environmental management, some of which may involve invasive species control.⁴⁰ Controlling pollution and conserving resources, including managing invasive species, are under the purview of the Environmental Conservation Department.⁴¹ The main goal of forest management as stipulated by this regulation is to stop the entry of dangerous animals or plants into forests.⁴² The Environmental Conservation Law (2012) mentions pollution prevention and ecosystem preservation, however it makes no mention of MPA designation or management.

Myanmar's commitment to sustainable development and environmental conservation, including biodiversity protection, is outlined in the National Environmental Policy, which is not a law. It emphasizes how important it is to have management and control plans for invasive species in order to preserve biodiversity.⁴³ MPAs slow down habitat damage, which keeps important ecosystems from disappearing, by limiting practices like bottom trawling, mining, and drilling. One of the biggest dangers to marine biodiversity is overfishing. By lowering or completely eliminating fishing pressure in some areas, MPAs enable fish populations to recover and age structures to their natural state. This enhances trophic interactions and preserves predator-prey connections, both of which support healthy ecosystems. The creation of MPAs inside ABNJ is fraught with difficulties, resulting from a lack of legal frameworks as well as a lack of scientific knowledge. The ecological processes and environmental conditions of the ABNJ are poorly understood. Notwithstanding this information gap, it is nevertheless imperative to carefully consider whether locations are appropriate for MPAs and what kinds of activities may be allowed there. There are logistical and financial hurdles after an MPA is established, in addition to the difficulty in establishing MPAs in ABNJ. It is especially difficult to enforce regulations, keep an eye on activities, and carry out surveillance in these marine areas.

Finding

Marine Protected Areas (MPAs) need legislative protection to protect marine ecosystems, but research shows that enforcement and implementation of these laws are frequently difficult. There is no uniform governance framework for MPAs established by any of Myanmar's legislation, which results in conflicting agency mandates, unclear enforcement authority, and insufficient accountability. Marine conservation's efficiency is further limited by the weakness of legal requirements for scientific monitoring, management plans, and participation by the public. The legislative framework for MPA protection in Myanmar is therefore still fragmented, undeveloped, and insufficient to handle the complex ecological and socioeconomic realities of marine ecosystems. Therefore, even though there are laws in place, their effectiveness primarily depends on how well they are enforced and how well nations work together to conserve the maritime environment.

Recommendation

It is crucial for establishing thorough national legislation that addresses the creation, administration, and enforcement of marine protected areas (MPAs) and involves international treaties like the Convention on Biological Diversity in order to strengthen the legal protection of MPAs. Effective management plans should be created with input from local communities and

⁴⁰ Section 7(h), Ibid.

⁴¹ Section 13 (f), Ibid.

⁴² Section 10(b) of the Forest Law, 2018.

⁴³ The National Environmental Policy 2019

stakeholders, establishing clear objectives and zoning regulations to ensure sustainable use. In order to achieve genuine marine protection, Myanmar needs a specific Marine Conservation or Marine Resources Act that unifies current legislation, makes institutional responsibilities clear, and incorporates international commitments under the UNCLOS and Convention on Biological Diversity (CBD) into legally binding domestic laws.

Conclusion

In conclusion, maintaining healthy ecosystems and conserving marine biodiversity depend on the legal protection of Marine Protected Areas (MPAs). Even while laws have been put in place to protect these places in many countries, the success of these legal safeguards frequently depends on how well they are enforced, how well they are funded, and how well they are managed. In addition to controlling human activity, effective legal frameworks must guarantee long-term sustainability by collaboration with the community, empirical study, and adaptive management. Achieving more robust and efficient protection of the world's maritime resources requires bolstering international collaboration and filling legal gaps.

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LEGAL CONTROL ON DISPOSAL OF PLASTIC WASTE IN MYANMAR

Nang Kalyar Woon¹

Abstract

Plastic waste refers to the accumulation of discarded plastic materials in the earth's environment. It is a serious issue that must be addressed urgently and internationally. The most common methods for plastic waste disposal are landfill, incineration, and recycling. Among them, land disposal is the most widely practiced method worldwide. However, improper disposal of plastic waste can lead to plastic-polluted beaches and oceans, plastic-littered landscapes, and the release of toxic fumes from burning plastic. Therefore, public education and awareness are essential elements in changing human behaviors to address plastic waste issues. The main aim of this paper is to prevent the improper disposal of plastic waste with effective legislation. This paper will examine the legal measures for uncontrolled disposal of plastic waste, the best methods of plastic waste disposal, and prevention of plastic waste in Myanmar. The results from this paper indicate that Myanmar would be able to take action with effective legislation for uncontrolled disposal, to get the best methods of disposal in reducing plastic waste, to implement the effective legislation and practices in preventing plastic waste, to promote public education and awareness concerning disposal, and finally, to become a clean environment from plastic pollution.

Keywords: Plastic Waste, Methods of disposal, Environmental Impact, Education and Awareness

Introduction

Plastic waste is a category of solid waste and any plastic discarded after use. It is ubiquitous in the natural environment. Since uncontrolled disposal of plastic waste can affect land, waterways, and oceans, plastic waste issues have become crucial and require special attention. Thus, improper disposal of plastic waste requires effective handling to eliminate environmental and health impacts. The Ayeyarwaddy River is one of the most polluted rivers in the world, and Myanmar's coastlines are also heavily affected by microplastics. Therefore, this paper analyzes how to use the methods of disposal, how to address the uncontrolled disposal of plastic waste, how to prevent it under International Conventions, the Environmental Conservation Law of 2012, the relevant City Development Laws and the Sectorial Laws regarding plastic waste disposal, and the enforcement actions contained in national legislation that address the disposal of plastic in Myanmar.

Aims and Objectives

The aims of this paper are to protect the environment from plastic pollution, to know that the uncontrolled disposal of plastic waste can harm people, animals, and the environment and to promote public awareness and education about responsible plastic waste disposal and recycling.

Materials and Methods

This research explored the prevention of the improper disposal of plastic waste under International Conventions, Resolutions and National Laws. The materials used for this paper are books, articles, and other publications. Interview data were collected from the relevant officers of the Pollution Control and Cleansing Department of the Yangon City Development Committee.

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International Legal Frameworks of Plastic Waste

Plastic pollution is a global phenomenon. At the international level, plastic waste is one of the major problems and it has to be addressed throughout the world.

Due to the worsening of plastic pollution, at the 14th meeting of the Conference of the Parties to the Basel Convention (COP-14, 29 April to 10 May 2019), amendments to Annexes II, VIII and IX of the Convention were adopted with the aim of increasing control of the transboundary movement of plastics waste.² Also, the Ministry of Natural Resources and Environmental Conservation (MONREC) issued the Notification No. 74/2023 on 7 June 2023. This notification provides the Promulgation of Procedures for Cross-Border Transportation of Hazardous Wastes and Other Wastes to control the impacts on human health and the environment and to implement the obligations of the Basel Convention in Myanmar.

The 2001 Stockholm Convention on Persistent Organic Pollutants (POPs), the United Nations Convention on the Law of the Sea, 1982, the Convention on Biological Diversity, 1992, the London Convention, 1972, the Prevention of Pollution by Garbage from Ships (MARPOL), Annex V, 1988 and the 1992 Report of the United Nations Conference on Environment and Development (Agenda 21) have been adopted relating to plastic waste.³

In Myanmar, the National Guidance for the Prevention of Pollution by Garbage from Ships was set out for the prevention of pollution by garbage from ships on 1st March 2017, according to Directive 2/2017.

By following the SDG Goals, waste generation can be reduced through prevention, reduction, recycling, and reuse.⁴ Resolutions 1/6, 2/11, 3/7, 4/6, 4/7, 4/9, and 5/14 were adopted by the UN Environment Assembly relating to the reduction of marine litter, micro-plastics, and single-use plastic products pollution.⁵

In the ASEAN region, the ASEAN Member States propose the gradual implementation of a systematic and integrated response to guide regional action to address the problem of marine plastic pollution in ASEAN in the next five years (2021-2025).⁶

The international community has enacted several legal instruments that address this important issue. Myanmar has already ratified all of these instruments except for the London Convention, 1972.

Definition of Plastic Waste

Plastic waste is the accumulation of plastic objects in the environment. When plastic waste enters the natural environment, it is difficult to degrade. "Wastes" are substances or objects

² Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989 (Revised Edition 2019)

³ Article 1 of the Stockholm Convention on Persistent Organic Pollutants (POPs), 2001, Article 210 of the United Nations Convention on the Law of the Sea, 1982, Article 6 of the Convention on Biological Diversity, 1992, Article 4 of the London Convention, 1972, Regulation 3 of the Prevention of Pollution by Garbage from Ships (MARPOL), Annex V, 1988, clause 21.8 of the Report of the United Nations Conference on Environment and Development, 1992.

⁴ 2030 Agenda for UN Sustainable Development Goals, 2015.

⁵ UNEP/EA.1/Res.6,2014, UNEP/A.2/Res.11,2016, UNEP/ EA.3/ Res.7,2018, UNEP/EA.4/ Res.6, UNEP/EA.4/L.7, 2019.

⁶ ASEAN, World Bank, ASEAN Regional Action Plan for Combating Marine Debris in the ASEAN Member States (2021-2025), Jakarta, Indonesia, 2021, p-vi.

which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law.⁷ Plastic waste can be defined as any discarded plastic generated by any industrial process, or by consumers.⁸

Section 2(h) of the Myanmar Environmental Conservation Law, 2012, provides that “Waste” includes solids, liquids, or vapours and also includes anything that is classified as waste in accordance with this Law, including any radioactive substance that is discharged, emitted, or deposited in the environment. “Plastic” means a solid material that contains as an essential ingredient one or more high molecular mass polymers and that is formed during either manufacture of the polymer or the fabrication into a finished product by heat and/or pressure.⁹

Myanmar does not have a specific definition of plastic waste, it does have a definition of “waste” and a definition of “plastic”.

Identification Codes of Plastic

ASTM International (American Society for Testing and Materials), is a globally recognized leader in the development and delivery of voluntary consensus standards, has adopted a Resin Identification Code (RIC) for these seven types of plastic. As contained in the RIC, plastics comprise the seven structure types mentioned below;

- (1) Polyethylene Terephthalate (PET or PETE or Polyester) – recycled;
- (2) High Density Polyethylene (HDPE) – recycled;
- (3) Polyvinyl Chloride (PVC) – sometimes recycled;
- (4) Low Density Polyethylene (LDPE) – non-recyclable;
- (5) Polypropylene (PP) – non-recyclable;
- (6) Polystyrene or Styrofoam (PS – non-recyclable;
- (7) Other Plastics – non-recyclable.¹⁰

By classifying plastics into these seven types, the basic raw material and hence the recyclable quality of plastics can be more easily identified. In Myanmar, the Department of Research and Innovation (DRI) entered into a MOU with the ASTM in October 2016.¹¹

Today, people use a majority of polystyrene types of plastic, which are non-recyclable. Thus, there is an urgent need to reduce the use of this type of plastic in order to protect the environment from its harmful effects. Therefore, all countries, including Myanmar, need to prohibit the manufacture, import, stocking, distribution, sale, and use of single-use plastic, such as polystyrene or styrofoam.

Methods of Disposal

The three most popular methods for getting rid of plastic are landfill, incineration, and recycling. Safe disposal of plastic waste is a serious environmental problem.

⁷ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989 (Revised Edition 2019).

⁸ <https://www.leap.unep.org/knowledge/glossary/plastic-waste>

⁹ Directive 2/2017, National Guideline for the Prevention of Pollution By Garbage from Ships, Department of Marine Administration (DMA), Myanmar, 2017, p-5.

¹⁰ ASTM D7611/D7611M – Standard Practice for Coding Plastic Manufactured Articles for Resin Identification, 2020.

¹¹ <https://www.myanmarstandards.org.mm/>

Landfill

Landfills are a common way to dispose of plastic waste, but they are no longer the preferred option because it can take years for plastic to decompose. Plastic pollution of the soil and water results from the abiotic and biotic degradation of plastics caused by land disposal or plastic dumping. Therefore, a landfill is not the best method for the disposal of plastic waste.

Additionally, landfill space shortage is becoming a significant issue, even though landfilling is still the most widely used conventional waste management technique in many countries. For instance, since 1979 in land-scarce Singapore, Waste-to-Energy (WtE) plants have been an effective method of managing plastic waste by reducing its volume for disposal in landfills and thus reducing landfill areas. Also, Yangon built a WtE plant to prevent waste from going to the landfill in 2017.

Incineration

One of the main causes of air pollution is the burning of plastic waste in an open field. The open burning of plastic releases harmful chemicals into the atmosphere, causing pollution. When animals and people breathe in polluted air, it can lead to respiratory issues and other health problems.

In Yangon, a huge fire outbreak happened at Htein Bin final disposal site, and it spread quickly, consuming more than half of the disposal site area on 21st April 2018. Most of the plastics were burnt in the Htein Bin Garbage Dump site, and firefighters and people who live around it, suffered severe impacts on their health and had to be taken to the hospital for treatment. Therefore, guarding against any future fire risk is urgent and important for protecting the health and safety of the people living in the surrounding areas of waste disposal sites.

SDG 3 focuses on ensuring health and promoting welfare for all ages.¹² “No person shall pile or burn any kind of waste except within the specific area”.¹³

However, incineration can be used to generate energy from the waste combustion heat. Electricity produced from plastic waste not only conserves the natural environment but also reduces plastic pollution. The waste disposal infrastructure needs improvement. In 2017, the WtE plant constructed in Htawai Chaung in Yangon. The plant treats all waste delivered to the Htawai Chaung Final Disposal Site.¹⁴ Furthermore, “The Committee shall coordinate with the relevant departments to connect the energy recovery from wastes to the power network”.¹⁵

The Philippines also adopts the Guidelines Governing Waste-To-Energy (WtE) Facilities for the Integrated Management of Municipal Solid Waste. Singapore’s first WtE plant was established in 1979. By reducing the volume of waste by up to 90%, incineration has been an effective method of waste disposal for Singapore.

¹² 2030 Agenda for UN Sustainable Development Goals, 2015.

¹³Section 322(u) of the Yangon City Development Law, 2018 and Section 105(l) of the Mandalay City Development Law, 2014.

¹⁴ JFE Engineering Corporation, Waste to Energy Plant for Yangon City in Myanmar (Final Report), Kawasaki City, March 2018, pp-4-9.

¹⁵ Section 254 of the Yangon City Development Law, 2018.

Therefore, like the Philippines and Singapore, Myanmar needs to build more WtE facilities in its major cities. Furthermore, the relevant city development laws need to prescribe the use of plastic waste for energy recovery.

Recycling

Plastic is one of the most problematic types of waste that is troubling waste management. The recycling method is the best solution for plastic waste management. There is also an urgent need to address the plastic waste pollution in Myanmar. Accordingly, the Yangon Region Chief Minister has stated that the plastic waste management services for recycling, recovery and reuse are being implemented in Yangon city.¹⁶ Mandalay City Development Committee (MCDC), however, initiated its “Thin Plastic Free Zone” Program in March 2006. Mandalay city has now become the model of a plastic-bag-free region of the country, and Yangon and Nay Pyi Taw are now planning to emulate the success of the MCDC by adopting its program.¹⁷ “The Ministry shall adopt the necessary programs for the conservation, protection, control and reduction of pollution in the environment and for reconversion”.¹⁸

The recycling of waste, including plastic waste, has traditionally been carried out in many cities in Myanmar mostly by the informal sector. Myanmar Recycles is the leading recycling company that collects and recycles traditionally unrecyclable waste that is a significant contributor to the global plastic waste crisis. In addition to working with private companies, Myanmar Recycles collaborates with YCDC, Pollution Control and Cleansing Department (PCCD), which has shown its commitment to tackling plastic pollution with Myanmar Recycles at the country’s largest landfill.¹⁹

“No one shall oppose the community’s directive on waste disposal and recycling”.²⁰ Moreover, Goal C of Myanmar’s strategy plan (2018-2030) identifies a requirement to promote “reduce, reuse, recycle and recovery” of waste materials before final disposal.

Recycling is the best solution method, but most of the plastic waste cannot be recycled, especially single-use plastics, which are mostly not recyclable. Therefore, recycling is only a temporary solution, and it alone is not sufficient to tackle the whole plastic crisis. There is no adequate recycling system in Myanmar.

Prevention of Uncontrolled Disposal

The Myanmar Environmental Conservation Law, 2012, was enacted with the aim for reducing air, water, and land pollution. After that, Myanmar’s National Waste Management Strategy and Master Plan (2018-2030) was adopted and launched in January 2020. The key activities in Goal A are identified to improve the municipal solid waste collection and eliminate uncontrolled waste disposal and open burning.

¹⁶ Akenji, L, (2019), *Circular Economy and Plastics: A Gap-Analysis in ASEAN Member States*, p-64.

¹⁷ Ministry of Industry, Country Analysis Paper on 3R Practice in Myanmar, Fourth Regional 3R Forum in Asia, Myanmar, March 2013.

¹⁸ Rule 16(a) of the Environmental Conservation Rules, Myanmar, 2014.

¹⁹ <https://www.mmmtimes.com/news/worlds-first-plastic-credit-scheme-comes-to-myanmar>

²⁰ Section 105(o) of the Mandalay City Development Law, 2014.

“Disposal site means a site where there are temporary bins for the collection and storage of rubbish and pile waste designated by the Committee”.²¹ Waste collection and improper disposal are issues that are also being faced by Myanmar. Waste collection and disposal have traditionally been the responsibility of the respective townships and city development committees.

In urban areas, in addition to increasing waste generation levels, data gaps, low levels of public awareness about waste management and willingness to pay for waste services, a general lack of compliance with existing waste rules/ regulations, and poor cooperation with local authorities are common occurrences. There is no waste separation system in place, and recycling activities are mainly carried out by the informal sector.²²

Out of the total waste generation in the country, at least half is generated by three major cities: Yangon (2,000 tonnes/day), Mandalay (955 tonnes/day), and Nay Pyi Taw (200 tonnes/day). Yangon, Mandalay and Nay Pyi Taw engaged with foreign partners’ cities to establish new waste collection, recycling, treatment, and final disposal facilities. Presently, in most rural communities, people are disposing of their waste directly into water sources. The most popular way of managing is open burning. Most of the people in rural communities utilize an informal management system.²³

Thus, the environmental impacts of plastic waste are a major issue also in Myanmar. According to the recent survey conducted by Fauna & Flora International (FFI) and Thant Myanmar, the beaches are located at the delta of the Irrawaddy River transports a shocking 119 tons of plastic pollution every day. Both marine habitats around Myanmar, especially in the Bay of Bengal, and Myanmar's coastlines are heavily polluted by microplastics. Both domestic and industrial waste in the Gulf of Mottama (GoM) is mostly dumped in the watercourses. Plastic fragments are most abundant from Rakhine and Delta areas, while fibers are most abundant on Tanintharyi coast.²⁴ Abandoned, Lost, or otherwise Discarded Fishing Gear (ALDFG) was found to be highly prevalent across the Myeik Archipelago of Myanmar.²⁵

Research by the campaign has found that the amount of rubbish dumped in the zone – which encompasses Nyaung-U, New Bagan and Old Bagan – each day is about 36 tons, of which about 20 percent is plastic waste such as water bottles. Nyaung U is a popular tourist area but lacks a proper waste collection system, thus heavily impacting biodiversity, health, and livelihoods.²⁶

The regional initiatives includes the action taken by the Coordinating Body on the Seas of East Asia (COBSEA) which brings together nine countries: Cambodia, People’s Republic of China, Indonesia, Republic of Korea, Malaysia, the Philippines, Thailand, Singapore and Viet Nam in development and protection of the marine environment and coastal areas of the region, for the health and wellbeing of present and future generations. COBSEA aims at the

²¹ Clause 1(o) of the Nay Pyi Taw Bye-Law, 2016.

²² ECD, MONREC, UNEP, National Waste Management Strategy and Master Plan for Myanmar (2018-2030), Myanmar, 2018, pp-19,34,39.

²³ Wint Hte, Yin Yin Htay, Aung Naing Soe, Waste Research in Gulf of Motama, Swiss Agency for Development and Cooperation SDC, IUCN, September 2019, pp-17, 24.

²⁴ Ibid, p-7.

²⁵ Thanda Ko Gyi, (2020), *Abandoned, Lost or otherwise Discarded Fishing Gear (ALDFG) in Myanmar’s Myeik Archipelago*, Myanmar Ocean Project, p-8.

²⁶ <https://www.frontiermyanmar.net/en/at-myanmars-tourist-hotspots-a-dirty-habit/>

sustainable development and protection of the marine environment and coastal areas of East Asian Seas.²⁷

ASEAN ratified the Bangkok Declaration on Combating Marine Debris and the ASEAN Framework of Action on Marine Debris at the 34th ASEAN Summit in Bangkok, Thailand in 2019. The ASEAN Framework IV takes actions in Private Sector Engagement such as product life-cycle management, sustainable consumption and production and “3R” approaches.²⁸ The 2018 East Asia Summit (EAS) participating countries on their part, are also taking action in combating marine plastic debris, to improve and promote environmentally sound management of plastic waste.²⁹

Also, Section 45 of the Constitution of the Republic of the Union of Myanmar, 2008, states, “The Union shall protect and conserve natural environment,” and according to Section 390(b) “Every citizen has the duty to assist the Union in carrying out the environmental conservation.” And, an important contributor in mitigating the country’s plastic waste problem is the National Environmental Policy, 2019, which provides long-term guidance for government organizations, civil society, the private sector, and development partners on the achievement of environmental protection and sustainable development objectives in Myanmar.

Thus, the Environmental Conservation Law, 2012, the Environmental Conservation Rules, 2014, and National Waste Management Strategy and Master Plan (2018-2030) have provided for relating to paying compensation for environmental impacts by the polluter who causes damage to the environment.³⁰

Notwithstanding the other existing laws, the Government shall advise, examine, supervise, revise and prohibit health matters such as collecting and disposing of garbage and sewage in public areas to improve the health of the working people.³¹

Also, “no person shall, without the permission of the Committee within the municipal boundaries, dispose of garbage, sewage, dirt, etc. in a lake, roads, on the streets, sidewalks, in rivers, in streams, or in a place not designated for disposal.”³² And Section 322(y) of the Yangon City Development Law, 2018, states that “no person shall throw and place refuse, plastic bags, plastic bottles, and paper at the public places.” Moreover, Clause 2(a) of the Nay Pyi Taw Byelaw, 2016 provides that “the Committee shall specify the place of disposal for each category and class of wastes including plastic, plastic bags, P.V.C pipes, and recyclable waste.”

²⁷ COBSEA, Regional Action Plan on Marine Litter, 2019, p-4.

²⁸ <https://www.asean.org/asean-framework-of-action-on-marine-debris/>

²⁹ Clause 1 of the 2018 East Asia Summit Leaders’ Statement on Combating Marine Plastic Debris, Singapore, 2018.

³⁰ Section 7(o), 32, 33(a) of the Environmental Conservation Law, 2012, Rule 30(a) of the Environmental Conservation Rules, 2014 and National Waste Management Strategy and Master Plan for Myanmar (2018-2030).

³¹ Section 3(1)(a) of the Public Health Law, 1972.

³² Section 67(c) the Kachin State Municipal Development Law, 2013, Section 99(a) and (e) of the Kayah State Municipal Development Law, 2020, Section 60(c) of the Karen State Municipalities Law, 2012, Section 63(c) of the Chin State Municipal Law, 2013, Section 52(d) of the Mon State Municipal Law, 2017, Section 67(c) of the Rakhine State Municipal Law, 2013, Section 69(d) of the Shan State Municipal Development Law, 2013, Section 317(b), 322(h) and (v) of the Yangon City Development Law, 2018, Section 105(c) of the Mandalay City Development Law, 2014, Section 164 (c) and (n) of the Sagaing Region Municipal Development Law, 2018, Section 64 (c) of the Irrawaddy Region Municipalities Law, 2012, Section 62 (d) of the Magway Region Municipalities Law, 2012, Section 66 (d) of the Bago Region Municipal Development Law, 2016, Section 59(d) of the Tanintharyi Region Municipal Development Law, 2017.

Thus, the followings sectorial laws are indirect laws related to the disposal of plastic waste. They have descriptions relating to the discharge of waste but do not specifically mention plastic waste, plastic bags, and single-use plastic.

- The Penal Code, 1861 (amendment in 2016)
- The Port Act, 1908 (amendment in 2008)
- Myanmar Port Authority Law, 2015
- Myanmar Investment Law, 2016 (amendment in 2019)
- Myanmar Territorial Sea and Maritime Zones Law, 2017
- The Conservation of Biodiversity and Protected Areas Law, 2018
- Forest Law, 2018
- Industrial Zone Law, 2020

Public education and awareness are essential factors relating to the disposal of plastic waste. Environmental knowledge and attitudes are key elements for changing human actions. Section 6(a) of Myanmar Environmental Conservation Law, 2012, states, “The powers of the Committee include carrying out organizational education and activities relating to environmental conservation.” Both YCDC and MCDC have implemented environmental education programmes in local schools aimed at raising awareness of students about waste separation and recycling. Thus, Section 264 of the Yangon City Development Law, 2018, provides that “the Committee shall educate the public about environmental conservation works and the management of wastes.”

Although Myanmar has the provisions of public education and awareness in laws, in practice, Myanmar’s implementation of public education and awareness programs is weak, and public participation in plastic waste management needs improvement.

Economic growth and changes in consumption behaviour have accelerated plastic waste generation in Myanmar. Consumption of single-use plastic has increased manifold over recent years. In total, approximately 2 billion PET bottles are estimated to be consumed in Myanmar every year. Since the COVID-19 outbreak, plastic packaging (especially single-use plastic) used in the food service industry and retail sector has increased in line with government advice and individual precaution to follow more stringent hygiene protocols.³³

For instance, in China, the State Council issued the Work Plan on “Zero-waste City” Pilot Program in China and launched the pilot program in 11 cities (including Shenzhen) and 5 special areas (including Xiong’ a New Area) in 2018. The pilot sites have taken plastic pollution control as a vital task for building zero-waste cities. The comprehensive development of zero-waste cities significantly helps promote source reduction, recycling and harmless disposal of plastic waste. As an important part in the transition to zero-waste cities, prevention and control of plastic pollution involves many fields, such as industries, agriculture, and people’s daily lives.³⁴ In September 2021, the National Development and Reform Commission (NDRC) and the Ministry of Ecology and Environment (MEE) jointly issued the Action Plan for Plastic Pollution Control During the 14th Five-Year Plan Period. Thus, local authorities have also been working actively to

³³ Ingrid Nesheim, (2022), *Towards improved waste management in Bago Region*, Report SNo.7706-2022, Royal Norwegian Embassy Yangon, Myanmar, p-16.

³⁴ MEESCC and SWITCH-Asia RPAC (2022), *Study on the Roadmap of Plastic Pollution Control for the Zero-Waste Cities in China*, p-6,8.

achieve plastic pollution control targets set out for the 14th Five-Year Plan period. The output value of recycled plastic waste was about 105 billion yuan in 2021, rising 33% from 79 billion yuan in 2020.³⁵

Also, India and the Philippines have respectively issued Rule 4(2) of the Plastic Waste Management (Amendment) Rules, India, 2021, and Section 4 of Single-Use Plastics and Single-Use Styrofoam Products Regulation Act, Philippines, 2021, to prohibit the manufacture, production, sale, distribution, import, and use of single-use plastic. Myanmar, on the other hand, has not enacted any legislation prohibiting the manufacture, production, sale, distribution, import, and use of single-use plastic.

Therefore, Myanmar needs to implement such legislation relating to single-use plastic. Moreover, the relevant Cities Development Laws do not contain the prohibition of specific plastic bags, plastic cups, and plastic box for disposal like Section 322(y) of the Yangon City Development Law, 2018. Also, the major cities in Myanmar need to implement the “Zero-Waste Pilot program and the Action Plan for Plastic Pollution Control like China.

Enforcement of Plastic Waste Disposal

Plastic pollution has been recognized as an urgent issue by Myanmar. To properly handle plastic waste management at this time, however, the laws, policies, and initiatives in place are currently insufficiently developed.

The Ministry of Natural Resources and Environmental Conservation (MONREC) is the focal and coordinating agency for overall environmental management in Myanmar. Waste management, however, is a principal function of City Development Committees and Township Development Committees designated within Myanmar cities. Each committee maintains a Pollution Control and Cleansing Department (PCCD), which is responsible for overseeing household solid waste and industrial, medical and hazardous waste management. However, collection and disposal are currently the main priorities of the municipalities and intermediate waste treatment, such as recycling, plays a minimal role at present.³⁶

With regard to enforcement, YCDC’s Accounting Officer has announced that “Shops such as restaurants, café, etc., must dispose of waste in the specific areas. If a shop fails to comply with the conditions, they shall be punished with a fine imposed by the Committee. YCDC shall take action with a fine of 10,000 kyats upon a person found to be in violation of the said conditions.”

In one case, a restaurant did not systematically dispose of wastes in Thakata Township in Yangon on 15th December 2014. Thus, it was decided that as the restaurant had failed to comply with a condition or order issued by the Committee under Section 322(h) of the Yangon City Development Law, 2018, it should be punished with a fine of 10,000 kyats.

Mostly, factories are located in Yangon. In the case of the Maha (Resin Industry), the industry had been emitting pollutants that were causing air pollution, water pollution, and land pollution from its factory in the Shwe Lin Ban Industrial Zone, Hlaing Tharyar Township on 17th

³⁵ Ibid, p-6.

³⁶ ECD, MONREC, UNEP, National Waste Management Strategy and Master Plan for Myanmar (2018-2030), Myanmar, 2018, p-17.

October 2017. It was found that the Maha (Resin Industry) had violated the conditions issued by the YCDC Committee and was punished with a fine of two lakhs of kyats under the Yangon City Development Law, 2018.

“No person shall discharge wastewater into rivers, streams, and sewers without treatment of wastewater and shall emit smoke causing air pollution into atmosphere from businesses, workplaces and factories in accordance with the prescribed quality standards. If a person convicted under section 322(n) and (o) and section 105(f) and (n) violates or fails to comply with this Law, they shall be punished with imprisonment or with fine or with both”.³⁷ Furthermore, the relevant States and Regions have enacted to dispose of and clean properly the wastewater from workshops and factories to prevent environmental pollution.

Nay Pyi Taw is taking enforcement action regarding plastic waste with a Bye-law enacted on 21st March 2016, which states that “no person shall dispose of wastes any other place except the place prescribed to dispose of waste in clause 63”. Enforcement action in Nay Pyi Taw’s Bye-law clause 65 states that “whoever violates or fails to comply with clause 63, he shall be punished by law and be bound to carry out restoration. If the committee imposes penalties, the costs incurred by the violator must be paid to the committee”.

With regard to enforcement of the States and Regions, “Whoever violates or fails to abide by any of the provisions, he shall be punished with fine or with imprisonment or both”.³⁸

Moreover, for example, in Australia’s states such as Queensland and New South Wales, the Protection of the Environment Operations Act, 1997, and Waste Reduction and Recycling Act, 2011, have respectively provided the maximum penalty for illegal dumping and waste dumping. Additionally, in Rwanda, Law Relating to the Prohibition of Manufacturing, Importation, Use, and Sale of Plastic Carry Bags and Single-Use Plastic Items, 2019, has provided the maximum penalty to ban all plastic bags and plastic packaging. Thus, Rwanda became the world’s first ‘plastic-free’ nation.

Nowadays, there is still little action being taken regarding improper disposal of wastes in Myanmar. After 2014 (not including the improper disposal from factory), no enforcement action has been taken regarding the disposal of plastic waste in Yangon. The weakness of enforcement action regarding the disposal of plastic waste in Myanmar is the main problem. Although the penalties are sufficient, in practice enforcement of action for uncontrolled disposal of plastic waste has been weak.

Findings

The major cities (Mandalay and Nay Pyi Taw) need to establish WtE plants and include such a provision in the relevant City Development Laws, as Section 254 of the Yangon City

³⁷ Section 322(n) and (o) of Yangon City Development Law, 2018 and Section 105(f) and (n) of Mandalay City Development Law, 2014.

³⁸ Section 81 and 82 the Kachin State Municipal Development Law, 2013, Section 114 and 115 of the Kayah State Municipal Development Law, 2020, Section 73 of the Karen State Municipalities Law, 2012, Section 72 and 76 of the Chin State Municipal Law, 2013, Section 72 and 73 of the Mon State Municipal Law, 2017, Section 80 of the Rakhine State Municipal Law, 2013, Section 77 and 83 of the Shan State Municipal Development Law, 2013, Section 191 and 192 of the Sagaing Region Municipal Development Law, 2018, Section 77 of the Irrawaddy Region Municipalities Law, 2012, Section 75 of the Magway Region Municipalities Law, 2012, Section 79 and 81 of the Bago Region Municipal Development Law, 2016, Section 70 and 71 of the Tanintharyi Region Municipal Development Law, 2017.

Development Law, 2018. The relevant Cities Development Laws fail to provide prohibitions and penalties for using and disposing of single-use plastic items. Moreover, Myanmar is still weak in taking action for violations of law and weak in complying concerning disposal of waste in industry, urban and rural areas. Concerning public education and awareness, Myanmar has only a weak awareness of the risks posed by improperly disposed plastic waste, industrial plastic waste and also of the need for public participation. Additionally, the relevant Cities Development Laws need to insert the disposal of plastic waste and single-use plastic separately from municipal waste and household waste. In this context, although Myanmar possesses a number of sectorial laws, Myanmar does not have a specific law on plastic waste management.

Conclusion

Plastic waste is a global problem. Against the plastic pollution crisis, the government has passed the Environmental Conservation Law, 2012, the respective Cities Development Laws, and relevant laws relating to environmental management. However, these initiatives remain inadequate in solving the plastic waste problem. Although Myanmar has endeavored to prevent waste through Six Goals in the National Waste Management Strategy and Master Plan (2018-2030) and Cities Development Laws about waste management, it would be more effective to do so by providing specific provisions in a legal framework, including provisions on prohibition and penalties for uncontrolled disposal of plastic waste. In practice, Myanmar needs to take action for violating laws concerning the disposal of plastic waste. Although recycling is a suitable method for reducing the plastic waste, most of the plastic waste cannot be recycled, especially single-use plastics, which are mostly not recyclable. Therefore, WtE plants have been the only effective method of plastic waste disposal. Furthermore, the major cities in Myanmar would be more effective at reducing plastic waste if these issues were addressed as “Zero-Waste City” Pilot program and the Action Plan for Plastic Pollution Control like China. And, Myanmar needs to implement and enforce legislation and practices based on preventive and mitigation measures to prevent the improper disposal of plastic waste. As a result, Myanmar would be able to reduce from plastic pollution.

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UNDERSTANDING ENVIRONMENTAL HARMS AND LEGAL PROTECTION OF MYANMAR'S MINING INDUSTRY

Swe Zin Phyo¹

Abstract

This study analyses the environmental harms caused by Myanmar's mining industry and evaluates the legal frameworks governing environmental protection. Although mining remains a vital contributor to the national economy, it has generated severe ecological consequences such as water and air pollution, deforestation, and biodiversity loss. The research employs doctrinal and case analysis to examine national legislation, including the Environmental Conservation Law (2012), the Myanmar Mines Law (1994, amended 2015), and the Environmental Impact Assessment Procedures (2015), alongside relevant international environmental principles such as the precautionary and polluter-pays principles. The findings reveal weaknesses in enforcement and persistent legal challenges, particularly in illegal and unregulated mining zones. Based on this analysis, the paper proposes actionable recommendations to strengthen Myanmar's legal and institutional responses to environmental degradation in the mining sector.

Keywords: Environmental harms, legal frameworks, enforcement weakness, sustainable mining

Introduction

Myanmar's mining sector is crucial to its economy but presents significant environmental challenges. Rapid mining activities have led to serious issues such as deforestation, water pollution, and habitat loss, threatening both ecosystems and local communities. Although Myanmar has established legal frameworks, including the Environmental Conservation Law (2012) and the Myanmar Mines Law (1994), the Law Amending the Myanmar Mines Law (2015), the enforcement of these laws is often limited. Factors such as corruption, regulatory influence, and insufficient compliance monitoring can obstruct the safeguarding objectives of these regulations.

This research will explore the environmental harms associated with mining in Myanmar and the legal challenges that hinder effective regulation. By examining existing legal frameworks and relevant case studies, it will emphasize the need for improved enforcement and alignment with international environmental standards to promote sustainable mining practices in Myanmar.

Materials and Methods

This research employs a qualitative approach that combines doctrinal analysis and case law analysis to examine the legal framework governing environmental protection in Myanmar's mining sector. The doctrinal component involves interpreting and analysing key environmental statutes, including the Environmental Conservation Law (2012), the Mines Law (1994, amended 2015), the Environmental Impact Assessment Procedures (2015), and the Conservation of Biodiversity and Protected Areas Law (2018). These are examined alongside relevant international environmental instruments such as the Rio Declaration on Environment and

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Development (1992) and the Convention on Biological Diversity (1992) to assess Myanmar's alignment with global environmental principles and obligations.

The case analysis component focuses on two significant examples of environmental harm in the mining sector — the Hpakant jade mining region in Kachin State and the Letpadaung copper mine project in Sagaing Region. These case studies were selected due to their national importance, extensive documentation, and relevance to issues of environmental degradation, community displacement, and legal enforcement challenges. Legal documents, governmental reports, policy papers, and court-related materials are examined to evaluate how existing laws have been applied in practice and to identify weaknesses in regulatory oversight.

Both primary and secondary data sources are utilized to ensure a comprehensive understanding of Myanmar's environmental legal framework. Primary sources include international conventions, domestic legislation, policy documents, and reported cases, while secondary materials comprise academic books, peer-reviewed articles, and legal commentaries addressing environmental law and mining governance. These materials are systematically analysed to identify regulatory gaps, enforcement weaknesses, and potential reforms, enabling the study to propose actionable recommendations for strengthening environmental governance and legal accountability within Myanmar's mining industry.

Water Pollution: Legal Gaps in Controlling Mining Effluent

The environmental impacts of mining on water resources occur in various forms, primarily through the release of mine runoff into groundwater, surface water, and streams, as well as the improper disposal of wastewater and acid mine drainage.¹ Mining operations often involve the use of harmful chemicals such as mercury, cyanide, and sulfuric acid to extract minerals, which can leach or spill into nearby water bodies, severely affecting aquatic ecosystems and human health².

The mining industry's significant contribution to water pollution stems from the use of toxic chemicals, heavy metal contamination, acid mine drainage (AMD), erosion, sedimentation, and reduced water availability. For example, gold mines in Kachin State pose a threat to Indawgyi Lake, Myanmar's largest inland freshwater lake, which provides essential resources for local communities. Excessive sedimentation, largely due to gold mining, has caused the lake to become shallow and muddy, harming fish populations and livelihoods. Cyanide, mercury, and other toxins regularly seep into water systems, causing contamination and posing severe health risks to communities who rely on the lake's resources.³

When exposed to air and water during mining, sulphide minerals generate AMD, releasing sulfuric acid and heavy metals into nearby rivers, streams, and lakes. This further degrades water quality, making it unsuitable for both aquatic life and human use. The mining practices in places like Tachilek⁴ and Shwegyin¹ Township have exacerbated these issues, where

¹ SGU Geological Survey of Sweden, "Mines and environmental impact", <https://www.sgu.se/en/mineral-resources/mines-and-environmental-impact/>

² Alex G. Stewart, (2019), "Mining is bad for health: a voyage of discovery", *Environ Geochem Health*, vol.42, p.1153.

³ Maran, Mekong Eye, (2022), "Illegal gold mining threatens freshwater lake in Myanmar", <https://www.mekongeye.com/2022/11/14/illegal-mining-threatens-freshwater-lake>.

⁴ Poe Phyu Zin, Myanmar Now, (2023), "Myanmar's gold mines destroying environment and lives",

local environments face increased soil erosion and water contamination due to illegal and unregulated mining activities.

In Hpakant, mining companies frequently violate legal requirements regarding mine tailing disposal, contributing to sediment build-up in the Uru River and causing frequent flooding in nearby communities. Despite mandates for environmental protections, such as keeping tailings 500 feet from water sources, enforcement remains inconsistent, exacerbating water pollution.² This situation reflects a systemic failure to apply fundamental environmental principles—particularly the precautionary principle and the polluter-pays principle—in the governance of mining operations.

Myanmar's Environmental Conservation Law (2012) mandates specific environmental quality standards, including emissions, effluent limits, and solid waste management criteria. It also emphasizes the establishment of treatment facilities for toxic substances to address water pollution.³ These provisions embody the precautionary principle, which requires preventive measures to be taken even when there is scientific uncertainty about potential environmental harm. However, in practice, this principle is weakly applied, as preventive mechanisms such as pre-operation environmental monitoring, early warning systems, and timely inspections are either absent or inadequately implemented—particularly in remote and conflict-affected regions such as Hpakant.

Under the EIA Procedures (2015), mining projects that significantly impact water resources are subject to EIA requirements. These procedures mandate thorough assessments of the potential environmental impacts, including water quality, and may require the implementation of water management plans as part of the Environmental Management Plan (EMP). Projects with severe adverse impacts must undergo detailed Environmental Impact Assessments (EIAs), which include comprehensive water management strategies to minimize harm.⁴

The Water Resources and Rivers Conservation Law (2006) provides a framework for managing and conserving Myanmar's water resources. It mandates environmental impact assessments for activities that may affect rivers and other water bodies⁵ and prohibits resource extraction within restricted zones of waterways. The law also establishes rights and obligations for the conservation of water resources, although enforcement challenges continue to hinder its full application in mining regions. However, enforcement agencies rarely impose penalties or require restoration from offending companies, allowing polluters to externalize environmental costs to local communities and ecosystems.

Consequently, the weak application of both the precautionary and polluter-pays principles perpetuates water pollution in Myanmar's mining regions. The weak enforcement, limited institutional capacity, and insufficient monitoring mechanisms have undermined the effectiveness

<https://myanmar-now.org/en/news/myanmars-gold-mines-destroying-environment-and-lives/>.

¹ The Burma Environmental Working Group (BEWG), (2011), "Burma's Environment: People, Problems, Policies", pp.62-64.

² Ibid.

³ Section 10, the Environmental Conservation Law (2012).

⁴ Article 91 (a), Environmental Impact Assessment Procedure (2015).

⁵ Section 6 (g-1), the Water Resources and Rivers Conservation Law (2006).

of these foundational principles, resulting in ongoing environmental degradation and public health risks in Hpakant and similar mining areas.

Air Pollution: The Ineffectiveness of Emission Standards

Mining activities generate substantial air pollution through dust, emissions from heavy machinery, and the release of toxic gases like sulphur dioxide (SO₂) and nitrogen oxide (NO_x). Despite the National Environmental Quality (Emission) Guidelines (2015) setting emission limits, enforcement remains inadequate, especially in key mining regions like Hpakant, where air pollution has led to respiratory diseases in local communities. Airborne pollutants such as particulate matter (PM) are rampant due to poor regulation of blasting, transportation, and processing activities. Though legal provisions exist, penalties for non-compliance are not stringent enough, allowing air pollution to persist.

Air pollution is a local, regional, and global concern, with health impacts that extend beyond the immediate emission area. It affects populations in low-income, middle-income, and high-income countries, particularly in Southeast Asia and the Western Pacific regions.¹ Mining contributes significantly to air pollution at various stages, including exploration, construction, development, and operational activities. Mining sites accumulate large amounts of material and small-sized particles easily dispersed by wind, leading to increased levels of dust and particulate matter.

One of the largest environmental threats mining poses is air pollution, particularly through the emission of particulate matter, toxic gases, and smelting by-products. Particulate matter (PM), which includes sulphates, ammonia, nitrates, black carbon, sodium chloride, and mineral dust, is a widespread concern in mining, often being emitted in large quantities during operations.² These particles pose severe risks to human health, causing respiratory issues and aggravating conditions like asthma, heart disease, and lung cancer.³ Besides harming human health, particulate matter can damage livestock and crops, and its effects are exacerbated by mining's proximity to densely populated areas.

Mining activities also release various toxic pollutants into the air, such as sulphur dioxide (SO₂), nitrogen oxides (NO_x), and heavy metals including lead, mercury, cadmium, and arsenic. The release of these pollutants primarily occurs during drilling, blasting, and crushing processes. Coal mining in Shan State, for example, has severely degraded air quality, impacting local communities. Mining in Northern Shan State has destroyed farmland, caused water and air pollution, and led to significant health risks for over 3,000 local villagers. Increased traffic from coal transport worsens the air quality, especially in dry seasons, and has caused accidents.

¹ World Health Organization, (2022), "Ambient (outdoor) air pollution", [https://www.who.int/news-room/fact-sheets/detail/ambient-\(outdoor\)-air-quality-and-health?gclid=EAIaIQobChMIqsgahcWYgAMVHCiDAx3mJgQNEAAYASAAEgKJOFD_BwE](https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health?gclid=EAIaIQobChMIqsgahcWYgAMVHCiDAx3mJgQNEAAYASAAEgKJOFD_BwE).

² World Health Organization, (2022), "Ambient (outdoor) air pollution", [https://www.who.int/news-room/fact-sheets/detail/ambient-\(outdoor\)-air-quality-and-health?gclid=EAIaIQobChMIqsgahcWYgAMVHCiDAx3mJgQNEAAYASAAEgKJOFD_BwE](https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health?gclid=EAIaIQobChMIqsgahcWYgAMVHCiDAx3mJgQNEAAYASAAEgKJOFD_BwE).

³ Earthworks, "Impact of Metal Mining on Air Quality", <https://earthworks.org/issues/gold-mining-and-air-quality/>.

Despite ongoing negotiations between mining companies and local villagers, no satisfactory resolution has been reached, and pollution continues to harm local populations.¹

Noise and vibration from mining activities also contribute to air pollution, primarily through blasting, ore stockpiling, and transportation. These impacts lower the quality of life in nearby communities and degrade the surrounding environment.

To reduce the environmental impact of mining, the Ministry of Natural Resources and Environmental Conservation issued the Environmental Quality (Emission) Guidelines (2015), mandating that mining companies comply with standards related to air emissions, wastewater management, and noise levels control. These guidelines are particularly relevant for projects requiring Environmental Impact Assessments (EIAs) or Initial Environmental Examinations (IEEs). Specific effluent standards apply to mining activities, covering both construction material extraction and mineral mining operations.² As part of the EIA process, the guidelines aim to protect ecosystem health by setting explicit emission and effluent limits.

Additionally, mining companies must adhere to the Prevention of Hazardous Chemicals and Related Substances Law, which governs the handling, transportation, storage, and disposal of chemicals. These regulations require companies to minimize the environmental impacts of hazardous substances, emphasizing the importance of following directives for safe chemical management. Air pollution from mining activities in Myanmar poses significant risks to both the environment and public health, exacerbated by poor regulation and enforcement.

Strengthening and enforcing air quality regulations, establishing effective monitoring systems, promoting cleaner mining technologies, and undertaking restoration efforts are essential steps to reduce pollution. Further, engaging local communities, collaborating with NGOs and international organizations, and investing in technology to minimize emissions are crucial for improving air quality and safeguarding public health in Myanmar's mining regions.

Wildlife and Habitat Destruction: Limited Legal Protections

The Conservation of Biodiversity and Protected Areas Law (2018) provides legal protections for wildlife; however, these are frequently violated, particularly in mining regions like Hpakant and Shan State. Large-scale mining operations disrupt ecosystems through deforestation and habitat destruction, displacing animal species and fragmenting ecosystems. This degradation threatens biodiversity and leads to species decline. Despite Myanmar having 46 protected areas³, many mining projects operate illegally within or near these zones due to weak enforcement and limited government oversight.

Wildlife species live in interdependent communities where their survival depends on soil conditions, local climate, altitude, and other features of their habitat. Mining directly and indirectly damages wildlife by altering ecosystems and landscapes. One of the most significant

¹ EAtlas Southeast Asia Team, (2019), "Nam Ma coal mines, Shan state, Myanmar", 2019, <https://ejatlas.org/conflict/nam-ma-coal-mining-and-extrajudicial-killings-shan-state-myanmar>.

² Ministry of Natural Resources and Environmental Conservation, National Environmental Quality (Emissions) Guidelines (2015), pp.115-117.

³ AFoCO-EML, "Forests and forestry in Myanmar: an overview of forestry laws, policies, and strategies", (2021), <https://afocosec.org/newsroom/news/forestry-news/forests-and-forestry-in-myanmar-an-overview-of-forestry-laws-policies-and-strategies/>.

impacts is the clearing of vegetation, which destroys habitats that many species, particularly those dependent on natural drainage systems, rely upon. Not only do mining operations within the mining area affect wildlife, but associated activities—such as the dumping of overburden, tailings deposition, and infrastructure development—further degrade ecosystems and fragment habitats.

The construction of mining infrastructure such as roads, ports, railways, and power lines create barriers to wildlife migration and increases habitat fragmentation. This fragmentation isolates populations, disrupts migration patterns, and limits resources, leading to species decline and genetic issues like inbreeding. Additionally, the thousands of acres of land destroyed during mineral extraction exacerbate habitat loss, as plants and trees are cleared and animals lose critical living spaces.

Mining operations also produce large amounts of dust and particulates, which can adversely affect wildlife. Pollutants contaminate the air and soil, disrupting plant growth and harming animals' respiratory systems. Such pollution degrades ecosystems, disrupting the balance necessary for wildlife survival. Noise, vibration, and machinery movements at mining sites create additional stress for wildlife, altering behaviour, communication, and mating patterns.

The impacts of mining on wildlife are evident during the construction phase of mining sites, where significant changes in vegetation, landscape, and hydrology occur. These changes not only affect the immediate mine site area but can be seen from kilometres away, affecting the broader region. Such impacts often lead to a loss of biodiversity and the destruction of wildlife habitats.

In Myanmar, The Myanmar Forestry Policy (1995) emphasizes sustainable forest resource management and wildlife habitat protection. This policy outlines strategies for forest conservation and development, ensuring the protection of wildlife and their habitats.¹ Forest Law further requires anyone intending to develop or undertake economic projects on forest-covered land to obtain approval from the Ministry and comply with **Environmental Conservation Law** and relevant regulations.

The Forest Law also mandates that entities granted the right to extract forest products or natural resources must undertake reforestation efforts at their own expense.² These reforestation projects aim to restore ecosystems and ensure the return of native wildlife. Similarly, the Conservation of Biodiversity and Protected Areas Law (2018) focuses on implementing Myanmar's biodiversity strategy, conserving wildlife and ecosystems, regulating wildlife trade, and safeguarding endangered species.³ The National Steering Committee oversees the implementation of these conservation objectives.

Mining operations are particularly concerning in areas near or overlapping with national parks and protected zones, such as Alaungdaw Kathapa National Park, Indawgyi Wildlife Sanctuary, and Inlay Lake Wildlife Sanctuary. Excavation activities are prohibited in these restricted areas to preserve wildlife and their habitats, but illegal mining often occurs due to poor regulation.

¹ Ministry of Natural Resources and Environmental Conservation, Myanmar Forest Policy (1995).

² Section 16, the Forest Law (2018).

³ Section 3, the Conservation of Biodiversity and Protected Areas Law (2018).

Under the Law Amending the Myanmar Mines Law (2015) and Myanmar Mines Rules (2018), mine permit holders are required to set aside funds for environmental conservation and mine closure activities. These efforts include land rehabilitation, reforestation, and the restoration of mining sites to productive states after mining ceases.^{1 2} Rehabilitation is essential to re-establish ecosystems and allow wildlife to return to these areas.

Mining activities have significant negative effects on wildlife, including habitat destruction, fragmentation, and pollution. The contamination of ecosystems disrupts wildlife habitats and food sources, contributing to species decline.

To mitigate these effects, stricter enforcement of legal protections, more comprehensive environmental impact assessments, and collaboration with stakeholders are essential. Enhanced regulatory oversight and commitment to rehabilitation and conservation efforts are crucial to protecting Myanmar's wildlife from the destructive effects of mining.

Land Degradation and Deforestation: Inadequate Rehabilitation Efforts

Land degradation and deforestation are widespread in Myanmar's mining regions, particularly in jade and gemstone extraction areas. Although the Law Amending the Myanmar Mines Law (2015) mandates that mining companies undertake land reclamation and restoration after operations cease³, compliance is weak. However, many companies either fail to comply with this requirement or engage in minimal rehabilitation efforts. As a result, vast tracts of land remain scarred and unproductive long after mining activities end.

Regions like Letpadaung, where high levels of acidification from mining have rendered agricultural land unusable, exemplify the failure of rehabilitation policies. Without proper soil treatment and reforestation, these areas suffer from long-term ecological damage, leaving local communities with degraded land that can no longer support farming or natural vegetation.⁴

Mining activities—especially in extensive areas dedicated to jade, gold, gemstones and copper—result in significant environmental damage. These operations lead to land-use changes and adverse environmental impacts, including deforestation, erosion, contamination, and soil profile alteration. Mining often clears large forested areas to excavate mineral-rich pits and construct access roads for heavy machinery. The demand for energy and storage facilities at mining sites necessitates additional infrastructure, while the labour required for these operations contributes to migration and the expansion of settlements, exacerbating deforestation.⁵

Most mining-related deforestation in Myanmar is driven by gold and coal extraction, though mining for other minerals such as copper, iron ore, and bauxite also contributes to habitat loss. The dense vegetation found in wetlands plays a crucial role in stabilizing soil and preventing erosion; however, massive flooding and landslides in affected communities have been linked to deforestation. The erosion caused by both mining and the loss of vegetation

¹ Rule 185, the Myanmar Mines Rules (2018).

² Section 13 (e-2), the Law Amending the Myanmar Mines Law (2015).

³ Section 13 (e-2), the Law Amending the Myanmar Mines Law (2015).

⁴ The Burma Environmental Working Group (BEWG), (2011), "Burma's Environment: People, Problems, Policies", p.62.

⁵ World Bank Group, (2019), "Myanmar Country Environmental Analysis",

<https://www.worldbank.org/en/country/myanmar/publication/myanmar-country-environmental-analysis>.

significantly increases the risk of mudslides, as tree roots no longer anchor the soil. During heavy rainfall, the absence of trees allows substantial amounts of soil to wash away, leading to the destabilization of the landscape.

Erosion also facilitates the flow of contaminants into water supplies, polluting streams, lakes, and other sources, which in turn compromises the quality of drinking water. The consequences of deforestation extend beyond soil erosion; it adversely affects the animal species dependent on forest habitats and threatens overall biodiversity.

The severity of these environmental impacts varies based on the type of minerals extracted, mining methods employed, local geology, and the effectiveness of environmental management practices implemented by mining companies. While most legal mines are established outside forest reserves and protected areas, illegal open-pit mining—often along rivers and streams—remains a significant driver of deforestation. For instance, illegal surface mining along the Uru and Chindwin Rivers in Hommalin Township has led to substantial environmental degradation.¹

The Hpakant jade mining site in Kachin State serves as a stark example of these challenges. Unauthorized jade mining is prevalent in the area, with poorly regulated operations causing massive environmental damage and frequent human fatalities. Scavengers seeking jade left behind by machinery often risk their lives, as landslides and debris from unstable mine dumps are common. Since 2015, over 500 people have reportedly died in landslides in Hpakant, highlighting the lethal dangers associated with these mining activities.²

Most of Myanmar's gemstone mining areas, particularly in conflict-affected regions like Hpakant and Khamti Township, pose significant regulatory challenges for the government. Despite regulations requiring compliance with environmental laws, enforcement remains weak. Large machinery exacerbates environmental destruction, carving out extensive valleys and creating massive waste piles that destabilize the surrounding area.

Local communities near mining operations suffer severe environmental degradation and health risks, forcing drastic economic changes. For instance, in the Letpadaung copper mining area, high levels of sulfuric acid in the soil and water have made farming impossible, pushing residents into artisanal mining and transforming the local economy from subsistence-based to cash-based.³

The mining project has neglected its environmental responsibilities, harming villagers' health and livelihoods. A 2015 waste spill in Wet Hme village contaminated farmland, destroying crops—yet the company neither cleaned up nor compensated affected farmers. Subsequent tests revealed dangerous levels of toxic metals (arsenic, copper, and lead) in the soil.⁴

¹ John Sai Luu, (2022), “Analysis: Myanmar’s gemstone riches bring poverty and environmental destruction”, Mongabay, <https://news.mongabay.com/2022/04/analysis-myanmars-gemstone-riches-bring-poverty-and-environmental-destruction/>.

² Ibid.

³ The Burma Environmental Working Group (BEWG), (2011), “Burma’s Environment: People, Problems, Policies”, p.62.

⁴ Amnesty International, (2017), “Mountain of trouble: Human rights abuses continue at Myanmar’s Letpadaung mine”, <https://www.amnesty.org/en/documents/asa16/5564/2017/en/>.

Additionally, emissions from the Moe Gyo sulfuric acid factory, which supplies the mines, have been linked to health crises, including increased cases of children born blind.¹

While Myanmar's legal framework outlines safeguards for land acquisition, implementation often fails to protect communities. According to Section 9(e), the Land Acquisition, Resettlement and Rehabilitation Law (2019) mandates that projects requiring land acquisition, including mining operations, must conduct Environmental Impact Assessments and socioeconomic impact assessments before approval.²

These assessments must align with Myanmar's Environmental Conservation Law and international best practices, ensuring that environmental degradation and community displacement are minimized. However, enforcement remains inconsistent, particularly in remote mining regions where regulatory oversight is weak. This gap often leads to unchecked ecological damage and conflicts with local communities.

The recurring landslides in Hpakant clearly demonstrate the weak implementation of the Precautionary Principle under Principle 15 of the Rio Declaration. Foreseeable risks to life and the environment were ignored as jade mining operations proceeded without adequate environmental and geotechnical assessments. The fatal incidents in 2015, 2020, and 2023, caused by the collapse of unstable tailings heaps, indicate non-compliance with Section 7 of the Environmental Conservation Law (2012) and Rule 176 of the Myanmar Mines Rules (2018), which legally require operators to prevent environmental degradation and ensure site safety.

Government responses have remained reactive, focusing on post-disaster measures rather than preventive enforcement. Allowing mining and waste dumping in geologically unstable areas constitutes a breach of the State's duty of due diligence in environmental protection. This conduct is inconsistent with the core obligation of the Precautionary Principle, which mandates preventive action even in the absence of full scientific certainty. The repeated landslides in Hpakant therefore exemplify Myanmar's failure to apply precautionary environmental governance in the mining sector.

Similarly, the Polluter Pays Principle (Principle 16 of the Rio Declaration) is poorly implemented in Myanmar's mining governance. Polluting companies rarely bear the full cost of environmental restoration, and affected communities are left uncompensated for damages. The lack of effective enforcement mechanisms under the Environmental Conservation Law and the Myanmar Mines Law allows operators to externalize environmental costs onto the public. This failure undermines both accountability and deterrence, enabling recurring cycles of deforestation, land degradation, and community displacement.

Section 59(c) allows the state to reclaim land if mining causes environmental harms, health risks, or breaches agreements.³ While this holds companies accountable, enforcement is weak due to economic and political pressures favouring extraction. Cases of pollution and deforestation without consequences show the law's limited impact, reflecting broader challenges in Myanmar's environmental governance.

¹ The Guardian, (2012), "Burma: riot police move in to break up copper mine protest", <https://www.theguardian.com/world/2012/nov/29/burma-riot-police-mine-protest>.

² Section 9(e), the Land Acquisition, Resettlement and Rehabilitation Law (2019).

³ Section 59(c), the Land Acquisition, Resettlement and Rehabilitation Law (2019).

The Myanmar Investment Law further mandates that investors using state-owned land submit proposals¹ adhering to environmental and social safeguards, including international best practices.² However, weak enforcement allows harmful practices to continue, leaving communities without recourse when land is seized, livelihoods are destroyed, or pollution goes unaddressed.

While the Myanmar government and international organizations recognize the need to mitigate mining's negative impacts on water, air quality, soil, biodiversity, forests, and wildlife, challenges remain in implementing effective governance and environmental regulations. Strengthening the application of the Precautionary and Polluter Pays Principles within Myanmar's legal system is essential to ensure that mining companies are held financially and legally responsible for rehabilitation, environmental restoration, and compensation. Without stricter enforcement of rehabilitation and investment in sustainable land restoration, Myanmar's mining areas will continue to face irreversible environmental damage, threatening both ecosystems and livelihoods.

Collaborative efforts among the government, mining companies, and civil society are essential to ensure sustainable and responsible mining practices, prioritize environmental protection, uphold local community rights, and promote transparency and accountability within the mining sector. Enhanced enforcement of existing laws and regulations, alongside proactive rehabilitation efforts, are crucial for addressing the ongoing threats of land degradation and deforestation in Myanmar's mining regions.

Discussion

Precautionary Principle

The precautionary principle, outlined in Principle 15 of the Rio Declaration, mandates that states take preventive action when there is a risk of environmental harms, even if full scientific certainty is lacking.³ In Myanmar, the principle is embedded in the **Environmental Conservation Law** (2012), which mandates precautionary measures to prevent environmental degradation.⁴ However, enforcement is weak, and harmful mining practices such as deforestation, habitat destruction, and pollution often go unchecked. The Environmental Impact Assessment (EIA) Procedures (2015) are meant to assess risks before project approval, but insufficient assessments and ineffective monitoring lead to the continuation of harmful practices. Strengthening these enforcement mechanisms is essential for effective application in Myanmar's mining sector.

Polluter Pays Principle

The polluter-pays principle, outlined in Principle 16 of the Rio Declaration, asserts that those responsible for environmental harms should bear the costs of remediation.⁵ Myanmar's

¹ Section 36 (d), the Myanmar Investment Law (2016).

² Section 65 (g), the Myanmar Investment Law (2016).

³ Principle 15, Report of the United Nations Conference on Environment and Development, United Nations, Rio De Janeiro (1992), p.6.

⁴ Section 7, the Environmental Conservation Law (2012).

⁵ Principle 16, Report of the United Nations Conference on Environment and Development, United Nations, Rio De Janeiro, 1992, p.6.

Environmental Conservation Law (2012) incorporates this principle, requiring mining companies to cover environmental clean-up costs.¹ Despite this, corruption and weak regulatory oversight enable many companies to avoid fulfilling their responsibilities. The law specifies that those who benefit from natural resources must contribute to environmental protection, and the Law Amending the Myanmar Mines Law (2015) also reinforces this by requiring companies to fund rehabilitation activities during mine closure.² Enhancing legal accountability and imposing stricter penalties for non-compliance could improve the effectiveness of this principle in Myanmar's mining industry.

Sustainable Development

The principle of sustainable development emphasizes balancing economic growth with environmental protection. Myanmar's mining sector has the potential to contribute to economic development, but this must be done sustainably. The **Environmental Impact Assessment (EIA)**, guided by Principle 17 of the Rio Declaration, is an essential tool to assess and mitigate the environmental impacts of mining projects.³ However, many mining companies conduct inadequate EIAs, and local communities often have little input in decision-making. To align mining activities with sustainable development goals, reforms are needed to improve the transparency and enforcement of EIA procedures, ensuring that environmental and social impacts are considered at every stage.

The Myanmar Investment Law integrates sustainable development by requiring investors to carry out environmental and social impact assessments in line with relevant laws. In accordance with the responsibilities outlined in the law, investors must obtain a Permit or Endorsement from the Commission for investments requiring prior approval under the Environmental Conservation Law and its environmental impact assessment procedures. Furthermore, during the permitted investment period, investors must submit updates on the status of their environmental and social impact assessments to the Commission.⁴

Section 71 of the Myanmar Investment Law also mandates that investors also need to carry out health assessment, cultural heritage impact assessments, environmental impact assessments and social impact assessments according to the type of investment activities in accordance with the relevant laws, rules, regulations and procedures during the investment period.⁵ These requirements are vital for ensuring that mining activities contribute positively to local communities and ecosystems. Additionally, mining companies are bound by legislation to fund rehabilitation activities and ensure that the land is restored post-mining operations, as stipulated in the Law Amending the Myanmar Mines Law (2015).

Responsible Mining and Global Frameworks

The concept of responsible mining, as articulated through global frameworks such as the Stockholm Declaration (1972) and Rio Declaration (1992), establishes fundamental principles for

¹ Section 7 (o), the Environmental Conservation Law 2012.

² Section 16 (e-2), the Law Amending the Myanmar Mines Law (2015).

³ Principle 17, Report of the United Nations Conference on Environment and Development, United Nations, Rio De Janeiro, 1992, P.6.

⁴ Section 65 (q), the Myanmar Investment Law (2017).

⁵ Section 71, the Myanmar Investment Law (2017).

sustainable mineral extraction. These international agreements emphasize environmental protection, intergenerational equity, and meaningful community participation. Myanmar's diverse mining sector faces the ongoing challenge of implementing these global standards within local contexts.

Across Myanmar's mining regions, distinct environmental challenges test these international principles. In Kachin State's jade mining areas, landscape transformation and hydrological impacts raise important questions about sustainable rehabilitation approaches.¹ The Letpadaung Copper Mine in Sagaing Region has caused severe environmental damage, including destruction of farmland through bulldozing and contaminated soil dumping, toxic wastewater runoff that killed crops, and pollution from sulfuric acid production impacting community health.² Along the Irrawaddy River, gold mining activities highlight the need for effective sediment control measures to maintain riverine ecosystem integrity.³

Unregulated mining operations in southern Myanmar's Tanintharyi Region have caused severe environmental degradation, including widespread deforestation, toxic contamination of waterways from heavy metals, destruction of aquatic ecosystems, and landscape erosion leading to hazardous flooding, while inadequate rehabilitation of mined areas leaves lasting damage to both terrestrial and coastal environments.⁴

The Chindwin Basin's rich biodiversity—including 370+ bird species, 155 fish species (54 endemic), and endangered mammals like tigers and pangolins—faces severe threats from unregulated mining (gold/copper/jade), logging, and agricultural expansion. Mining operations pollute rivers and wetlands, destroying critical fish spawning grounds and migratory bird habitats, while deforestation and land conversion jeopardize forest ecosystems. Local communities dependent on these resources for food and livelihoods are increasingly vulnerable, necessitating urgent conservation measures to prevent irreversible ecological damage.⁵ These regional variations collectively underscore the importance of adapting international mining standards to local conditions.

Myanmar's regulatory framework, including the Environmental Conservation Law (2012) and Mining Rules (2018), provides a foundation for implementing global principles. However, opportunities exist to strengthen their application through enhanced environmental impact assessment methodologies and more robust community consultation processes.

The Stockholm Declaration's Principle 21, which addresses states' responsibilities for transboundary environmental protection, and the Rio Declaration's Principle 10 on public participation offer particularly relevant guidance for these improvements.

¹ Global Witness Report, (2015), "Jade: Myanmar's Big State Secret"

<https://www.globalwitness.org/en/campaigns/natural-resource-governance/myanmar-jade/>.

² Business & Human Rights Resource Centre, (2024), "Myanmar: Letpadaung copper mine project sparks ongoing protests, land disputes & security concerns", <https://www.business-humanrights.org/en/latest-news/myanmar-letpadaung-copper-mine-project-sparks-ongoing-protests-land-disputes-security-concerns/>.

³ Kachin News Group, (2024), "Illegal gold mining increases on Ayeyarwady River in Shwegu Township", <https://www.bnionline.net/en/news/illegal-gold-mining-increases-ayeyarwady-river-shwegu-township>

⁴ Hein Thar, (2023), "Poisoned earth: Unregulated mining ravages Myanmar's deep south. Frontier Myanmar" <https://www.frontiermyanmar.net/poisoned-earth-unregulated-mining-ravages-myanmars-deep-south/>.

⁵ Daniel, R, (2019), "Chindwin Basin biodiversity faces serious threats, urgent conservation measures needed, say SEI's scientists", <https://www.sei.org/features/chindwin-basin-biodiversity-faces-serious-threats-urgent-conservation-measures-needed-say-seis-scientists/>.

Practical implementation pathways could include adopting best available technologies for mine waste management, especially in sensitive ecosystems like Tanintharyi's coastal areas. For riverine mining operations, sediment control measures aligned with the precautionary approach would help balance extraction needs with environmental protection. Across all regions, establishing transparent monitoring systems and grievance mechanisms would advance both environmental outcomes and community trust.

The transition toward responsible mining practices in Myanmar presents both challenges and opportunities. By drawing on the foundational principles of international environmental agreements while adapting to local ecological and social contexts, Myanmar's mining sector can progress toward a more sustainable model. This evolution requires ongoing dialogue between policymakers, operators, and affected communities to develop solutions that address both development needs and environmental responsibilities. Such balanced approaches lie at the heart of global mining frameworks and represent the path forward for responsible mineral development.

Legal Enforcement Challenges

Illegal mining is widespread in conflict-affected areas like **Kachin State**, where central government control is weak. Myanmar's legal system struggles to regulate these areas due to ongoing armed conflicts and the presence of ethnic armed groups. Illegal mining not only worsens environmental degradation but also fuels local conflicts by funding armed groups. Strengthening governance and improving legal oversight in conflict zones are critical to addressing these issues.

Issues related to corruption within Myanmar's regulatory bodies can hinder the effective enforcement of environmental laws. Mining companies may sometimes find ways to navigate legal requirements through informal agreements, which can lead to environmental challenges. Enhancing transparency and accountability within regulatory agencies is essential for improving the implementation of laws such as the Mines Law (2015) and Environmental Conservation Law (2012).

Public participation in environmental governance is a cornerstone of international environmental law, as seen in Principle 10 of the Rio Declaration.¹ In Myanmar, local communities affected by mining operations often lack the resources to participate in environmental decision-making processes. Strengthening legal frameworks to ensure that affected communities have a say in mining projects is essential. Myanmar's Environmental Impact Assessment (EIA) Procedures (2015) formally require consultation with affected communities at all stages of mining operations. However, weak enforcement, lack of transparency, and insufficient monitoring have rendered these safeguards ineffective, perpetuating environmental harms and disregarding community rights. Efforts should focus on better enforcement, independent community monitoring, and stronger accountability to ensure real participation and compliance with environmental and social safeguards.

¹ Principle 10, Report of the United Nations Conference on Environment and Development, United Nations, Rio De Janeiro, 1992, p.5.

Conclusion

Myanmar's mining industry has caused severe environmental damage, including water and air pollution, deforestation, and biodiversity loss. Although the country's legal framework such as the Environmental Conservation Law (2012) and Mines Law (2015)-provides a basis for environmental protection, weak enforcement, corruption, and lack of transparency have rendered these laws ineffective. To mitigate mining's destructive impacts, Myanmar must strictly enforce key environmental principles, including the precautionary principle, the polluter-pays principle, and sustainable development. Moving forward, strengthening governance, ensuring transparency, and empowering local communities in oversight will be essential to curb environmental degradation and promote a more sustainable and accountable mining sector.

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LEGAL CONTROL OF ONLINE SALES BUSINESS IN MYANMAR

Saw Ei Phyu¹

Abstract

Online sale business is the sale of goods or services on the internet. In today's digital age, online sale business has become an essential part of the global economy. In Myanmar, the Online Sales Business Registration Order, 2023, is issued by the Ministry of Commerce. That Order has mandated the application of registration certificate by the Registration Certificate Holders in online sales business and the duties and the rights of the Registration Certificate Holder in online sales business. Besides, it has provided the orders such as suspension of the registration certificate and the cancellation of the registration certificate for the violations of the Registration Certificate Holders in online sales. Disputes arisen between consumers and the Registration Certificate Holder must be settled in compliance with the Consumer Protection Law, 2019. And, the Online Sales Business Registration Order, 2023 has been provided in favor for the application of the registration of online sales business and does not sufficiently complete for the violations of the duties and promotion of the Registration Certificate Holders in online sales. Hence, the Online Sales Business Law should be provided for enforcing the liabilities of the Registration Certificate Holder or entities, and for promoting the continuous and sound development of online sales business.

Keywords- Online Sales Business, registration certificate, promotion of online sales business.

Introduction

Online sales business means providing services by sale of goods or services through online system. In today's digital age, online sales business involves an essential competent of the global economy. In Myanmar, everyone who wishes to operate online sales business shall register his or her online sales business to the Department of Trade of the Ministry of Commerce in accordance with the specified manners by the Department through online system. When the consumers suffered the damages relating to the buying of the goods through online sales, they can file the compliant as to disputes to the Department of Consumer Affairs. The Registration Certificate Holders in online sale have to perform the duties as mentioned in the Competition Law, 2015; the Electronic Transaction Law, 2004; the Intellectual Property Laws; and the Online Sales Business Registration Order, 2023. The Registration Certificate Holders in online sales are entitled to the rights when their online businesses are registered under the Online Sales Business Registration Order, 2023. And, the State shall operate the sustainable development of the online sales businesses.

Aim and Objectives

The aim of this paper is to get a balance between to control it effectively and legally and promoting online sales business growth. And with the rapid growth of online sales business, regulations are necessarily to ensure that online sales business operate within a legal framework that fosters transparency, fairness and accountability. This research paper will explain how to control the online sales business legally based on the Laws; the Orders; Newspapers and Monthly News Letter of the Consumer Affairs and e-source.

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Definition relating to Online Sales Business

Online Sales Business

“Online Sales Business is defined providing service by sale of goods or services through Online system.”²

Registration Certificate

“Registration Certificate” is Registration Certificate for Online Sales Business issued by the Department of Trade according to the Online Sales Business Registration Order, 2023.³

Registration Certificate Holder

“Registration Certificate Holder” is a company or a business organization or a person who holds the Registration Certificate and operates Online Sales Business.⁴

Essentiality of Online Sales Business

In today’s digital age, online sales business becomes an essential component of the global economy, allowing businesses of all sizes to reach new markets and customers. The COVID-19 pandemic has been a wakeup call to the world, proving that the digital age has come.

There are many advantages of the Online Sales Business. They are (i) increasing sales; (ii) reducing costs; (iii) eliminating Geographic Barriers; (iv) improving customer services; (v) increasing efficiency and (vi) conducting the online business easily.

(i) Increasing Sales

“Online sale business always helps to increase sales” as it widens the market by reaching out to new customers not only throughout the country but also all over the world.

(ii) Reducing Costs

“It also helps to reduce business costs” as it eliminates the need for a physical store and sales staff. It also helps reducing inventory costs and transportation costs.

(iii) Eliminating Geographic Barriers

It also eliminates geographic barriers, as customers can purchase goods and services from anywhere in the world.

(iv) Improving Customer services

It also allows customers to compare prices and products from different retailers easily, which is not possible in a physical store.

(v) Increasing Efficiency

“Efficiency is increased as orders can be made quickly and easily” through an e-commerce website. This eliminates the requirements for paperwork and reduces the chances of human error.

² Clause 2 (a) of Online Sales Business Registration Order, 21st July, 2023.

³ Clause 2 (b), Ibid.

⁴ Clause 2 (c), Ibid.

(vi) Conducting the online business easily

The business operators in online business can easily conduct their online business from anywhere all they need is a solid internet connection.

Therefore, as the online sales business has many advantages, and the influence of online sales business also extends across various aspects of the economy, consumer behavior, and business operations, it becomes an essential component of the global economy.

Registration of Online Sales Business

In Myanmar, everyone who desires to operate online sales business shall register online sale business to the Department of Trade.

The Essential Supplies and Services Law provides that “the Union Government may confer any relevant Ministry to issue prohibiting order, regulating order, supervision order, preventing order and the order which cause to carry out as necessary, regarding the following matters; -⁵

- (a) matters relating to import, export, trade, possession, storage, transport, distribution, utilization and consumption regarding any goods stipulated and declared as essential goods;
- (b) matters relating to slaughter, catching, causing to work, breeding, import, export, trade, possession, storage, transport, distribution, utilization, consumption regarding such animal stipulated and declared as essential goods of any goods;
- (c) matters relating to such service stipulated and declared as essential service of any service.”

Hence, the Ministry of Commerce (MOC) was conferred full authority by the Union Government of Myanmar to issue various necessary orders related to online businesses on 21 July 2023 since it is recognized as essential services under Section 4 (c) of the Essential Supplies and Services Law of 2012. The Ministry of Commerce has practiced its authority by issuing the “Online Sales Business Registration Order”. This Order has mandated that local individuals, companies, or business organizations engaged in online sales business that provides goods or services through the online system must apply for a registration certificate from the Department of Trade (DOT) under the Ministry of Commerce.

Everyone who desires to operate online sales business shall complete the application form specified by the Department and shall apply for a Registration Certificate to the Department through online system.⁶

The Online Sales Business Registration Order describes that “the applicant shall comply with the following stipulations for registration of online sales businesses if he or she applies for a company or business organization according to above-mentioned clause (3):⁷

- (a) a company or business organization which has been formed according to the Myanmar Companies Law or the Co-operative Society Law or other existing Law;
- (b) company or business organization which has official website in its own name;

⁵ Section 4 of the Essential Supplies and Services Law, 2012.

⁶ Clause 3 of the Online Sales Business Registration Order, 21st July, 2023.

⁷ Clause 4, Ibid.

(c) company or business organization which can present the online sale business place.”

The Online Sales Business Registration Order provides that “the applicant shall comply with the following stipulations for registration of application if he or she applies for an individual according to clause (3):⁸

- (a) a person who resides within the territory of the Republic of the Union of Myanmar;
- (b) a person who has attained 18 years old and above;
- (c) a person who can abide by the stipulations in this Order;
- (d) a person who is not suffering from mental illness;
- (e) a person who hasn’t been listed in the black list of relevant government department or any government organization;
- (f) a person who can present the online sales business place”.

Whoever conducts any online business shall operate it only after the receipt of a registration certificate.⁹ Those who operates any online sales business without a registration certificate shall be prosecuted under Section 5 of the Essential Supplies and Services Law.¹⁰

Whoever violates any order issued under section 4 of the Essential Supplies and Services Law, shall, on convention, be punished with imprisonment for a term from a minimum of six months to a maximum of three years and shall be also liable to a fine not exceeding five hundred thousand Kyats.¹¹

As of July 2024, more than 6,000 online businesses are officially registered, according to the Department of Trade under the Ministry of Commerce. The department is conducting the registration process under the Consumer Protection Law and some existing laws to ensure that consumer rights are protected in the online sales sector in Myanmar.¹² However, the non-registered online sale businesses are still due to the lack of awareness of the business operator and cannot be effectively enforceable by the Department of Trade. There are some complaints which may not be effectively enforceable by the Department of Trade after issue of the “Online Sales Business Registration Order”.

The complainant who lives in Magway city, Magway Region, ordered Mini Tricycle through the Online Shopping and transferred 118, 0000 Kyats for the price of Mini Tricycle. Nevertheless, such Mini Tricycle was not delivered. Therefore, the Department of the Consumer Affairs filed the complaint through Website Complaint System. When the Department of the Consumer Affairs investigated those complaint, the Online Shopping is an Online Shopping situated in China. Its Online Shopping did not have in Tamu. Therefore, the Department of the Consumer Affairs notified to the complainant that those Online Shopping can be disconnected and it is difficult to connect those Online Shopping as it has situated in China. And the authority of the Department of the Consumer Affairs linked and the address mentioned in the complaint

⁸ Clause 5 of the Online Sales Business Registration Order, 21st July, 2023.

⁹ Clause 2 of the Order for specifying online sales business as an essential service, 21st July, 2023.

¹⁰ Clause 3, Ibid.

¹¹ Section 5 of the Essential Supplies and Services Law, 2012.

¹² Global New Light of Myanmar, 27, July, 2024.

situated in China. Hence, under the Relevant Law, this complaint should be settled only with the sufficient evidence and this complaint was conclusive.¹³

The complainant who lives in Yangon, filed the application relating to the illegal sale of medicine through the online shopping. That medicine is the essential product for the patients who suffered the diabetes. And that kind of the Mixtrad Insulin is placed under the control of the prescribed temperature for not harming of the patients. Hence, those exported illegal sale does not guarantee the quality of the medicine and harm to life. He claimed to prevent the illegal exportation of Cold Chain Product and to operate the required sanction rapidly upon the illegal sale of the Cold Chain Product. When the Department of Consumer Affairs inquired those illegal sales of the Cold Chain Product upon the Facebook page, those Facebook account is the account selling a bottle of medicine to Turkey, Pakistan and India particularly. As it did not precisely describe the address upon the Facebook page, it has not been inquired by the Department.¹⁴ Therefore, those illegal selling online businesses are still until now even if the Online Sales Business Registration Order, were issued in 21st July, 2023.¹⁵

A complainant from Kawthaung Township, Tanintharyi Region purchased a mobile phone from the facebook account and transferred 60,000 kyats to KPay through phone on 18-6-2023. However, the Facebook account and phone number were blocked and the ordered item was not delivered, so he filed a complaint with the Consumer Affairs Department, Website Complaint System. Regarding the complaint, the Tanintharyi Region Chief Executive Office contacted the phone number where the money was transferred, but could not be disconnected. Therefore, the KPay account opened with that phone number at KBZ Bank was closed to prevent further fraud.¹⁶

Therefore, everyone who conducts any online business shall operate it only after the receipt of a registration certificate. Whoever operates any online sales business without a registration certificate shall be punished with imprisonment for a term from a minimum of six months to a maximum of three years and shall be also liable to a fine not exceeding five hundred thousand Kyats. Nevertheless, the non-registered online sale businesses are still and cannot be effectively enforceable by the Department of Trade. The Department of Trade should effectively enforce the non-registered online sales businesses.

The Duties of the Registration Certificate Holder in Online Sales Business

In Myanmar, the Registration Certificate Holders in online sales have to perform the duties as prescribed the Online Sales Business Registration Order, 2023. Besides, they have to perform the duties followed under the Competition Law, 2015; the Electronic Transaction Law, 2004; the Intellectual Property Laws; and the Tax Laws.

The duties of the Registration Certificate Holder provide in the Online Sales Business Registration Order that “the Registration Certificate Holders; -¹⁷

¹³ News Letter of the Consumer Affairs, November, 2023.

¹⁴ News Letter of the Consumers Affairs, August, 2024.

¹⁵ News Letter of the Consumers Affairs, July, 2024.

¹⁶ News Letter of the Consumers Affairs, July, 2024.

¹⁷ Order 18 of the Online Sales Business Registration Order, 21st July, 2023.

- (a) shall take responsibility to resolve the issues related to the sale of goods or services;
- (b) shall provide the receipt for the sale of goods or services;
- (c) shall provide correct information and guarantees for the sale of goods or services;
- (d) shall take responsibility and accountability to ensure the quality of goods or services equivalent of the purchased price of the goods or services;
- (e) shall specify the sales principles and the cooling-off period for the sale of the goods and undertake in accordance with them in the case of returning goods by the consumer due to non- conformity or with the information or guarantees provided;
- (f) shall avoid sales of any goods or services that are not included in the list of the types of goods or services attached with the application form;
- (g) shall avoid the manner that is disrespectful to the consumer or affect the consumer's dignity in respect of the sale of goods or services,
- (h) shall provide correct information for the methods of payment made by the consumer for the sale of goods or services;
- (i) shall inform the mode and terms of delivery of the goods to the consumer, allow to choose the options prior to the sale and then deliver the goods accordingly;
- (j) shall keep the consumer's personal information or information that is undesirable to disclose by the consumer except the case of disclosing it;
- (k) shall avoid stimulating, preaching, organizing, advocating and demonstrating with the purpose of political matters or the destruction of peace, stability and security of the public through online sales business;
- (l) shall avoid transferring registration certification directly or indirectly to others;
- (m) shall sell goods or service transparently;
- (n) shall comply with the rules and regulations prescribed by the relevant government departments for food or medicine or medical equipment or cosmetics;

If the Registration Certificate Holder in online sales businesses violates any stipulation in clause (18) of the Online Sales Business Registration Order, 2023, the Department of Trade of the Ministry of Commerce may order suspension of the registration certificate for a limited period or cancellation of the registration certificate.

Besides, the Registration Certificate Holders in online sale have the duties under the Competition Law, 2015; the Electronic Transaction Law, 2004; the Intellectual Property Laws; the Tax Laws.

The Registration Certificate Holders in online sale businesses shall avoid any infringement under the Competition Law, 2015. Therefore, the Registration Certificate Holders in online sale businesses shall not carry out the acts which cause monopolization on market under

Section 15 of the Competition Law, 2015. The Registration Certificate Holders shall avoid the acts for the purposes of unfair competition under Section 17 of the Competition Law, 2015.¹⁸

The Registration Certificate Holder in the online sales businesses shall also avoid any kind of direct intellectual property infringement under the Trademark Law, 2019, Industrial Design Law, 2019, Patent Law, 2019, and Copyright Law, 2019. The Registration Certificate Holders in online sales businesses shall comply with intellectual property laws, including respecting copyrights, trademarks, and patents. They do not use, reproduce, or distribute any IP without proper authorization. Those who sell counterfeit goods or infringe on intellectual property rights shall, on conviction, be imposed with the legal penalties under the Intellectual Property.

In addition, the Electronic Transaction Law provides for businesses to protect personal data and maintain the confidentiality of user information. The Registration Certificate Holders in the online sales businesses protect personal data and maintain the confidentiality of user information under Section 27 A of the Electronic Transaction Law, 2004.

The Registration Certificate Holders shall additionally perform their obligations to pay income tax and commercial tax in accordance with the Commercial Tax Laws, 1990 and the Union Taxation Law, 2023.

If the Registration Certificate Holders violate the duties under the Online Sales Business Registration Order, they may be passed the orders such as, the suspension for a limited period and the cancellation of the registration certificate. Nevertheless, although current enforcement like suspension or cancellation of registration certificates for violation of the duties by the Registration Certificate Holders under the 2023 Online Sales Business Registration Order exists, they are insufficient. Therefore, stronger penalties such as fines or civil remedies should be implemented for more effective enforcement.

Disputes Resolution in Online Sales Business for Consumer Disputes

Today, there are many disputes arisen between consumers and the Registration Certificate Holders in online sale. Disputes arisen between consumers and the Registration Certificate Holders in online sales must be settled in compliance with the Consumer Protection Law, 2019. When the consumers have suffered damages as to buying the goods through the online sales, they can file any complaint as to disputes to the Department of Consumers Affair.

Under the Ministry of Commerce, “the Consumer Affairs Department (CAD) has announced that consumers can complain to it about their grievances against local online shops. Millions of people visit the website of online businesses. Mostly, consumers have to pay only when they received the goods. However, some online shops request payments first and then block the consumer’s account after receiving payments. Therefore, the Consumer Affairs Department informed that customers can lodge complaints about non-arrival of goods after payments, discrepancies with advertised product quality, being unable to contact after payments, exaggerating the information on the goods, and non-arrival of products within the agreed delivery time. Complaints can be made on Facebook page of the Department of the Consumer Affairs and the Department of the Consumer Affairs Myanmar Application, or by contacting 1535.”¹⁹

¹⁸ Section 17 of the Competition Law, 2015.

¹⁹ Global New Light of Myanmar, 2nd May, 2023.

Submitting the complaint is accepted two ways in the dispute settlement mechanisms such as online (website, social, media and mobile) and offline (documents, phone and in person) in the Disputes Settlement Body where is relevant State and Regions and head of office.

The aggrieved consumer or the family members of the aggrieved consumer or the related person of the aggrieved consumer or the government departments and organizations; and the consumer protection associations may file the complaint to the relevant Office in person or any form of the social media together with evidence.²⁰

Hence, there are many complaints of the consumers made to the Department of Consumer Affairs. Under the Consumer Protection Law, 2019, the consumers are entitled to in two ways such as consumer's entitlement to guaranteed goods and to guaranteed services. There are many complaints made by the consumers when they have suffered damages.

The complainant who lives in Pyawbwe Township, Meiktila, ordered 40 pieces of Tamu Longyi through online Shopping. The price of 1 piece of Tamu Longyi is 4,500 Kyats. He transferred 22,000Kyats for 40 pieces of Tamu Longyi by KBZpay account. Nevertheless, the parcel ordered from online shopping has not been delivered to him. Hence, on 7 July, 2023, the complainant filed the application of the complaint to the Department of the Consumer Affairs. When the Department of the Consumer Affairs investigated the complaint, the online shopping is situated and opened in Yangon. The owner of the Online Shopping page has been notified by the Department of the Consumer Affairs and in mediation by the Department of the Consumer Affairs, the complainant recovered 21,8000 Kyats and satisfied. Therefore, the complaint is conclusive.²¹

The complainant who lives in Kawthaung Township, Taninthayi Region, ordered the mobile phone through Facebook online shopping account. He transferred 6,0000 Kyats for the price of mobile phone by KBZpay account. His Facebook account and the phone number were blocked and the parcel ordered by him has not been delivered. Hence, he filed the application of complaint through Website Complaint System to the Department of the Consumer Affairs. As to such complaint, when Department of the Consumer Affairs of Taninthayi investigated the phone number transferred for the price of the mobile phone. That phone number was disconnected and KBZpay account opened by that phone number was closed by KPZ Bank. For not causing of fraud in the future, the complainant was educated for awareness to buy from the legal Online Shopping account and his complaint was conclusive.²²

The complainant who lives in Patheingyi, Ayeyawady Region, ordered Wifi Router Machine through Facebook Page of the Electronic Shop. As the Wifi Router Machine was not used within a week, he resent it to the Electronic Shop to prepare it. But it has not been redelivered. Therefore, he filed the complaint to Western District Department of Consumer Affairs in Yangon. When its Department investigated the Electronic shop, it responded that as it did not have the extra device or tool to prepare the Wifi router Machine, it has delayed. It will prepare the Wifi Router Machine until the satisfaction on the part of buyer. It has delivered Wifi Router

²⁰ Section 44 of the Consumer Protection Law, 2019.

²¹ News Letter of the Consumer Affairs, December, 2023.

²² News Letter of the Consumer Affairs, December, 2023.

Machine when it has been prepared. The complainant has satisfied and his complaint was conclusive.²³

A complainant from Nay Pyi Taw, Union Territory, ordered a Smart Watch from an online shop in Hinthada Township and it was delivered by a delivery company on 28-3-2024. He has received and charged it for an hour, but it did not charge. He called back and received no response, so he contacted the Consumer Affairs Department. Officials from the Hinthada District Chief's Office contacted Online-Shop regarding the complaint. On 23-5-2024, the Online Shop contacted the department. The Smart Watch purchased was repaired and returned by delivery. The department official contacted the complainant and asked him about the repaired Smart Watch and he replied that he was satisfied with it. It was reported that the complaint was resolved through negotiation under the Consumer Protection Law.²⁴

Therefore, the disputes arisen between the consumers and the Registration Certificate Holders in online sale in Myanmar can be settled under the Consumer Protection Law, 2019. When the consumers filed the complaints to the Department of Consumer Affairs, they are entitled to repair and replace the goods as guaranteed or refund.

The Promotion of the Online Sales Businesses

The Registration Certificate Holders in online sales can obtain the rights when their online businesses are registered under the Online Sales Business Registration Order, 2023. Besides, the State shall operate the sustainable development of the online sales businesses.

The Online Sales Business Order, 2023 provides that “the Registration Certificate Holders in online sales who holds the registration certificate shall obtain the right for recovery of his good reputation if consumer's damage is not due to his or her goods or services; the right to defend himself or herself against consumer's complaint according to the law; the right to claim and report officially related to his or her business; the right to accept payment in accordance with the agreement and the value for the sale of goods or services; and the right to sell online under the name mentioned in the registration certificate.”²⁵

The State should promote “the construction of e-commerce infrastructures and strengthen the construction of e-commerce standards system”.

The State shall provide equal treatment of online and offline commercial activities and promote their integrated development.

The State should promote the establishment of multi-national and cross-regional communication and cooperation on cross-border e-commerce and participates in the development of international e-commerce rules.

In Myanmar, the rights of the Registration Certificate Holders who hold the registration certificates have been provided in the Online Sales Business Registration, 2023. Nevertheless, this Order has been provided in favor for the application of the registration of online sales business and the State shall promote the sustainable development of the online sales businesses.

²³ News Letter of the Consumer Affairs, April, 2024.

²⁴ News Letter of the Consumer Affairs, July, 2024.

²⁵ Clause 19 of the Online Sales Business Registration Order, 21st July, 2023.

Research Finding

Since online sales business involves an essential component of the global economy in today's digital age, it is effectively and legally required to control. In Myanmar, the Online Sales Business Registration Order is recently issued the on 21st July, 2023. It contains the application for registration certificate and the duties and the rights of the Registration Certificate Holders who hold registration certificate. Nevertheless, the Online Sales Business Registration Order, 2023 is not sufficient to control the online sales businesses in Myanmar. Today, there are many illegal online sales businesses in Myanmar. Therefore, the law relating to Online Sales Businesses should be enacted for control of them to enforce the violations of the duties of the Registration Certificate Holders in online sales business and promoting the continuous and sound development of online sales business.

Conclusion

The online sales business is the buying and selling of goods and services through online system. Everyone who desires to operate the online sales business must apply for the registration. Whoever operates the online sales business without registration shall be prosecuted in accordance with Section 5 of the Essential Supplies and Services Law. Whoever shall be punished with imprisonment for a term from a minimum of six months to a maximum of three years and with a fine not exceeding five hundred thousand Kyats. The non-registered online sales businesses are still and cannot be effectively enforced by the Department of the Trade. The Department of Trade should effectively enforce the non-registered online sales business. If the Registration Certificate Holders violate the duties under the Online Sales Business Registration Order, they may be passed the orders such as, the suspension for a limited period and the cancellation of the registration certificate. Nevertheless, the orders of suspension for a limited period and the cancellation of the registration certificate are not effectively sufficient for the violations relating the duties of the Registration Certificate Holders in online sales under the Online Sales Business Registration Order, 2023. The sufficient penalties such as fine or some effective prevention under the civil liabilities should be effectively provided. When the consumers filed the complaints to the Department of Consumers Affairs, they are entitled to repair and replace the good as guaranteed or refund. The Registration Certificate Holders who hold Registration Certificate are entitled the rights under the Online Sales Business Registration Order, 2023. Nevertheless, the Online Sales Business Registration Order has been provided in favor for the application of the registration of online sales business and does not complete for promotion of online sales business. The State should promote the construction of e-commerce infrastructures and equal treatment and promote technology and application of online sales business. Therefore, Law relating to online sales business should be provided with a view to safeguarding the legitimate rights and interests of the Registration Certificate Holders or entities, regulating online sales business conduct and promoting the continuous and sound development of the online sales business.

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A STUDY ON THE CONTROL OF THE MINING ACTIVITIES IN THE DEEP SEABED AREA

Jone Sai¹

Abstract

Mining activity is one of the activities in the international seabed area. Mining activities consist of prospecting, exploration, and exploitation of the mineral. It shall be carried out by the Enterprise of the International Seabed Authority or state enterprises or natural or juridical persons which possess the nationality of State Parties or effectively controlled by other nations. The deep seabed area extends beyond the national jurisdiction. The Area and its natural resources are the common heritage of mankind. It is open to use by all states exclusively for peaceful purposes. Moreover, the International Seabed Authority is authorized to act on behalf of mankind in respect of the area by the United Nations Convention on the Law of the Sea. This paper is to study how to extend the legal control of the International Seabed Authority and sponsoring states over the mining activities in the deep seabed Area.

Keywords: The Area, Mining activities, International Seabed Authority, Sponsoring States

Introduction

The special legal regime of the Area had been provided in Part XI of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), and the Agreement relating to the Implementing Part XI of the United Nations Convention on the Law of the Sea, 1994. The United Nations Convention on the Law of the Sea was enacted in 1982 and entered into force in 1994. The Area has been provided in Part XI of the United Nations Convention on the Law of the Sea 1982 and the 1994 implementation agreement. The Area comprises the ocean floor, the seabed, and their subsoil beyond the boundaries of national sovereignty. The UNCLOS recognized the seabed region outside of sovereign borders and its mineral resources as a part of the common heritage of mankind.

The International Seabed Authority is responsible for overseeing the International Seabed Areas and administers and regulates the rules, regulations, and procedures for the exploration of the minerals and marine environment management plans. Through the sponsoring state, the contractors have been permitted to explore and exploit the minerals in the international seabed area. The contractors will then need to file an application to the International Seabed Authority in order to proceed with the deep seabed mining project. Exploration of minerals has been provided in the Regulations for the Exploration of Polymetallic Nodules in 2000, amended in 2013, Regulations for the Exploration of Polymetallic Sulphides in 2010, and Regulations for the Exploration of Crusts in 2012. The regulations contain Part I to Part X, including Annexes. The minerals can be divided into three categories, namely, polymetallic nodules, polymetallic sulphides, and cobalt-rich ferromanganese crusts.

Materials & methods

A qualitative research method is used in this study. International conventions, rules, regulations, lecturer reviews, and legal provisions are utilized in this paper. As the primary Sources, the United Nations Convention on the Law of the Sea 1982, the 1994 Implementation Agreement, and the Exploration Regulations are used as the main materials in this paper. The books of Malcom N. Shaw, International Law, 2017, R.R Churchill and A.V. Lowe, The Law of

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the Sea, 1999, and Yushifumi Tanaka, *The International Law of the Sea*, 2012 are applied as secondary sources. As the tertiary sources, research journals, newspapers are used in this study.

Historical Background of the Deep Seabed Area

The occurrence of potato-sized nodules was found in the Arctic Ocean off Siberia around the 19th century. They were discovered to exist throughout the majority of the world's oceans during the HMS Challenger scientific mission in 1872–1877. Previously known as manganese nodules, polymetallic nodules are tiny, brown-black balls that typically range in diameter from 1 to 20 cm. In the 1950s, attention was drawn to the economic significance of the nodules. During the International Geophysical Year between 1957 and 1958, polymetallic nodules were collected on the Tuamotu plateau approximately 370 kilometers east of Tahiti at a depth of some 900 meters. These nodules proved to contain commercially valuable minerals, such as nickel, copper and cobalt.²

Serious attention was focused on deep seabed minerals in the 1960s, when American geologist Jonn L. Mero published a book entitled “The Mineral Resources of the Seas,” in which he made the case that the seabed could become a major source of supply for meeting the world’s mineral needs.³ In 1967 Ambassador Pardo of Malta gave an influential speech at the United Nations, noting the danger of militarization of the seabed, the risk of pollution that could permanently damage the marine environment, and the potential that technically advanced states could exclusively control the exploitation of the significant resources of the seabed beyond the limits of national jurisdiction. He emphasized that the General Assembly should promptly adopt a resolution based on the concept that the sea-bed and the ocean floor are a common heritage of mankind and should be used and exploited for peaceful purposes and for the exclusive benefit of mankind as a whole.⁴

In 1970, a ‘Declaration of Principles Governing the Sea Bed and Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction,’ by 108 votes to nil, with fourteen abstentions, as General Assembly Resolution 2749.⁵ It solemnly declared, *inter alia*, that: (1) The seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, as well as the resources of the Area, are the common heritage of mankind; (2) the Area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof; (3) No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the Area or its resources incompatible with the international regime to be established and the principles of this Declaration; and (4) All activities regarding the exploration and exploitation of the resources of the Area and other related activities shall be governed by the international regime to be established.⁶

Ambassador Arvid Pardo of Malta's addresses led to the convening, in 1973, of the Third United Nations Conference on the Law of the Sea, which after nine years of negotiation adopted

² Tanaka, Yoshifumi, 2012, *The International Law of the Sea*, Cambridge University Press, p.170.

³ www.un.org/en/chronicle/article/international-seabed-authority-and-deep-seabed-mining.

⁴ Satya N. Nandan, Michael W. Lodge, Shabtai Rosenne, (2002), *The Development of the Regime for Deep Seabed Mining*, p.17.

⁵ Ibid, p.27-28.

⁶ General Assembly, Resolution 2749 (XXV), 1970.

the Convention. The Convention sets out a comprehensive legal framework that regulates all ocean space, its uses, and resources. It contains provisions relative to the maritime zones and provides for the protection and preservation of the marine environment. One of the most important parts of the Convention concerns the exploration for and exploitation of the resources of the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction. By the Convention, the Area and its resources are proclaimed to be 'the common heritage of mankind'.

Relationship between Part XI of the UNCLOS 1982 and 1994 Implementation Agreement

The First United Nations Conference on the Law of the Sea 1958 (UNCLOS I) adopted four conventions. These were the Geneva Conventions on the Territorial Sea and Contiguous Zone, on the High Seas, and on the Continental Shelf and on the Fishing and Conservation of the Living Resources of the High Seas. The 1958 conference could not solve which had defeated the 1930 conference: the breadth of the territorial sea. Thus, the Second United Nations Conference on the Law of the Sea (UNCLOS II) was convened in 1960 to discuss that problem, and also the associated question of fishery limits. However, it failed to adopt a compromise formula providing for a six-mile territorial sea plus a six-mile fishery zone. Agreement on the breadth of the territorial sea had to await the preparation of the Convention drawn up by the Third United Nations Conference on the Law of the Sea (UNCLOS III). UNCLOS III had its origins in the Sea Bed Committee established in 1967 by the United Nations General Assembly to examine the question of the deep seabed lying beyond the limits of national jurisdiction. The 1958 conference had not made any special provision for the legal regime of the seabed, because at the time its great mineral wealth was not appreciated, and technology necessary for its exploitation did not exist. UNCLOS III was agreed in 1970, in General Assembly Resolution 2570, to convene a United Nations Conference with the task of producing a comprehensive Convention on the Law of the Sea. The Third United Nations Conference on the Law of the Sea (UNCLOS III) was held its first session in 1973, and worked for several months each year until it finally adopted a convention in 1982.⁷

At the Third United Nations Conference on the Law of the Sea (UNCLOS III), negotiation of a deep seabed mining regime proved difficult. The final product, codified primarily in Part XI of the LOS Convention, set out general principles to govern seabed mining, principles that traced their origins to the early General Assembly resolutions. The Convention also contained complex articles specifying the structure and powers of a new international institution, the International Seabed Authority (ISA or Authority). In addition, the Convention provided for economic assistance for developing states, a production ceiling to safeguard land-based producers, and mechanisms allowing an international seabed institution to obtain mining technology. This section highlights Part XI's provisions, along with critical reactions to those provisions. Many of Part XI's detailed provisions were modified or set aside in the 1994 Implementation Agreement.⁸

The regime established by Part XI was innovative in the sense that it stated the parallel system, production policies, financial terms of contracts, the transfer of technology, and review

⁷ Churchill, R.R and Lowe, A.V, (1999), *The Law of the Sea*, Third Edition, Juris Publishing Manchester University Press, p.15-16.

⁸ Louis B. Sohn, John E. Noyes, Erik Franckx, Kristen G. Juras, (2010), *Cases and Materials on the Law of the Sea*, Second Edition, p. 560.

conference. Nonetheless, some industrialized States, including the United States, strongly objected to the framework governing the Area. Later on, major industrialized States adopted unilateral domestic legislation in relation to mining systems in deep seabed areas. In 1984, eight industrialized States established the Provisional Understanding Regarding Deep Seabed Matters in order to keep away from overlapping in deep seabed operations. This was called the 'Reciprocating State' regime or the 'mini-treaty' regime. Nevertheless, there were growing concerns that which situation ran the serious risk of damaging the unity and universality of the deep seabed regime established in Part XI and the LOSC as a whole. States were also prompted to reevaluate Part XI of the UNCLOS by the global economic shift toward market-oriented strategies and the postponement of the commercial exploitation of deep seabed resources.⁹

Against that background, in July 1990, the UN Secretary-General Javier Pérez de Cuéllar initiated informal consultation in order to meet the specific objections of the developed States. These informal consultations took place from 1990 to 1994 and fifteen meetings were convened. As a result, on 28 July 1994, the UN General Assembly adopted the Implementation Agreement, by a vote of 121 in favor, none against, and seven abstentions. The provisions of the Implementation Agreement and Part XI of the LOSC are to be interpreted and applied as a single instrument. In the event of any inconsistency between the 1994 Agreement and Part XI, the provisions of the former shall prevail. After the adoption of the 1994 Agreement, "any instrument of ratification or formal confirmation of or accession to the Convention shall also represent consent to be bound by the 1994 Agreement." No State or entity may establish its consent to be bound by the 1994 Implementation Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention. Despite the title of the 'Implementation' Agreement, it modifies the original regime of Part XI of the LOSC.¹⁰

The Annex to the Agreement address a number of issues raised by developed states. In particular, it is stated that all organs and bodies established under the Convention and Agreement are to be cost-effective and based upon an evolutionary approach taking into account the functional needs of such organs or bodies; a variety of institutional arrangements are detailed with regard to the work of the International Seabed Authority; the work of the Enterprise is to be carried out initially by the Secretariat of the Authority and the Enterprise shall conduct its initial deep seabed mining operations through joint venture that accord with sound commercial principles; decision-making in the Assembly and Council of the International Seabed Authority is to comply with a series of specific rules; the Assembly upon the recommendation of the Council may undertake at any time of matters referred to in article 155(1) of the Convention, notwithstanding the provisions of that article as a whole; and transfer of technology to the Enterprise and developing states is to be sought on fair and reasonable commercial terms on the open market or through joint-venture arrangements.¹¹

Mineral Resources and Mining Activities

The Seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction, is defined as "The Area".¹² The seabed of the Area and its resources are the "common heritage of

⁹ Tanaka, Yoshifumi, 2012, *The International Law of the Sea*, Cambridge University Press, p. 178.

¹⁰ Ibid.

¹¹ Shaw, Malcom N., 2017 *International Law*, Eight Edition, Cambridge University Press, p.472-473.

¹² Article 1 (1) of the United Nations Convention on the Law of the Sea, 1982.

mankind.”¹³ All rights in the resources of the Area are empowered by "mankind as a whole". It is the International Seabed Authority (ISA) which is authorized to act on behalf of mankind in respect of the Area.

The mineral resources are divided into three categories by the International Seabed Authority in the international seabed area with the respectively regulation, namely polymetallic nodules, polymetallic sulphides and cobalt-rich ferro manganese crust.

Polymetallic nodules are defined “one of the natural resources of the Area consisting of any deposit or accretion of nodules, on or just below the surface of the deep seabed, which contain manganese, nickel, cobalt and copper.”¹⁴ Polymetallic sulphides mean “hydrothermally formed deposits of sulphides and accompanying mineral resources in the Area which contain concentrations of metals including, *inter alia*, copper, lead, zinc, gold and silver.”¹⁵ Cobalt crust is defined “hydroxide deposits of cobalt-rich iron/manganese crust formed from direct precipitation of minerals from seawater on to hard substrates containing minor but significant concentrations of cobalt, titanium, nickel, platinum, molybdenum, tellurium, cerium, other metallic and rare earth elements.”¹⁶

Mining activities in the Area are all activities of exploration for, and exploitation of, the resources of the Area.¹⁷ Regulations 1(3)(a) of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, 2000, Regulations 1(3)(a) of the Regulations on Prospecting and Exploration for on Polymetallic Sulphides in the Area, 2010, Regulations 1(3)(b) of the Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area 2012 state that prospecting has defined the search for deposits of polymetallic nodules, polymetallic sulphides, cobalt crusts in the Area including estimation of the composition, sizes and distributions of deposits and their economic, values, without exclusive rights. Exploration system means “searching for deposits of polymetallic nodules, polymetallic sulphides and cobalt crusts in the Area with exclusive rights, the analysis of such deposits, the testing of collecting systems and equipment, processing facilities and transportation systems and the carrying out of studies of the environmental, technical, economic, commercial and other appropriate factors that must be taken into account in exploitation.” Exploitation means “the recovery for commercial purposes of polymetallic nodules, polymetallic sulphides, cobalt crusts in the Area and the extraction of minerals therefrom, including the construction and operation of mining, processing and transportation systems, for the production and marketing of metals.”¹⁸

Mining activities in the Area shall be carried out by the Enterprise, and in association with the Authority by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, when sponsored by such States, or any group of the foregoing.¹⁹ Mining activities shall be carried

¹³ Article 136 of the United Nations Convention on the Law of the Sea, 1982.

¹⁴ Regulations 1(3)(d) of the Regulations on Prospecting and Exploration for Polymetallic Nodule in the Area, 2000.

¹⁵ Regulations 1(3)(d) of the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area, 2010.

¹⁶ Regulations 1(3)(d) of the Regulations on Prospecting and Exploration for Cobalt-rich Ferro Manganese Crusts in the Area, 2012.

¹⁷ Article 1(3) of the United Nations Convention on the Law of the Sea, 1982.

¹⁸ Regulations 1(3)(a) (b) of the Regulations on Prospecting and Exploration for Polymetallic Nodule in the Area, 2000, Polymetallic Sulphides in the Area, 2010, for Cobalt-rich Ferro Manganese Crusts in the Area, 2012.

¹⁹ Article 153(2) of the United Nations Convention on the Law of the Sea, 1982.

out in accordance with a formal written plan of work drawn up and approved by the Council after review by the Legal and Technical Commission. In the case of activities in the Area carried out as authorized by the Authority by the entities, the plan of work shall be in the form of a contract.²⁰ “Contracts may provide for joint arrangements between the contractors and the Authority through the Enterprise, in the form of joint ventures or production sharing, as well as any other form of joint arrangement, which shall have the same protection against revision, suspension or termination as contracts with the Authority.”²¹

Thus, deep seabed mining systems can be carried out by state enterprises or natural persons or juridical persons and by joint venture with the International Seabed Authority through the Enterprise, but they possess the nationality of States Parties.

Structure of the International Seabed Authority

The International Seabed Authority (ISA) was established on 16 November 1994 when the United Nations Convention on the Law of the Sea (LOS) came into force. The ISA has been fully operational since June 1996, with its headquarters located in Kingston, Jamaica. The ISA is responsible for regulating activities related to mineral resources in the international seabed area, which is beyond national jurisdiction. The ISA comprises 169 member states plus the European Union. The International Seabed Authority was established by the Part XI of the United Nations Convention on the Law of the Sea, 1982. All States Parties are *ipso facto* members of the Authority. As of 30 April 2024, there are 152 parties to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, 1982. The Authority is the organization through which States Parties shall, in accordance with a view to administering the resources of the Area.

The autonomous organ known as the International Seabed Authority is tasked by the government's signatories to the 1982 Convention with coordinating and supervising operations inside the Area, especially in relation to resource management. In June 1996, it was completely operating. The Assembly, Council, and Secretariat are the Authority's three main organs. The Finance Committee and the Legal and Technical Commission should also be included.²²

All States parties to the Convention are *ipso facto* members of the Authority and so, too, of the Assembly, wherein each State has one vote.²³ The Assembly, as ‘the supreme organ of the Authority to which the other principal organs shall be accountable’, has the power to lay down general policies for the Authority which must, however, be consistent with the specific provisions set out in the Convention. In addition, the Assembly formally elects members of the Council, and of the Governing Board and Director General of the Enterprise, and other subsidiary organs of the Authority, and adopts on matters such as approval of the budget of the Authority and of the rules governing the distribution of financial and other economic benefits from exploitation of the resources of the Area.²⁴

²⁰ Ibid, Article 153(3).

²¹ Article 11 (1), Annex III of the United Nations Convention on the Law of the Sea, 1982.

²² Shaw, Malcom. N, 2017, International Law, Eight Editions, Cambridge University Press, p. 473.

²³ Article 156(2), 159 of the United Nations Convention on the Law of the Sea, 1982.

²⁴ Article 160 (2) of the United Nations Convention on the Law of the Sea, 1982.

The Council is the central, executive organ of the ISA. The Council consists of representatives of 36 member states that are elected by the Assembly. It can exercise law-making, policy-making, and supervisory competencies, including the power to establish specific policies on any matter within the competencies of the ISA. In particular, the Council decides over the approval of plans of work, elaborates and adopts the Mining Code, and ‘exercises control over the activities in the Area.’ The LOSC also confers competencies on the Council to ensure environmental protection, including the power to issue emergency orders, on the basis of recommendations received from the Legal and Technical Commission. In sum, the Council enjoys more competencies than the Assembly and can be regarded as the main decision-making organ.²⁵ The Council consists of two organs; namely an Economic Planning Commission and a Legal and Technical Commission.

Each Commission shall be composed of 15 members, elected by the Council from among the candidates nominated by the States Parties. However, if necessary, the Council may decide to increase the size of either Commission having due regard to economy and efficiency.²⁶ Economic Planning Commission's task was to advise the Council on economic matters and in particular to review trends of and factors affecting supply, demand and prices concerning raw materials which might be obtained from the Area. However, the functions of the Economic Planning Commission are to be performed by the Legal and Technical Commission until either the Council decides otherwise or the first plan for the exploitation of a deep seabed site is approved by the Authority.²⁷

The Legal and Technical Commission shall make recommendations with regard to the exercise of the Authority's functions upon the request of the Council; review formal written plans of work for activities in the Area, and submit appropriate recommendations to the Council, environmental protection, the establishment of an inspectorate for day-by-day supervision of seabed mining, the institution of cases before the Sea Bed Disputes Chamber, and measures to enforce decisions of the Chamber. In addition, the Commission drafts the rules and regulations of the Authority.²⁸

The Secretariat of the Authority shall “comprise a Secretary-General and such staff as the Authority may require. The Secretary-General shall be elected for four years by the Assembly from among the candidates proposed by the Council and may be reelected. It shall be the chief administrative officer of the Authority, and shall act in that capacity in all meetings of the Assembly, of the Council and of any subsidiary organ, and shall perform such other administrative functions as are entrusted to the Secretary-General by these organs. It shall make an annual report to the Assembly on the work of the Authority.”²⁹ In addition to arranging the annual sessions, workshops, and technical meetings, the Secretariat also manages the contracts

²⁵ Jaeckel, Aline L., 2017, *The International Seabed Authority and the Precautionary Principle: Balancing Deep Seabed Mineral Mining and Marine Environmental Protection*, Boston: Brill Nijhoff, Publication on Ocean Development, Volume 83, pp. 93-94.

²⁶ Article 163 (1) (2) of the United Nations Convention on the Law of the Sea, 1982.

²⁷ Churchill, R.R and Lowe, A.V, 1999, *The Law of the Sea*, Third Edition, Juris Publishing Manchester University Press, p.226.

²⁸ Article 163,165 of the United Nations Convention on the Law of the Sea, 1982.

²⁹ Article 166 of the United Nations Convention on the Law of the Sea, 1982.

for exploration and exploitation. Moreover, the Secretariat conducts expert studies and offers background information and research for the ISA organs to take into consideration.³⁰

Establishment of the Enterprise is provided in Article 158(2) and its statute is set out in Annex IV of the United Nations Convention on the Law of the Sea 1982. “There shall be an Enterprise Governing Board, a Director-General and the staff complement as may be necessary for the performance of its functions. The Governing Board shall be composed of 15 members elected by the Assembly.”³¹

The functions of the Enterprise are: “monitoring and review of trends and developments relating to deep seabed mining activities, including regular analysis of world metal market conditions and metal prices, trends and prospects; assessment of the results of the conduct of marine scientific research with respect to activities in the Area; assessment of available data relating to prospecting and exploration; assessment of technological developments relevant to activities in the Area; evaluation of information and data relating to areas reserved for the Authority; assessment of approaches to joint-venture operations; collection of information on the availability of trained manpower.”³²

Mandate of the International Seabed Authority relating to the Mining System

International Seabed Authority (ISA) is the intergovernmental organization that organizes, carries out and controls activities in the Area on behalf of mankind as a whole. The ISA shall exercise such control over activities in the Area as is necessary for the purpose of securing compliance with the relevant provisions and the plans of work approved in accordance with article 153(3) of UNCLOS. Further, ISA shall have the right to take at any time measures provided for under part XI to ensure compliance with its provisions and the exercise of the functions of control and regulation assigned to it thereunder or under any contract.³³

ISA adopts and uniformly applies rules, regulations and procedures relating to, *inter alia*, (1) the prospecting for, exploration and exploitation of resources in the Area, (2) the effective protection, (3) financial and internal administration of ISA, (4) a payment mechanism and financial terms of contracts for the exploitation of mineral resources between ISA and the Contractors, (5) the equitable sharing and other economic benefits derived from activities in the Area and contributions made pursuant to Article 82 of the UNCLOS, 1982.

The work of the International Seabed Authority affects all actors involved in the seabed mining regime. The ISA is assigned three crucial tasks: The first is to establish the Area regime by enacting the Mining Code; the second is to use the previously indicated contractual mechanism to regulate access to minerals within the Area; and the third is to make sure that the regulatory framework is followed. Moreover, Rules and regulations for its financial management

³⁰ Jaeckel, Aline L., 2017, The International Seabed Authority and the Precautionary Principle: Balancing Deep Seabed Mineral Mining and Marine Environmental Protection, Boston: Brill Nijhoff, Publication on Ocean Development, Volume 83, p. 95

³¹ Article 5 of the Annex IV of the United Nations Convention on the Law of the Sea, 1982.

³² Section 2 (1) of Annex of the Agreement relating to the Implementing Part XI of the United Nations Convention on the Law of the Sea, 1994.

³³ International Seabed Authority, (2023), the Rights and Obligations of the International Seabed Authority and the Sponsoring States with respect to Activities in the Area, Discussion Paper, p. 6-7.

and internal administration and for equitable sharing of the financial benefits of seabed mining shall be established by the International Seabed Authority.³⁴

The ISA can legislate with respect to activities in the Area. Concerning the legislative jurisdiction, Article 17 (1) of Annex III provides that, the Authority shall adopt and uniformly apply rules, regulations and procedures in accordance with article 160(2)(f)(ii), and article 162(2)(o)(ii), for the exercise of its functions as set forth in Part XI on, *inter alia*, (a) administrative procedures relating to prospecting, exploration and exploitation in the Area; (b) operations; (c) financial matter; (d) implementation of decisions taken pursuant to Article 151 (10) and Article 164 (2)(d). The Authority is also empowered to adopt appropriate rules and regulations concerning protection of human life, protection of the marine environment, installations used for carrying out activities in the Area, the equitable sharing of financial and other economic benefits derived from activities in the Area and the payments and contributions, including regulations relating to prospecting, exploration and exploitation of the mineral in the Area.³⁵

Importantly, “the contract for exploration and the standard clauses for exploration contract are annexed to the Regulations. However, some important differences between the contractors’ obligations remain. Notably, the five-year program of activities, which is not publicly available, is individually developed by each contractor and annexed to the contract.”³⁶ “Regulations can be amended which requires the Legal and Technical Commission to keep the rules, regulations, and procedures under review and recommend amendments to the Council as it may be deemed necessary or desirable.”³⁷

“The programme of work of the Legal and Technology Commission comprises regular items that are annually or periodically considered by the commission, regulatory and environmental management matters of the Authority and specific requests made by the Council.”³⁸ “The regular agenda items mainly include the evaluation of the activities of the contractors, such as the review of annual reports; requests for extensions and relinquishments; the periodic review of contracts; the drafting and revision of regulations and recommendations for guidance to contractors; the environmental management of impacts that may result from activities in the Area; and the review of new applications for approval of plans of work for exploration as and when received by the Secretariat. Other items to be considered by the Commission include items requested by the Council.”³⁹

Article 145 of the Convention requires the Authority to take necessary measures with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities. The first regional environmental management plan was adopted in 2012 for the Clarion-Clipperton Zone. Since then, the Council

³⁴ Jaeckel, Aline L., (2017), *The International Seabed Authority and the Precautionary Principle: Balancing Deep Seabed Mineral Mining and Marine Environmental Protection*, Boston: Brill Nijhoff, Publication on Ocean Development, Volume 83, p.144.

³⁵ Tanaka, Yoshifumi, 2012, *The International Law of the Sea*, Cambridge University Press, P.175.

³⁶ Schedule 2 of the Annex III of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, 2000, Polymetallic Sulphides in the Area, 2010, for Cobalt-rich Ferro Manganese Crusts in the Area, 2012.

³⁷ Article 165(2)(g) of the United Nations Convention on the Law of the Sea, 1982.

³⁸ Para 28 of the Functions, working practices and anticipated programme of work of the Legal and Technical Commission for the period from 2023-27, 2023 (ISBA/28/LTC/2).

³⁹ Para 29, Ibid.

has encouraged the Secretariat and the Commission to advance the development of contracts for exploration currently exist. Such areas include, in addition to the Clarion-Clipperton Zone, the northern part of the Mid-Atlantic Ridge, the Indian Ocean and the North-West Pacific Ocean.⁴⁰

If a disagreement emerges over the rejection of a work plan, it will be brought before the dispute resolution processes outlined in the Convention. A dispute between the Authority and a prospective miner regarding the rejection of a contract can only be heard by the Seabed Disputes Chamber, a division of the International Tribunal for the Law of the Sea (ITLOS), once all authorization requirements have been met. It is also possible to exercise jurisdiction over disagreements pertaining to a legal matter that comes up during contract negotiations. The Chamber may not review any decisions taken by the Authority for refusing an application.⁴¹

Utilizing its law-making powers the ISA has been developing the Mining Code. The ISA has established three sets of regulations: Regulations for the Exploration of Polymetallic Nodules in 2000, Regulations for the Exploration of Polymetallic Sulphides in 2010, and Regulations for the Exploration of Crusts in 2012. The Regulations contain Part I to Part X, including Annexes.

The Role of the Sponsoring States

Part XI of UNCLOS 1982 and the 1994 Agreement ensure that the Area shall be open to all States for activities, as a matter of legal right. The basic conditions for prospecting, exploration, and exploitation are prescribed in Annex III of UNCLOS.⁴² The exploration and exploitation of seabed minerals must be carried out under a contract with the International Seabed Authority and subject to its rules, regulations and procedures; to receive a contract, a private entity must be sponsored by an UNCLOS State Party. The system of State sponsorship is an indispensable part of the UNCLOS regime. In 2011, the International Tribunal for the Law of the Sea published an Advisory Opinion explaining that sponsorship “is a key element in the system for the exploration and exploitation of the resources of the Area set out in the Convention”.⁴³ Sponsoring States help protect the Area as “the common heritage of mankind”, and the sponsorship system helps ensure that contractors undertake their activities according to the UNCLOS framework.⁴⁴

Article 148 of the Convention states that: “The effective participation of developing States in activities in the Area shall be promoted as specifically provided for in this Part, having due regard to their special interests and needs, and in particular to the special need of the landlocked and geographically disadvantaged among them to overcome obstacles arising from their disadvantaged location, including remoteness from the Area and difficulty of access to and from it.”⁴⁵

Contractors are state enterprises and privately owned entities must be sponsored by state parties (sponsoring states), they also have regulatory jurisdiction over the contractor. The LOSC

⁴⁰ Para 46 of the Functions, working practices and anticipated programme of work of the Legal and Technical Commission for the period from 2023-27, 2023 (ISBA/28/LTC/2).

⁴¹ Natalie Klein, (2004), *Dispute Settlement in the UN Convention on the Law of the Sea*, Cambridge University Press, P.327.

⁴² Secretary-General, Annual Report, Just and Equitable Management of the Common Heritage of Humankind, 2023, p.35

⁴³ Seabed Dispute Chamber of the ITLOS, Advisory Opinions, Case No.17, 2011.

⁴⁴ Watson Farley & Williams, 2023, *Deep Seabed Mining Insights: The Role and Rights of Sponsoring States under the UNCLOS Regime*.

⁴⁵ Article 148 of the United Nations Convention on the Law of the Sea, 1982.

envisaged there could be certain situations in which the sponsoring state is also liable for damage arising out of activities in the Area, as set out in article 139(1) and (2) and article 4(4) of Annex III.⁴⁶

In order for a natural or juridical person to be eligible to carry out mining activities under article 153, they must either be a national of the sponsoring state or effectively controlled by it. In the event that the state of effective control differs from the state of nationality, the Law of the Sea Convention requires that both states issue certificates of sponsorship. If effective control is interpreted as meaning regulatory control that is, the ability to exercise regulatory jurisdiction over the persons, there is limited scope for joint sponsorship since states will have broad regulatory over their nationals.⁴⁷

States Parties or the Sponsoring States have responsibility to ensure relating to the deep seabed mining activities that “States parties shall have responsibility to ensure that activities in the Area, whether carried out by States Parties, or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with this Part.”⁴⁸

The sponsoring State or States shall have the responsibility to ensure, within their legal systems, that a contractor so sponsored shall carry out activities in the Area in conformity with the terms of its contract and its obligations under this Convention. “A sponsoring State shall not, however, be liable for damage caused by any failure of a contractor sponsored by it to comply with its obligations if that State Party has adopted laws and regulations and taken administrative measures which are, within the framework of its legal system, reasonably appropriate for securing compliance by persons under its jurisdiction.”⁴⁹

The United Nations Convention on the Law of the Sea provided that “states shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority. The requirements of such laws and regulations shall be no less effective than the international rules, regulations and procedures”.⁵⁰

Moreover, this paper discusses Myanmar’s implementation relating to the UNCLOS and deep seabed regime. After the proclamation of Territorial Sea and Straight Baseline in 1968, Myanmar declared its Territorial Sea and Maritime Zones Law in 1977, prior to the conclusion of the 1982 United Nations Convention on the Law of the Sea. On the first day, Myanmar was a signing member, and on May 21, 1996, it was approved. In June 1996, the UNCLOS came into effect for Myanmar.⁵¹ In 2017, the Government enacted Myanmar Territorial Sea and Maritime Zones Law under the Pyidaungsu Hluttaw No.14/2017.⁵² The objectives of this Law are: “to have security, rule of law and tranquility for the interests of the State in the territorial sea, contiguous

⁴⁶ Tara Davenport, (2019) Responsibility and Liability for Damage Arising out of Activities in the Area: Attribution of Liability, Liability Issues for Deep Seabed Mining Series, Paper No. 4, P-8.

⁴⁷ Andres Sebastian Roja and freedom-Kai Philips, (2019), Effective Control and Deep Seabed Mining: Toward a Definition, p. 2.

⁴⁸ Article 139 of the United Nations Convention on the Law of the Sea, 1982.

⁴⁹ Article 4 (4) of Annex III of the United Nations Conventions on the Law of the Sea, 1982.

⁵⁰ Article 209 of the United Nations Convention on the Law of the Sea, 1982.

⁵¹ Executive Summary, The Republic of the Union of Myanmar, Continental Shelf Submission, Amended July 2015, p.1

⁵² Pyidaungsu Hluttaw No.14/2017.

zone, exclusive economic zone and continental shelf; to protect and conserve, and maritime zones of the State and to do marine scientific researches; and to protect and conserve from the pollutions on the sea, airspace and impact on marine environment through the territorial sea and maritime zones of the State.”⁵³ Moreover, the Government of Myanmar has drawn up street regulations to promote careful planning of mineral exploitation. These Laws cover for all mining or mining related activities in land ward sites, namely (i) The Myanmar Gemstone Law, 1995; (ii) The Myanmar Pearl Law, 1995; (iii) The Myanmar Mines Law, 1994, amended in 2015. However, these Laws cover mining systems within the national jurisdiction.

In Myanmar, relating to the workshop on deep seabed resources and the blue economy for the Association of Southeast Asian Nations (ASEAN) and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) countries was held in Nay Pyi Taw on 9-11 September 2019. Myanmar is the first nation in ASEAN and BIMSTEC countries to host that workshop in cooperation with the International Seabed Authority, and it was supported by the Korea Maritime Institute. The workshop's main goals are to raise awareness among ASEAN and BIMSTEC members of the International Seabed Authority's mandate and responsibilities, as well as the obligations of sponsoring States and contractors when engaging in activities in the area; to comprehend the potential opportunities for development that ASEAN and BIMSTEC members may experience from increased participation in activities conducted in the area; and to create the conditions necessary for ASEAN and BIMSTEC members to have opportunities for capacity building.⁵⁴ As Myanmar, this workshop can be first step to participate in deep seabed mining activities.

States shall operate in deep seabed mining under the joint venture investment. In Joint venture, it can be potential questions arise such as the question whether the joint venture would take the form of a contractual or an incorporated joint venture; the applicable law applied to the contract and to the operating company formed by the joint venture partners; the ratio of capital participation of the joint venture partners; the conditions for terminating or revising the contract; and the settlement of disputes mechanisms.⁵⁵

According to the United Nations Convention on the Law of the Sea 1982 and 1994 Implementation Agreement, the International Seabed Authority encourages to the developing States for mining activities in the Area. The developing States can access technology assistance for exploration of the mineral. Mining activities shall be carried out as a joint venture arrangement. In a joint venture system, contractors are required to obtain a certificate of sponsorship from each sponsoring state.

National Laws of the Sponsoring States

Deep seabed mining may be carried out by the Enterprise and by state parties, State enterprises, or natural persons or juridical persons. Natural and juridical persons must eligible to carry out those activities, which comply with two requirements. First, they must be either nationals of a state party or effectively controlled by it or its nationals. Second, they must be sponsored by such States.

⁵³ Section 3 of the Myanmar Territorial Sea and Maritime Zones Law, 2017.

⁵⁴ Myanmar Digital News, September 10, 2019.

⁵⁵ Giinther Jaenicke, Professor Emeritus, Dr.jur, (1995), Joint Ventures for Deep Seabed Mining Operations, p.331.

Sponsoring States are required to take “all measures necessary” to ensure compliance by the sponsored contractor with UNCLOS and the terms of their contract. Such measures include adopting laws, regulations and administrative measures within their legal systems. At its 23rd session in 2017, the Assembly invited sponsoring States, if they had not already done so, to review their respective national legislation, drawing on the advisory opinion of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea. As of June 2023, ISA’s online National Legislation Database contains information on or the texts of relevant national legislation received from the following 38 States: Bangladesh, Belgium, Benin, Brazil, China, Cook Islands, Cuba, Czechia, Dominican Republic, Ecuador, Egypt, Fiji, France, Georgia, Germany, Guyana, India, Japan, Kenya, Kiribati, Mexico, Micronesia (Federated States of), Montenegro, Nauru, Netherlands, New Zealand, Nigeria, Niue, Oman, Republic of Korea, Russian Federation, Singapore, Sudan, Tonga, Tuvalu, United Kingdom of Great Britain and Northern Ireland, United States of America and Zambia. The database contains further information and the texts of national laws, regulations and administrative measures submitted by the aforementioned member and observer States of ISA.⁵⁶

With the entry into force of UNCLOS in 1994 and the establishment of ISA in 1994, exploration activities for mineral resources in the deep seabed area began to be regulated under exploration contracts.⁵⁷ International Seabed Authority has currently issued 30 contracts for exploration (19 for polymetallic nodule fields, 7 for polymetallic sulphides and 4 for cobalt-rich ferromanganese crusts.)⁵⁸ Currently access as the sponsoring states are Belgium, China, Cook Islands, France, Germany, India, Jamaica, Korea, Kiribati, Nauru, Poland, Russia, Singapore, Tonga, United Kingdom, and IOM (Bulgaria, Cuba, Czech Republic, Poland, Russian Federation and Slovakia).⁵⁹

Under the Article 153 (4) and Article 4 (4) of the Annex III of the United Nations Convention on the Laws of the Sea, 1982, some Sponsoring States adopted national legislation relating to the deep seabed mining activities in the Area, it’s as follows:

“Belgium adopted ‘Act on prospecting and exploration for, and exploitation of, resources of the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction, 2013.’ China adopted ‘Law of the People’s Republic of China on Exploration for and Exploitation of Resources in the Deep Seabed Area, 2016.’ Germany enacted ‘Seabed Mining Act, 1999, amended in 2010. Japan adopted ‘Law on Interim Measures for Deep Seabed Mining, 1982.’ Kiribati adopted ‘Seabed Minerals Acts, 2017.’ Nauru adopted ‘International Seabed Minerals Act, 2015.’ New Zealand enacted ‘United Nations Convention on the Law of the Sea Act, 1996.’ The Singapore adopted ‘Deep Seabed Mining Act 2015.’ Tonga adopted ‘Tonga Seabed Minerals Act 2014.’ The United Kingdom adopted ‘Deep Sea Mining Act 1982,’ amended in 2014.”

⁵⁶ Secretary-General, Annual Report, Just and Equitable Management of the Common Heritage of Humankind, 2023, p.39.

⁵⁷ www.isa.org.jm.

⁵⁸ Para 51 of the Report of the Secretary-General of the International Seabed Authority under article 166, paragraph 4, of the United Nations Convention on the Law of the Sea (ISBA/29/A/2).

⁵⁹ www.isa.org.jm.

In the case of deep seabed mining, contractors must be nationals of the States Parties or effectively controlled by other nations. Thus, States should be provided deep seabed mining law whether operation or not activities in the Area to control the sponsored contractors.

Finding

The prospecting and exploration regulations adopted by the International Seabed Authority are the main control over the prospecting and exploration of the mineral resources. In the case of deep seabed mining activities, the contractors need a sponsoring state. According to the advisory opinion of the Seabed Dispute Chamber, the sponsoring state has to exercise due diligence to ensure that the mining contractor complies with International Seabed Authority rules, regulations and procedures. The applicable law needs to apply for the operating company formed by the joint venture partners, the ratio of capital participation of the joint venture partners, the conditions for terminating or revising the contract, and the settlement of dispute mechanisms. If Myanmar operates mining activities in the Area, need to provide the national law. However, Myanmar current law does not cover the Area. Thus, future Myanmar deep seabed mining law should be drawn based on the analysis of other sponsoring states' Law.

Conclusion

Both the principle of freedom and of sovereignty were unable to provide an equitable legal framework for governing the area. Therefore, the common heritage of mankind has come up as a fundamental principle governing the area. The original regime embodied in the Law of the Sea was significantly modified by the 1994 Implementation Agreement. Major changes include the approval procedure for an exploration plan, the enterprise, decision-making, the review conference, transfer of technology, production policy, the financial terms of contracts, the establishment of a finance committee, and economic assistance. Nonetheless, the principal elements of the principle of the common heritage of mankind remain intact. Exploration activities for mineral resources in the deep seabed area have been regulated under exploration contracts.

Thus, the International Seabed Authority needs to control the deep seabed mining activities effectively for sustainable development use in the deep seabed area. The laws and regulations adopted by the sponsoring states shall also be directed to preventing, reducing, and controlling pollution of the marine environment from activities in the area undertaken by vessels, installations, structures, and other devices flying their flag or of their registry or operating under their authority. When the sponsoring states enact the national legislation, need to consider the application scope of law, to control deep-seabed mining activities, and to protect lawful rights and interests of the citizens. Such laws and regulations shall be no less effective than the international rules, regulations, and procedures.

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LEGAL ASPECT OF ECOTOURISM AND LOCAL BIODIVERSITY CONSERVATION IN MYANMAR

Theint¹

Abstract

This study assesses the potential of Myanmar's ecotourism sector to contribute to environmental conservation initiatives. Myanmar, with its rich biodiversity and numerous protected areas, offers unique opportunities for the advancement of sustainable tourism practices. This study analyzes the regulatory structures that oversee the ecotourism industry, with an emphasis on sustainable development and the preservation of the environment. A thorough examination of the Myanmar Ecotourism Policy and Management Strategy for the years 2015 to 2025, along with pertinent legal documents, reveals significant legal stipulations, obstacles, and prospects associated with the advancement of ecotourism. Data were collected field surveys and interviews conducted with local communities and ecotourism operators. The research indicates that the main legal challenges in ecotourism consist of insufficient regulatory structures, conflicts between commercial interests and environmental conservation, as well as a lack of adequate community engagement. The findings suggest that enhancing regulatory enforcement and encouraging increased community participation are crucial for the sustainable advancement of ecotourism. Policymakers should focus on creating fair laws that promote the growth of tourism while also safeguarding environmental resources. The findings suggest that ecotourism exerts both beneficial and detrimental effects on local biodiversity, as heightened awareness and conservation initiatives are counterbalanced by disruptions to habitats. The results indicate that the implementation of sustainable ecotourism practices is crucial for achieving a harmonious balance between conservation efforts and the advancement of tourism development. Suggestions are offered to improve the legal framework, encourage community involvement, and ensure the preservation of natural heritage in Myanmar.

Keywords; ecotourism, local biodiversity, sustainable development, tourism management, conservation.

Introduction

Traveling to natural environments presents a significant opportunity to explore breathtaking landscapes while simultaneously contributing to the preservation of fragile ecosystems. It can also yield economic advantages for local communities and foster conservation initiatives. To maximize the benefits of ecotourism, it is essential to prioritize minimal environmental impact alongside sustainable and equitable economic development. This type of tourism emphasizes environmental conservation and responsible travel behaviors. It encompasses visits to national parks for wildlife observation, cultural education, and the appreciation of natural beauty.

The Executive Secretary of the Convention on Biological Diversity adds, “Without a doubt, however, the greatest contribution that tourism makes is in opening minds to the wonders of nature”. Currently, tourism stands as the dominant global industry, with unprecedented numbers of visitors to protected areas seeking to experience the marvels of the natural world.

Myanmar is located in South East Asia with a total land area of 261,228 sq miles. The land is so well endowed with a diversity of species, such as tigers, asian elephants, sumatran rhinoceros, white-bellied heron, irrawaddy dolphin and a variety of natural resources, including tropical evergreen, mixed deciduous, dry deciduous dipterocarp, mangrove, hill and temperate

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evergreen and dry thorn forests, that it is an absolutely wonderful paradise for ecotourism in Myanmar. The national ecosystems are recognized as one of Asia's significant biological reservoirs. Therefore, it is the Ministry of Natural Resources and Environmental Conservation's responsibility to protect and maintain these forests.

Aims and Objectives

This paper aims to develop and enhance laws and regulations that support sustainable ecotourism and biodiversity conservation. And the objectives of this paper are protecting and preserving the diverse ecosystems and species found in Myanmar through effective management of protected areas and raising awareness about the importance of biodiversity conservation and promoting educational programs that highlight the benefits of ecotourism.

Method

The methods used for this research are the qualitative method and quantitative method. This research paper encompasses a comprehensive examination of literature and legal resources pertaining to international and national law and policy. Additionally, it entails an evaluation of legal instruments related to ecotourism and local biodiversity conservation in Myanmar. Data was collected through field surveys and interviews with local communities and ecotourism operators.

Results and Discussion

1 Benefits of Ecotourism

According to the International Ecotourism Society, ecotourism is now defined as “responsible travel to natural areas that conserves the environment, sustains the well-being of the local people, and involves interpretation and education”. Education is meant to be inclusive of both staff and guests.

In Myanmar, the term ecotourism refers to tourism-related activity in and around its protected areas, that focuses upon management tools, systems and processes to deliver three elements: biodiversity and ecosystems conservation; education and learning to enable hosts and visitors to understand and engage with management approaches to protect and conserve the natural and cultural assets of these areas; and economic and social benefits to communities in and around protected areas to reduce and eliminate unsustainable practices, and engage them in collaborative approaches to protected area management.²

² Ministry of Natural Resources and Environmental Conservation, Ministry of Hotels and Tourism, Myanmar Ecotourism Policy and Management Strategy for Protected Areas, 2015-2025.

Ecotourism in Myanmar encompasses tourism activities that take place within and near its designated protected areas, as well as other natural environments throughout the country. This form of tourism emphasizes the implementation of three fundamental components: the conservation of biodiversity and ecosystems; the provision of educational opportunities for both hosts and visitors regarding the safeguarding and preservation of the natural and cultural resources in these regions; and the generation of economic and social advantages for local communities, which serve to a) diminish the pressure on natural resources and b) promote collaborative efforts in the management of protected areas.³

The United Nations has created a list of 17 Sustainable Development Goals in 2016, with the hope of achieving them by the year 2030. Each goal has a list of smaller, possibly more attainable sub-goals. Each of the 17 goals is interconnected with each other, so the achievement in one goal will help to achieve some of the others. According to the United Nations World Tourism Organization (UNWTO) website *Tourism for SDG's*, tourism can aid in achieving every one of the UN's 17 sustainable development goals. These are no poverty, zero hunger, good health and wellbeing, quality education, gender equality, clean water & reliable sanitation, affordable and clean energy, decent work and economic growth, industry, innovation and infrastructure, reduced inequalities, sustainable cities and communities, responsible consumption and production, climate action, life below water, life on land, peace and justice, partnerships for the goals.⁴

Currently, there is growing evidence indicating that both direct and indirect negative effects may be influencing biodiversity and ecological well-being due to invasive species, habitat destruction, and various other intricate factors that remain inadequately comprehended. Many of these impacts are not sufficiently recognized or effectively managed. However, there is potential for mitigation if individuals become more cognizant of these effects and the strategies to counteract them, alongside the establishment of policy frameworks that provide incentives for their reduction.⁵

Ecotourism and Effect of Local Biodiversity in Myanmar

Myanmar's 21 officially recognized ecotourism sites present a rich array of nature-oriented attractions. These include a variety of exotic wildlife, such as wild elephants, leopards, tigers, gibbons, turtles, and numerous rare bird species. Additionally, the sites feature remarkable plant life, encompassing mangroves and rare orchids, alongside breathtaking landscapes that range from the majestic Himalayan peaks to picturesque tropical islands. In addition, seven of the PAs are ASEAN Heritage Parks, namely Alaungdaw Kathapa, Hkakaborazi, Indawgyi, Inlay, Lampi, Meinmahla Kyun and Natmataung. The government of Myanmar recognizes the necessity for enhanced efforts to raise both national and international awareness regarding the importance and unique characteristics of its protected areas. This includes a commitment to

³ MONREC, ICIMOD, *Guidelines for Developing Ecotourism in Myanmar*, 2017.

⁴ *Ecotourism World, Environmental Issues, Nature Conservation, Sustainable, How Tourism Contributes to the UNs SDGs*, May, 2020.

⁵ IUCN, hane Feyers, Sarah Tolbert, Marissa Altmann, *Critical Analysis and Global Insights for IUCN Intervention in the Tourism Sector, Technical Report*, 2016-2017.

fostering a unified strategy for the interpretation of high-traffic protected areas, such as its ASEAN Heritage Parks and RAMSAR site.⁶

The local biodiversity in Myanmar has a dual impact on ecotourism, encompassing both advantageous and detrimental aspects. Economically, biodiversity plays a pivotal role in supporting sectors such as agriculture, fisheries, and tourism, thereby significantly bolstering both local and national economies.

The adverse consequences include overexploitation, where the heightened demand for natural resources results in practices such as overfishing, logging, and poaching, thereby endangering various species and their habitats. Additionally, habitat destruction through deforestation and the conversion of land for agricultural and urban purposes diminishes biodiversity and disrupts ecological balance.

Achieving a harmonious balance between conservation efforts and economic development is essential for safeguarding the diverse biodiversity of Myanmar while effectively tackling these challenges.

Principles of Ecotourism

Ecotourism is characterized by its non-consumptive and non-extractive nature, fostering an ecological awareness and embodying eco-centric values and ethics concerning the natural environment. It aims to integrate conservation efforts, community engagement, and sustainable travel practices. Consequently, stakeholders involved in the implementation, participation, and promotion of ecotourism activities are encouraged to adhere to its foundational principles. These principles include minimizing physical, social, behavioral, and psychological impacts; enhancing environmental and cultural awareness; and fostering mutual respect. Additionally, ecotourism seeks to provide enriching experiences for both visitors and hosts, generate direct financial support for conservation initiatives, and create economic benefits for local communities and private enterprises. It also aims to offer visitors meaningful interpretative experiences that heighten their awareness of the political, environmental, and social contexts of the host countries. Furthermore, it emphasizes the design, construction, and operation of low-impact facilities while recognizing and respecting the rights and spiritual beliefs of local peoples, collaborating with them to promote empowerment within their communities.⁷

Legislative Frameworks of Ecotourism

To effectively manage tourism, it is essential for managers to comprehend the broader international landscape. A significant global trend is the emphasis on international collaboration and coordination in the conservation of protected areas. This trend is manifested through a range of international designations and initiatives for protected areas that have emerged since the 1970s. These initiatives encompass legally binding agreements, such as the World Heritage and Ramsar Conventions, as well as the Convention on Biological Diversity (CBD). Additionally, there are voluntary programs like UNESCO's Man and the Biosphere Programme, which includes an international network of biosphere reserves, and the newly established Key

⁶ Ministry of Natural Resources and Environmental Conservation, Ministry of Hotels and Tourism, Myanmar Ecotourism Policy and Management Strategy for Protected Areas, 2015-2025.

⁷ TIES, TIES Announces Ecotourism Principles Revision, 2015.

Biodiversity Areas Partnership. Each of these initiatives establishes conservation standards and outlines requirements for monitoring and remediation when necessary. To qualify for these international designations, prospective protected areas must adhere to these standards and comply with relevant laws at various governance levels. All of these initiatives hold significance for the tourism sector.

IUCN defines a protected area is expanded by six management categories; Ia Strict nature reserve, Ib Wilderness area, III Natural monument or feature, IV Habitat/species management area, V Protected landscape or seascape, VI Protected areas with sustainable use of natural resources. IUCN defines four governance types. These are Type A. Governance by government, Type B. Shared governance, Type C. Private governance, Type D. Governance by Indigenous Peoples and local communities.⁸

According to the Constitution of the Republic of the Union of Myanmar, 2008, The Union is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union, shall enact necessary law to supervise extraction and utilization of State owned natural resources by economic forces.⁹ The Union shall assist to promote socio economic development including education, health, economy, transport and communication, so forth, of less-developed National races.¹⁰

The categories of protected areas are as follows: Scientific Reserve; National Park; Marine National Park; Nature Reserve; Wildlife Sanctuary; Geo-features Significant Area; Community Conserved Protected Area.¹¹

In conformity with the guidance given by the Committee or Minister, the Forest Department shall carry out the duties permitting research and public visits for recreation within national parks without any adverse impact on the ecosystems.¹²

The Director General may, with the approval of the Ministry designate buffer zones in protected areas for regional development activities, socio-economic development of local community and ecotourism development without any adverse impact on core zone. The community forestry, community-based tourism and management of locally managed marine area may be permitted in a designated buffer zone in accordance with procedures by stipulating conditions; accept or reject an application applied by a person or a business entity in accordance with prescribed procedures to operate an ecotourism business and related activities in protected areas.¹³

The duties of a park warden are to effectively manage buffer zones focusing on development of local community livelihood but without having adverse impact on core zones of protected areas and to administer ecotourism development in buffer zones of protected areas.¹⁴

⁸ IUCN, Tourism and Visitor Management in Protected Areas, Best Practice Protected Area Guidelines Series No. 27, 2018.

⁹ Section 37(a), (b), Constitution of the Republic of the Union of Myanmar, 2008.

¹⁰ Section 22(c), Constitution of the Republic of the Union of Myanmar, 2008.

¹¹ Section 8, Conservation of Biodiversity and Protected Areas law, 2018.

¹² Section 17 (b), Conservation of Biodiversity and Protected Areas law, 2018.

¹³ Section 13 (g), (h), Conservation of Biodiversity and Protected Areas law, 2018.

¹⁴ Section 18 (g), Conservation of Biodiversity and Protected Areas law, 2018.

The functions and responsibilities of the Forest Department are as determining environmental service fee for carrying out business/economic activities/scheme in the forest land.¹⁵

The Director General shall stipulate terms and conditions along with the permit for ecotourism business and related activities within protected areas under sub-section (h) of section 13.¹⁶

Under the Tourism Law, 2018, the functions and duties of the State, Region or Union Territory Tourism Working Committee formed by the Ministry of Hotels and Tourism are coordination with the Nay Pyi Taw Council, relevant State or Regional Governments, Regional Government Organization and Private Sector Tourism Associations to implement activities which support the development of tourism in various tourist destinations, enhance standards and service quality, protect culture and environment, and develop human resources.¹⁷

The primary government agency is responsible for the planning and management of Myanmar's protected areas. MOECAF: designates protected areas, zoological and botanical gardens; and implements policies related to the conservation of national protected areas and the protection and study of wildlife together with the habitats of endangered flora and fauna. Through its Ecotourism Steering Committee, MOECAF also: designates protected areas suitable for recreation and ecotourism; stipulates conditions under which persons or companies may operate ecotourism-related businesses inside protected areas; sets out ecotourism policies for PAs, and in their implementation coordinates with related departments and organizations including the private sector; and supervises and monitors activities in PAs to ensure sustainability of practices.¹⁸

Recognizing the benefits and demand for tourism activity in and around its protected areas, MOECAF designated 15 ecotourism sites in 2005, and expanded this number to 21 in 2011. Sites were designated according to a number of factors including their historical context, accessibility, key natural and cultural features and the presence of a PA staff and Warden's Office. Responsibilities for managing ecotourism within MOECAF are divided between two committees, namely an Ecotourism Steering Committee (ESC) and an Ecotourism Working Committee. Within the context of its PAs and designated ecotourism sites, the Steering Committee is responsible for: "(i) formulating Ecotourism Policies; (ii) issuing orders and directives to implement ecotourism in accordance with laws and procedures; (iii) permitting the ecotourism related matters, submitted by the Ecotourism Working Committee, in accordance with protocols; (iv) coordinating with relevant departments and organizations; (v) coordinating with foreign and local ecotourism agencies, organizations and companies; and, (vi) giving guidance for the sustainable development of ecotourism."¹⁹

Through its Ecotourism Working Committee, MOECAF also: implements ecotourism policies and activities in PAs; recommends the designation of PAs as ecotourism sites; sets out rules and regulations permitting ecotourism activity in PAs, where approved by higher

¹⁵ Section 9 (i), Forest Law, 2018.

¹⁶ Section 14, Conservation of Biodiversity and Protected Areas law, 2018.

¹⁷ Section 10(f), Myanmar Tourism Law, 2018.

¹⁸ Ministry of Natural Resources and Environmental Conservation, Ministry of Hotels and Tourism, Myanmar Ecotourism Policy and Management Strategy for Protected Areas, 2015-2025.

¹⁹ MONREC, Notification No. 90, 4 May 2011.

authorities; processes applications for ecotourism activity in PAs; issues permits to travel to PAs where approved by higher authorities; submits to the Management Committee, the monthly registered data of entries to ecotourism destinations; develops income generation strategies for nature conservation; administers ecotourism activities in wildlife sanctuaries and botanical gardens; coordinates with related departments, domestic and international tourism organizations for the development of ecotourism; and, provides guidance and other institutional support to PA ecotourism committees.²⁰

PA Ecotourism Committees function similarly to destination management organizations, sharing comparable structures and responsibilities; however, their primary emphasis is on the ecotourism framework within a designated protected area. Additionally, these committees collaborate with the Ministry of Environmental Conservation and Forestry (MOECAF) to execute policies, initiatives, and activities, all while adhering to the guiding principles of ecotourism established in Myanmar.²¹

The following five-year management strategy sets out six strategic programs and series of key objectives to implement the core policy objectives laid out in Part II. The six strategic programs are to: strengthen institutional arrangements; strengthen ecotourism planning in and around protected areas; engage local communities; invest in infrastructure and responsible business models; strengthen research and monitoring frameworks; and, strengthen marketing and interpretation. Among other key policies and plans, the six strategic programs align with the National Comprehensive Development Plan, the Myanmar Tourism Master Plan and the National Forest Master Plan.²²

Efforts to enhance the legal and regulatory framework for ecotourism and Protected Areas (PAs) involve a comprehensive evaluation of the existing Protection of Wildlife and Protected Areas Law, along with its associated regulations. This evaluation aims to pinpoint necessary actions that will establish a more transparent legal and regulatory foundation for ecotourism activities within PAs. Particular emphasis will be placed on the guidelines and processes for the establishment and management of ecotourism enterprises in these areas, alongside the development of an Ecotourism Partnerships Framework tailored for PAs. Additionally, initiatives will be implemented to assess and authorize tour operators and guides engaged in commercial activities within PAs, as well as to elucidate the permissions and procedures required for accessing these protected areas.²³

Businesses in the Tourism sector have the responsibility to: operate in a responsible and sustainable manner and safeguard traditions and culture, and conserve the natural environment of Myanmar.²⁴

If the hotel or guest house operator wants to carry out the construction and renovation of the hotel or guest house building before the commencement of the business, he/she must apply for the prior approval to the Regional Tourism Committee with Form 1 together with the following evidence documents the recommendation of the Department of Environmental

²⁰ Ibid.

²¹ Ibid.

²² MONREC, Notification No. 90, 4 May 2011.

²³ Ministry of Natural Resources and Environmental Conservation, Ministry of Hotels and Tourism, Myanmar Ecotourism Policy and Management Strategy for Protected Areas, 2015-2025.

²⁴ Section 14 (a), (b), Myanmar Tourism Law, 2018.

Conservation in relation to whether there is any damage to the environment and if the proposed land and building is adjacent to the forest and environmental conservation area, the recommendation letter from the Department of Forestry.²⁵

The entrepreneur shall apply the prior permission attached with the evidence documents: the Recommendation from the Environmental Conservation Department²⁶ and the Recommendation from the Department of Forestry if the proposed land and building is located continuously with the forest and preserved natural environment area.²⁷

According to the Directive for Hotel Business, 2019 and Directive for Guest House Business, 2019 provided the environmental Conservation measures such as trash and wastewater must be disposed of in accordance with the direction of the relevant non-polluting department. Generators must be installed in accordance with the direction of the relevant department to avoid disturbing the environment.²⁸

Neither he nor his guests shall be warned to engage in ideological actions that may undermine the character, cultural, traditions, and systems of life of the local people in the destination area.²⁹

The proliferation of ecotourism typically coincides with the establishment of extensive tourism infrastructure, an influx of visitors, and heightened human activities in ecotourism regions, all of which pose risks to the natural ecosystems that serve as the primary draw. Consequently, achieving a harmonious balance between tourism development and environmental preservation is imperative. It is vital to engage in collaborative initiatives aimed at formulating sustainable ecotourism policies that emphasize nature conservation and mitigate detrimental impacts, thereby ensuring that ecotourism can deliver enduring positive outcomes for both the environment and local communities.³⁰

Examples of Ecotourism and Effect of Local Biodiversity Conservation in Ayeyarwady Region

The Meinmahla Kyun Wildlife Sanctuary, situated in the southern region of the Ayeyarwady Delta, was established in 1994 and encompasses an area of 33,776 acres in Myanmar. Recognized as a protected area, it received accreditation as an ASEAN World Heritage Park in 2003. This sanctuary is located within Bogalay Township and is characterized as an island within the Ayeyarwady Delta. The predominant ecosystem is a mangrove forest, which is vital for the local biodiversity. In 2017, it was designated as a Ramsar site, highlighting

²⁵ Section 26 (i), (n), Myanmar Tourism Rules, Notice No. 1/2020.

²⁶ Section 2 (k), Order for the Application of Prior Permission for the Construction and Renovation of Hotel and Guest House, Order No.1/2019.

²⁷ Section 2 (o), Order for the Application of Prior Permission for the Construction and Renovation of Hotel and Guest House, Order No.1/2019.

²⁸ Appendix (m), Directive for Hotel Licence Holders, 2019, Appendix (h), Directive for Guest House Licence Holders, 2019.

²⁹ Section 2(h), Directives for Tour Guide Licence Holders, 2019 and Directives for Regional Tour Guide Licence Holders, 2019.

³⁰ Yulian Purnama, Achmad Gilang, Andin Rusmini, Legal Challenges in the Development of Ecotourism as Part of the Tourism Business, *Journal of Contemporary Administration and Management (ADMAN)*, Vol.1, Issue 3. December 2023.

its significance in wetland conservation. Visitors to the sanctuary have the opportunity to observe various endangered species, including crocodiles, turtles, waterbirds, fish, and migratory birds.

Mangroves are integral to the field of ecotourism. In the Ayeyarwady Delta, the interplay between mangrove ecosystems and ecotourism is both significant and complex. This relationship encompasses various positive aspects, such as habitat conservation, educational initiatives, sustainable development, ecosystem services, and cultural enrichment. By fostering responsible tourism practices, mangroves can facilitate a harmonious balance between ecological conservation and economic advantages. However, ecotourism can also pose several detrimental effects on mangrove habitats, including habitat disruption, pollution, depletion of resources, erosion, climate change repercussions, and disturbances to wildlife. Therefore, the implementation of effective management strategies is essential to mitigate these adverse effects and promote sustainable ecotourism practices.

The Marine Research Centre of Patheingyi University, in collaboration with Worldview Myanmar, has established the first mangrove gene bank, which is designed to protect and facilitate research on these vital species. The gene bank is currently operational and is managed by Patheingyi University. Mangrove species sourced from diverse coastal areas of Myanmar have been nurtured in a nursery before being transferred to the gene bank site located in Shwe Thaung Yan. This project is part of the Thor Heyerdahl Climate Park, located in the Ayeyarwady Region of Myanmar. The park serves as a resource center in collaboration with local, regional, and national institutions, enabling the successful completion of comprehensive initiatives. Patheingyi University, a prominent academic institution located in the coastal west, has recently been recognized as a university of excellence. Ongoing research projects conducted by the faculty have equipped both students and academic staff with essential skills and capacity-building opportunities. As a result, regional governments have allocated 1,800 acres for the purposes of mangrove restoration and climate change adaptation. Effectively implementing mangrove restoration in at-risk coastal regions will not only safeguard human lives but also generate new opportunities for the populations. This initiative will act as a catalyst for climate change mitigation, fostering sustainable social and economic development.

The Sea & Lake garden encompasses an area of 300 acres in Shwe Thaung Yan. The Mangrove View Resort serves as a deep connection to the natural environment. Situated amidst the mangrove forests, a saltwater river gently meanders adjacent to the hotel grounds. Guests can explore the mangrove forest by taking a leisurely walk along a 600-foot bridge constructed entirely of timber. The development of Sea & Lake garden in this region can offer economic benefits, such as employment opportunities and increased tourism revenue, however, it also presents considerable threats to the delicate mangrove ecosystems.

Mangrove degradation resulting from construction activities can occur through several significant mechanisms. Firstly, deforestation involves the clearing of land for buildings, roads, and other infrastructure, which directly eliminates mangrove habitats. Secondly, soil disturbance can result in erosion and destabilization of sediments, adversely affecting the integrity of remaining mangrove areas. Additionally, construction activities often lead to increased runoff of sediments and pollutants into adjacent waterways, which can be detrimental to mangrove ecosystems. The use of construction materials may also result in chemical spills, introducing toxic substances into the environment. Furthermore, dredging operations that involve the excavation of water bodies can alter natural hydrological patterns, thereby compromising the

health of mangrove forests. The establishment of drainage systems can further exacerbate the situation by lowering water levels, which is critical for the hydrological balance necessary for mangrove survival. Lastly, the removal of natural barriers during construction can heighten coastal erosion, leading to further loss of mangrove areas. Moreover, construction activities may unintentionally facilitate the introduction of invasive species, which can outcompete and threaten native mangrove populations.

The cumulative effects of these impacts pose significant risks to the ecological functions of mangroves, which include their contributions to carbon sequestration, shoreline protection, and the support of biodiversity. It is essential to implement sustainable planning and management strategies to alleviate these adverse effects. In the Ayeyarwady Region, it is imperative to strike a balance between the development of sea and lake gardens and the conservation of mangrove ecosystems. By adopting sustainable practices, it is possible to safeguard these critical environments while simultaneously fostering economic development and enhancing community well-being.

Funding Mechanisms

The Nature and Wildlife Conservation Division (NWCD) of the Forest Department of MONREC is the government agency that is mandated to oversee PA management, and is allocated the budget also. This budget comes from Union funds. The majority of PA revenues was earned from the provision of tourism activities such as land rental and concession fees. Besides NWCD, some other government agencies share the revenue of earning from recreation and tourism. MOHT collects entrance fees in Hkakaborazi and Natmataung National Parks and Lampi Island Marine National Park. The collected zone fees at Inle Lake Wildlife Sanctuary is partially retained by Shan State Government.³⁰

PA revenues are not earmarked, retained or reinvested, but are required to remit to the Union Fund, Therefore, they cannot strictly be considered to be a source of conservation funding. WCS recaps that although the law permits a verity of PA revenues to be generated, few of these sources are actually utilized. There are no systems in place that would allow PA income to be retained and reinvestment in biodiversity conservation.³¹

The Ministry shall establish an Environmental Management Fund in the Union Budget in accord with the financial regulations and by-laws of the Union for effective implementation of environmental conservation works in addition to the receipt from the Union Consolidated Fund.³²

The functions of the Tourism Executive Committee are coordinating with relevant government departments and government organizations on activities which will support tourism sector and environmental conservation in order to preserve Myanmar's natural beauty and biodiversity and coordinating with relevant government departments and government organizations on activities which will support conservation of Myanmar's cultural heritage, traditions and environment.³³

³⁰ Thein Soe, Evaluation on Economic Benefits of Protected Areas in Myanmar: A case Study of Lawkananda Wildlife Sanctuary, 2017.

³¹ Ibid.

³² Section 8, Environmental Conservation Law, 2012.

³³ Section 7 (d), (e), Myanmar Tourism Law, 2018.

The functions of the Regional Tourism Executive Committee are transferring licence fees, licence renewal fees, fines and other income related to tourism collected by the branch offices of the Region and State under the Ministry of Hotels and Tourism to the relevant fund.³⁴

The Director General may, with the approval of the Ministry determine a plan to collect entrance fees or other fees related to tourism in protected areas.³⁵

Protected area user fees, especially in developing countries, are often nominal or missing altogether. No users fees have ever been charged at the lake, only international visitors are charged a fee for entering the Inle Zone, currently 10\$. The use of collected fees should be transparent and follow an annual budget. Information should be provided so that visitors and stakeholders can see how funds are being used effectively to sustain ecosystem services. As a result, tourism has yet to raise funds for management or conservation activities.³⁶

China, India, Thailand stand out as successful ecotourism economies in Asia. Crucially, the financing mechanism for this sector in these countries relies primarily on a framework comprising National Strategies and Plans, Environmental Conservation legislation and policies for the reinvestment of revenues derived from protected areas. The growth of infrastructure and establishment of facilities within ecotourism destinations necessitate capital investment sourced from both the public sector and private enterprises. Policies advocate that the economic benefits generated from ecotourism should be distributed to local communities to promote sustainable development and alleviate poverty.

Conclusion and Recommendations

This research has also brought the realization that the financial and socio cultural sectors of country play a crucial role in the field of sustainable development of ecotourism and local biodiversity conservation. Drafting and enacting dedicated legislation for Myanmar's ecotourism sector would significantly enhance regularly efficacy and promote sustainable development within the industry. The formulation of new legislation governing the ecotourism sector in Myanmar necessitates the integration of several core principles to sustainable policy and standards, funding for compensation, local empowerment and equitable benefits, infrastructure management and visitor education and awareness. The proposed law must commence with the clear and statutory definition of ecotourism, distinguishing it from conventional tourism. This definition should legally bind operators to the core principles of the sectors such as the conservation of natural and cultural heritage, the promotion of environmental education and the generation of socio-economic benefits for local communities. Effective sector governance requires a mechanism for harmonizing the divergent mandates of key government entities, particularly Ministry of Natural Resources and Environmental Conservation and Ministry of Hotels and Tourism. All proposed ecotourism projects, must be legally subjected to Environmental Impact Assessment. Specific regulations governing waste management, water usage and the reduction of carbon footprints by operators must be promulgated. The legislation must institute a system for the issuance of ecotourism licenses, predicated on the applicant's adherence to a set of environmental ethical performance standards such as infrastructure design,

³⁴ Section 10 (h), Myanmar Tourism Law, 2018.

³⁵ Section 13 (f), Conservation of Biodiversity and Protected Areas Law, 2018.

³⁶ Ei Sandi Sett, Yanhong Liu, Assessement of the Existing Tourism-Park-Community Relationships: A Case Study in the Inle Lake Wildlife Sanctuary, Myanmar, International Journal of Science, Volume 3, February 2014.

operational practices and visitor educational protocols. To ensure social equity, the law must mandate the meaningful participation of local communities in the planning, management and monitoring of ecotourism activities within adjacent to their ancestral lands. A crucial legal provision must be the establishment of a transparent and compulsory benefit-sharing-mechanism, requiring licensed ecotourism enterprises to allocate a prescribed percentage of their gross revenue directly to local conservation funds and community development initiatives. The law must empower the relevant governmental authorities to conduct regular, independent audits of license operators and prescribe a clear hierarchy of enforcement measures.

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CONSEQUENCES OF TAX INCENTIVES FOR FOREIGN DIRECT INVESTMENT IN MYANMAR

Mya Hnin Thet Paing¹

Abstract

In order to promote a particular economy, the Myanmar Government aims at attracting Foreign Direct Investment (FDI) by offering tax incentives (Tax concessions) in the form of tax holidays, for FDI including domestic investments and other allowances. However, such generous fiscal incentives to attract FDI could hinder the government's efforts in building fiscal policy space. Moreover, in making investment decisions, the investors often emphasize on the other considerations such as relatively low-cost labor, political situation, etc rather than the tax incentive system. Thus, such tax incentives may have only caused the waste of revenue costs because the incentives go to the investments. In this situation, tax reforms in the other revenue laws, other than the incentives regime, have been made by increasing the domestic income tax and the other commercial tax. Thus, this paper discusses the consequences of tax incentives that are offered to Foreign Direct Investment in Myanmar which can lead to adverse impacts to the local revenue system by causing revenue loss. This paper also analyzes the legal issues related to current Revenue Laws and Myanmar Investment Law, 2016. It is found out that the current Myanmar Investment Law, 2016 needs more specific provisions relating to the tax incentives with respect to the terms of relief which can lead to revenue cost.

Keywords: Tax incentives, Foreign Direct Investments, Revenue Loss

Research Methodology

This paper used the descriptive methods by analyzing both primary data from legislations and secondary data from literature, government's websites, official publications, and analytical review on tax incentives for FDI in development of the Myanmar economy as well as the consequences of offering tax incentives for FDI in the domestic revenue system. Data utilized in this paper are collected from legislations, literature books, research papers, Publications, Journals and relevant websites. First, it studies the nature of tax incentives and linkage between tax incentives and FDI. Second, it studies the tax incentives which are currently offered to FDI in Myanmar legislation. Finally, it discusses whether the tax incentives for FDI can have adverse impacts to the local revenue system by causing revenue loss.

Introduction

In order to promote and facilitate both foreign and domestic investment in the economy and open more economic sectors to private investment, Myanmar Government enacted a new investment law in April 2017. Such law offers as an investment incentive to investors; Corporate Income Tax (CIT) holiday, Tax-free profit if reinvested, depreciation, equal income tax rate, R&D deduction, exemption for imports of machinery, equipment, materials, spare parts, construction materials that cannot be purchased locally, exemption for raw materials and semi-finished goods, Refund of tax and duty in case of export. Moreover, in order to enhance the profitability of a newly established business or expansion of an existing business which will contribute to the country's economic objectives, Myanmar Investment Law and the Myanmar Special Economic Zone Law grant relief from customs duties on imports of equipment and construction materials which enables a firm to reduce its capital requirements and lower its fixed costs. Relief from duties on imports of raw and semi processed materials and of components

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generally provides a competitive advantage in establishing a domestic or foreign market.² Since most of the tax incentives are introduced after other deficiencies in law and administration are remedied and are directed to areas of economic activity that the country wishes to develop, it is important to analyse that whether such exemptions and reliefs help in development of Myanmar Economy and trade relation.

A common objective of tax exemptions and reliefs in Myanmar is regional development. Therefore, investors in designated regions (usually the more remote, economically less-developed regions of a country or regions with high levels of unemployment) receive tax holidays, investment allowances, or accelerated depreciation. However, a serious disadvantage of offering tax incentives to attract investment is that, to the extent that enterprises that would have invested in any event claim them, tax revenue is lost without any corresponding benefit to the host country. Moreover, this can lead to pressure for similar treatment from other deserving sectors. This pressure is much more difficult to withstand once some targeted incentives have been given. Therefore, in a number of countries, both developing and industrial, the incentives have spread over time to other activities, and removing the incentives once the reason for them has gone has been difficult politically. While any one targeted incentive may not involve a significant revenue cost, the total for all the resulting incentives can sharply erode government revenues from the business sector.

Nature of Tax Incentives

Traditionally, Governments have used the tax incentives (sometimes also referred to as fiscal incentives) as a tool to promote a particular economic goal.³ Tax incentives may be defined as any incentives that reduce the tax burden of businesses or enterprises in order to attract them to invest in particular projects or sectors. They are exceptions to the general tax regime.⁴ It is also defined as a measure that provides more favorable tax treatment of certain activities or sectors compared to what is granted to the general industry.⁵ Tax incentives characterize a means to attract socially beneficial investment⁶ by lowering the tax liability of the investors⁷, especially in countries which have a weak investment environment and limited capability to address such weakness.⁸ In such a case, investors may be entitled to the direct and quantifiable monetary benefits.⁹ These may be included in any part of the tax code such as the corporate income tax, personal income tax, value-added and excise taxes, customs tariffs and investment and the other related laws.¹⁰ These are preferential tax treatments which are offered to a selected group of taxpayers and some form of exemptions such as tax holidays, credits, investment allowances,

² George E. Lent, (1967) "Tax Incentives for Investment in Developing Countries" *International Monetary Fund* Vol-14 No.2, p-251.

³ United Nations, (2018) "Design and Assessment of Tax Incentives in Developing Countries: Selected Issues and Country Experience", p-6.

⁴ United Nations Conference on Trade and Development, 'Tax Incentives and Foreign Direct Investment' https://unctad.org/system/files/official-document/iteipcmisc3_en.pdf.

⁵ Klemm (2010), "Causes, benefits and risks of tax incentives", *International Tax and Public Finance*, Vol-17, p-315.

⁶ Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank*, Issue 54, p-2.

⁷ International Institute for Sustainable Development, "Revisiting Tax Incentives as an Investment Promotion Tool" <https://www.iisd.org/itn/en/2024/01/13/revisiting-tax-incentives-as-an-investment-promotion-tool/>.

⁸ Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank*, Issue 54, p-2.

⁹ International Institute for Sustainable Development, "Revisiting Tax Incentives as an Investment Promotion Tool" <https://www.iisd.org/itn/en/2024/01/13/revisiting-tax-incentives-as-an-investment-promotion-tool/>.

¹⁰ Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank*, Issue 54, p-2.

preferential tax rates and import tariffs or customs duties and deferral of tax liability.¹¹ Thus, it can be grouped into a number of categories such as investment allowances and tax credits, timing differences, reduced tax rates, and free economic zones.¹² Tax incentives may be classified into two categories depend upon its nature, i.e., profit-based tax incentives (which reduce the amount of payable tax by granting investors tax holidays or reducing the applicable tax rate) and cost-based tax incentives (which defer the payment of tax by the extension of extended loss carry-forward periods or accelerated depreciation).¹³

The use of tax incentives depends upon the varying reasons based on the developing status of the countries. Developed or advanced countries tend to use such incentives as a spare tool and mostly in the form of enhanced cost recovery of investments under the corporate income tax. However, developing or transition countries tend to use that more broadly in the corporate income tax, consisting of the form of tax holidays, but also across the range of tax instruments.¹⁴ In the former countries, such incentives are incorporated in the income tax law while in developing countries, it has been used in the form of the combination of targeted and more general incentives which is included in the income tax law, the investment laws and other laws, or simply government decrees.¹⁵ In some cases, the incentives may be seen as a counterweight to the investment disincentives inherent in the general tax system especially in transition countries. However, in other countries, the incentives are proposed to offset the other disadvantages that investors may face, such as a lack of infrastructure, complicated and antiquated laws, and bureaucratic complexities and weak administration, in the tax area or elsewhere.¹⁶

The role of tax incentives in promoting FDI has been subjected to many studies, but their respective advantages and disadvantages have never been clearly established. Some stated that tax incentives are bad in both theory (since they distort investment decisions) and in practice (since they are often ineffective, inefficient and prone to abuse and corruption) for foreign direct investments. Even though the tax incentives are used as a means for a country's economic development, they also entail forgone revenues and increase administrative cost and complexity, cause undesirable distortions in investment behavior, and encourage corruption and rent-seeking.¹⁷ At first, tax incentives seem to be costless since they do not appear to affect the current fiscal system or budget. However, they may impose significant costs such as revenue loss, low economic efficiency, increased administrative and compliance costs, and excessive tax planning and tax evasion that may exceed their benefits and considerably erode the general tax base.¹⁸ Thus, it is necessary to find the right balance in using tax incentives to ensure that their benefits exceed the costs.

¹¹ United Nations, (2018) "Design and Assessment of Tax Incentives in Developing Countries: Selected Issues and Country Experience", p-5.

¹² Ibid.

¹³ International Institute for Sustainable Development, "Revisiting Tax Incentives as an Investment Promotion Tool" <https://www.iisd.org/itn/en/2024/01/13/revisiting-tax-incentives-as-an-investment-promotion-tool/>.

¹⁴ Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank*, Issue 54, p-2.

¹⁵ Zee, H., Stitsky, J.G., Ley, E (2002), "Tax incentives for business investment: a primer for policy makers in developing countries", *World Development*, Vol-30, p-1497.

¹⁶ Vann David Holland and Richard J. Vann, (1998) "Income Tax Incentives for Investment" *International Monetary Fund* Vol-2, p-1.

¹⁷ Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank*, Issue 54, p-10.

¹⁸ United Nations, (2018) "Design and Assessment of Tax Incentives in Developing Countries: Selected Issues and Country Experience", p-6.

Tax Incentives for FDI in Myanmar

In order to reduce the effective tax burden for a specific project, Myanmar Investment Law offers the exemptions and reliefs for income tax as an incentive to some investment activities. Income tax exemptions shall only be granted to sectors that the Commission has specified as sectors that are promoted for investments.¹⁹ With respect to the income tax exemption, designated the less developed regions as Zone (1), the moderate developed regions as Zone (2), and the adequate developed regions as Zone (3), the Commission shall, with the approval of the Government, issue a notification and may grant income tax exemptions to investment business in Zone (1) for a period of 7 consecutive year including the year of commencement of commercial operation, investment operation, investment businesses in Zone (2) for a period of 5 consecutive year including the year of commencement of commercial operation, and investment businesses in Zone (3) for a period of 3 consecutive year including the year of commencement of commercial operation.²⁰

The designation of the zones is subjected to change depending on the development in the respective regions. MIC, in exercise of the powers conferred under Sec-100 (b) of MIL, issued a notification regarding to the Designation of Development Zones on 22 February 2017. In accordance with this notification, 162 areas are designated as Zone 1: Less Developed Regions, 122 as Zone 2: Moderate Developed Regions and 46 areas as Zone 3: Developed Regions.²¹ In exercises of the power conferred under section 43 and sub- sec (b) of Sec- 100 of the MIL, MIC has prescribed 193 investment promoted sectors with the approval of the Union Government by notification. Such investment promoted sectors shall be granted income tax exemptions if it is applied to MIC.²²

Furthermore, the law also offers such exemption or relief in case of the reinvestment activities. The Commission may scrutinize and grant (a) exemption or relief from income tax if the profits obtained from the investment business is reinvested in the same business or in a similar type 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 an accelerated depreciation rate (which is less than the stipulated lifetime of the asset) and (c) right to deduct expenses from assessable income incurred for research and development (R&D) related to the investment activities/business required for the development of the country and carried out in the country.²³

If such businesses operate in accordance with this Section, such businesses may reinvest the profits obtained during the exempted fiscal year in the next following fiscal year in the same business or any similar type of business and the income shall be exempted on this profit. But, if a business reinvests the profits obtained during the fiscal year prior to reinvestment exemption in the next following fiscal year, income tax exemption shall not be granted although that business is granted income tax exemption on reinvestment of the profits arisen from the businesses by MIC in accordance with this Section.²⁴ For example, reinvesting the amount of 1,000,000,000

¹⁹ Section-75 (c), The Myanmar Investment Law 2016.

²⁰ Section 75 (a), The Myanmar Investment Law 2016.

²¹ Myanmar Investment Commission, Designation of Development Zone (No. 10 / 2017, 22 February 2017).

²² Myanmar Investment Commission, Classification of Promoted Sector Notification (No. 13 /2017, 1 April, 2017).

²³ Section-78, Myanmar Investment Law, 2016.

²⁴ Ministry of Planning and Finance, Application of Income Tax Exemption on Reinvestment, Granted Under Myanmar Investment Law (No.1/2021, 30 June 2021).

MMK in 2017-2018 fiscal year (Assessment Year) which is out of the total profits of 2,000,000,000 MMK obtained in 2016-2017 fiscal year (Income Year) is not entitled for reinvestment exemption.²⁵

Furthermore, in Myanmar, the Commission may scrutinize and grant (a) exemptions and reliefs from customs duty and other internal duties and taxes or both of machineries, equipment, instruments, machinery components, spare parts, construction materials unavailable locally, and materials used in the business, which are imported as actually required, during the construction period or during the preparatory period of the investment business, (b) exemptions and reliefs from customs duty and other internal duties and taxes or both on the importation of the raw materials and partially manufactured goods conducted by an exported-oriented investment business for the purposes of the manufacture of products for export, (c) reimbursement of customs duty or other internal duties and taxes or both on imported raw materials and partially manufactured goods which are used to manufacture products for export, and (d) 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 duties and 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.²⁶ The finished products which are manufactured by the raw materials or the partially manufactured goods imported with tax exemption or relief shall be fully exported and not be allowed for the local sale.²⁷

Moreover, with the purpose of attracting the investors, the Myanmar Special Economic Zones Law, 2014 (Myanmar SEZ Law) also grants a generous tax incentive such as a corporate tax holiday of up to seven years, and a subsequent extended period of reduced corporate tax rate, as well as deductions linked to R&D investments and local staff training activities. The Myanmar SEZ Law specifies that businesses in the free zone and promotion zone receive income tax exemptions for the first seven or five years, respectively, followed by a 50% reduced tax rate for the second five years, plus an additional five-year reduced rate on reinvested profits. Then the standard corporate tax rate of 25% applies.²⁸ Dividends paid out to shareholders from taxed profits are exempt from dividend tax. Additionally, free zone investors are exempt from customs duties and commercial taxes on all imports used for production (including imports from promotion zones), while promotion zone investors can apply for exemption on imported capital goods only. The investors may entitled to enjoy the exemptions of customs duties and other relevant taxation for five years from the business commencement on the import of equipment and instrument not for sales and their required spare parts, the construction materials for factory, warehouse and own office, the motor vehicles and other materials which are essential for the business, and fifty percent relief of the custom duties and other taxation for the consecutive five years.²⁹ Moreover, expenses related to staff training and research activities incurred by investors in free zones can be deducted from taxable income.

²⁵ Ibid.

²⁶ Section 77, Myanmar Investment Law, 2016.

²⁷ Ministry of Planning and Finance, Announcement for the Application of Tax Exemptions or Reliefs under Section 77 (b) of the Myanmar Investment Law (No.35/2017, 30 March 2017).

²⁸ Section 32, Special Economic Zones Law, 2014.

²⁹ Section 44, Special Economic Zones Law, 2014.

Therefore, the Myanmar Government broadly grants tax holidays based on the location of the investment, including in under-developed areas and also to certain economic activities (e.g. skills development, R&D, environmental protection) by studying these two laws (the Myanmar SEZ Law and the Myanmar Investment Law). However, companies engaged in ‘non-promoted’ activities will not receive an income tax holiday.³⁰ It is directed to new firms and is not available to existing operations.

Table 1: Tax Incentives to FDI in Myanmar under Myanmar Investment Law and the Special Economic Zone Law

		Inside SEZs		Outside SEZs
Law		SEZ Law		Investment Law
Approval		SEZ Management Committee		Myanmar Investment Commission
Tax exemptions and reductions	Commercial tax/ VAT	Free Zone	Exemption	No exemption
		Promotion Zone	Exemption for 5 years	
	Corporate income tax (CIT)	Free Zone	Exemption for 7 years 50% reduction for next 5 years 50% reduction for next 5 years for reinvested profits	Exemption for promoted sectors only, for 3, 5 or 7 years depending on development designation of location
		Promotion Zone	Exemption for 5 years 50% reduction for next 5 years 50% reduction for next 5 years for reinvested profits	
	Dividend tax	Free Zone	Exemption on dividends paid out from profits for which CIT was paid	No exemption
		Promotion Zone		
	Deductions	Free Zone	Local staff training and R&D activities	R&D activities
		Promotion Zone	Not specified	
Customs duties		Free Zone	Exemption on import of capital goods, intermediate goods and raw materials (including from Promotion Zone)	Exemption on import of capital goods during the construction period or during the preparatory period of the investment; Refund on import of raw materials and intermediate goods for the manufacture of export products
		Promotion Zone	Exemption on capital goods for 5 years 50% reduction for next 5 years Refund on import of raw materials and intermediate goods for the manufacture of export products	

Relation between Tax Incentives and Foreign Direct Investment

The impact of tax incentives on FDI is ambiguous. Over the past decades, most of the supervisors of international Investment and Econometric analysis have shown that tax incentives are not the most powerful and essential tool in influencing the decisions of multinationals in choosing their locations.³¹ Thus, in making investment decisions, investors often emphasize the unimportance of tax incentives compared with the other considerations. Firstly, firms analyze the country's basic economic and institutional situation. In case of making investments in developing and transition countries, investors consider the cost of labour, and the other considerations included in large-scale investments such as the legal framework of market economy and political situations, policies on land lending and³² whether countries have stable macroeconomic policies

³⁰ Charltons, ‘Myanmar Investment Law’, <https://www.charltonsmyanmar.com/investment-law/>.

³¹ Alina Cristina, (2012) “The Effectiveness of the Tax Incentives on Foreign Direct Investments” *Journal of Public Administration, Finance and Law*, p-56.

³² Vann David Holland and Richard J. Vann, (1998) “Income Tax Incentives for Investment” *International Monetary Fund Vol-2*, p-2.

and manage well the critical macroeconomic variables, such as inflation, interest rates, and exchange rates.³³ Also in Myanmar, foreign investors desire to operate in industries because of its abundance of young and cheap labour which is an asset for labour-intensive and low-skilled light manufacturing activities.³⁴ Thus, there are numerous non-tax-related factors that bear on investment decisions and income tax exemption was perceived as a negligible stimulant for investment decisions.

Moreover, taxpayers desire to be able to predict the tax consequences of their projects or actions which need clear laws (that have stability). In most developing countries, the tax laws are not clear, overlap in offering tax incentives in different laws and may be subject to frequent revisions which may have the potential to cause difficulty in long-term project planning.³⁵ Thus, the administration of the law is as important as the law itself and hence, it is obvious that the tax administration may cause difficulty for the investors in coping with their business whether in providing timely and consistent interpretations of the law or in enforcing the law appropriately.³⁶ Thus, most stated that tax reliefs or exemptions are the tools that give compensation for weak negative factors that are found in a climate of investment. Thus, rather than tax incentives, the general tax system is more important in relation to Foreign Direct Investment.

Discussion

In attracting investments, tax incentives have not by and large been successful specifically in Foreign Direct Investment. Firstly, this can only lead to the country's revenue loss because of the reason that the incentives only go to the Investment by way of imposing serious costs and there is no return to the economic development of the country. However, exemptions or reduced tax rates on corporate income tax (CIT), tax deductions or credits on expenses (e.g., R&D), and accelerated depreciation of assets are the most common form of incentives that are used under Myanmar Investment Law and Myanmar Special Economic Zone Law. Among them, the tax holidays can have a significant impact on fiscal costs.³⁷ The incentives offered under such two laws are the most generous in the region (along with Cambodia, Indonesia, Lao PDR and VietNam), as a result of the long period of reduced CIT rate.³⁸ For example, while the Cambodia is the least generous in the region, the forgone revenue due to tax incentives was estimated to amount to 6%.³⁹ Thus, many regional peers have abolished the reduced tax rate or tax incentives in zones which may avoid creating a dual regime system that can be a source of complexity and distortion.⁴⁰ With respect to Myanmar's tax regime, the World Bank estimated MMK 41 billion (approximately USD 27 million) has been lost out by the Myanmar Internal Revenue Department because of the income tax exemptions. Moreover, from the International Monetary Funds, it is estimated that with regards to the corporate income tax, "overly generous and discretionary tax incentives are considered to be a direct cost exceeding 25% of the total income tax revenue."⁴¹

³³ Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank*, Issue 54, p-2.

³⁴ OECD, (2020) "OECD Investment Policy Review Myanmar 2020", p-31

³⁵ Vann David Holland and Richard J. Vann, (1998) "Income Tax Incentives for Investment" *International Monetary Fund*, Vol-2, p-3.

³⁶ Ibid.

³⁷ OECD, (2020) "OECD Investment Policy Review Myanmar 2020", p-206.

³⁸ Ibid 207.

³⁹ OECD (2018), OECD Investment Policy Reviews: Cambodia 2018.

⁴⁰ OECD (2018), OECD Investment Policy Reviews: Cambodia 2018.

⁴¹ Sebastian Sahla and Alison Ken, (2020) "Fair Finances: How tax and social spending can support the reduction of poverty and inequality in Myanmar" *Oxfam & ActionAid Policy Brief*, p-13.

Hence, prioritizing industries may also be problematic and may not be suitable for Myanmar. In Myanmar, Government revenues largely depend upon the corporations and economic enterprises. Because of the such low rate or exemptions and reliefs, it may have an adverse impact on Myanmar's revenue regime and could hinder the standard of living and the economic development with the reasons that tax incentives are intended to encourage investment in certain sectors or geographic areas, they are rarely provided without conditions attached.

Secondly, according to Sec-75 of the MIL, 2016, the income tax exemptions are designated to the specified zone for a respective period. The Ministry of Investment and Foreign Economic Relations stated that "In the view of the balanced development of the regions and states, in matters of the income tax exemption, zones have been set according to development, and three, five and seven years per zone. Income tax exemptions are not given to all businesses, but only to those engaged in investment sectors necessary for the development of the state, thus regulating the state's income and development". It also mentioned that the incentives are only granted to the promoted sectors and not offered to all investment activities and thus, the revenue loss will not be faced.⁴² Generally, There are two primary sources of the cause of the tax revenue losses from tax incentives; (1) forgone revenue from projects that would have been undertaken even if the investor did not receive any tax incentives and lost revenue from investors and (2) activities that improperly claim incentives or shift income from related taxable firms to those qualifying for favorable tax treatment.⁴³ In this case, the provisions under Sec-75 may be similar to the first situation. Thus, it may be denoted that the revenue loss will occur if the investment activities are only operated during the incentive periods and there are no benefits to the country at all. The revenue loss will occur in case of the investment in short-term, high-profit projects. Because of the reasons that these projects would occur even though there are no tax incentives, the tax incentive is a pure windfall to them.

Finally, the harmonized taxation system is one of the important factors in a country's revenue system. According to Section 5(d) of the Income Tax Law and the Sec-80 of the Myanmar Investment Law, if there are the provisions relating to the exemptions and reliefs with regard to the income tax and the other kinds of taxes, it must be carried out in accordance with the MIL and Myanmar SEZ Law. Except the exemptions and reliefs under section 75, 77 and 78, other taxes shall be carried out in accordance with relevant tax laws.⁴⁴ Moreover, the MIC may approve or reject some or all of the application of the Tax Incentives requested by the Investor, and may grant a Tax Incentive in whole or in part in accordance with conditions.⁴⁵ However, in Rule 94 of the Myanmar Investment Rules 2017, it is provided that the MIC may refuse to grant a Tax Incentive if the Investor or an Associate has within the previous 3 years discontinued or significantly reduced a prior Investment for which a tax incentive was given under any law or has not complied with applicable tax laws.⁴⁶ In this case, it may be misunderstood that the investors may be entitled to apply the tax incentives besides the MIL and Myanmar SEZ Law.

Moreover, in accordance with the Rule-114, the power in relation with the tax exemptions and reliefs for investments activities are also conferred to the Internal Revenue Department by

⁴² MIFER, Article "Myanmar's Investment Laws Part (6) New Government, New Law" written by U Aung Naing Oo, Permanent Secretary of the Ministry of Investment and Foreign Trade" <https://mifer.gov.mm/mm>

⁴³ OECD, (2020) "OECD Investment Policy Review Myanmar 2020", p-206.

⁴⁴ Section-80, Myanmar Investment Law, 2016.

⁴⁵ Rule-93(a), Myanmar Investment Rules, 2017.

⁴⁶ Rule-94, Myanmar Investment Rules, 2017.

providing that “in evaluating a tax return of an Investor benefiting from a Tax Incentive under sections 75 and 78 of the Law the IRD may review whether the Investor is complying with the provisions of the Law relating to the Tax Incentive and any conditions specified in the Tax Incentive granted to the Investor”.⁴⁷ Moreover, according to the Sec-86(a) of the Tax Administration Law, the Ministry of Planning and Finance and IRD may issue necessary rules, regulations, by-laws, notifications, orders, directives and procedures with the approval of the Government.⁴⁸ From the power conferred upon it, the IRD issued the practice statement with respect to the “Application of Income tax exemption on reinvestment, granted under the Myanmar Investment Law”.⁴⁹ Thus, it may be seen that the IRD also plays an important role in granting and implementing the tax incentives conferred under MIL.

In the case of PTTEP International Limited (Yangon Branch) vs. the Internal Revenue Department, a tax audit by the Large Taxpayers’ Office found that PTTEP transferred funds from its operating accounts to a reserve fund account during the 2014-2015 fiscal year, intending to reinvest profits. However, the audit concluded that there was insufficient evidence of a legitimate reserve fund account in compliance with Section 27 (b) FIL 2012, leading to the assessment of MMK 22,357,488,551 as non-exempt income. PTTEP appealed this decision, but the Head of the Large Taxpayers’ Office upheld the tax audit’s findings. Subsequently, PTTEP filed an appeal with the Revenue Appellate Tribunal.⁵⁰

The Revenue Appellate Tribunal opened and heard the case as Income Tax Appeal No. 7/2020 and confirmed the order of the Head of the Large Taxpayers’ Office and dismissed the appeal. Arguing that there are legal issues in the judgment order of the Revenue Appellate Tribunal that have to be resolved, the applicant applies to have the case referred to the Supreme Court of the Union as an income tax reference. The Tribunal studied the submissions of the applicant and the respondent and relevant documents in detail. The applicant submitted that according to Section 21 (b) FIL 1988, the MIC is the only government authority that may grant an income tax exemption on reinvested profits. With regard to the submission whether the Tribunal’s consideration that “granting income tax exemptions is not part of the powers vested in the MIC” is legally correct, there is no such consideration in the Tribunal’s Income Tax Appeal No. 7/2020.⁵¹

Chapter 7 of the FIL, 2012 stipulates the duties and powers of the commission, with Section 12 setting forth the duties and section 13 setting forth the powers. The granting of income tax exemptions is not listed as a power in these provisions. It can be found only in Chapter 12, Section 27 of this law that tax exemptions or relief may be granted to investors. It has been found that the Tribunal only considered the findings and the reasons and that there is no legal issue to be resolved.⁵² The same situation occurs in the new investment law, MIL 2016. According to Sections 24 and 25 of the MIL and Rule 99 (a) of the MIR, MIC may scrutinize and grant when applying to enjoy exemptions and reliefs in accordance with the provisions of this

⁴⁷ Rule-114, Myanmar Investment Rules, 2017.

⁴⁸ Section-86, The Tax Administration Law, 2019.

⁴⁹ Ministry of Planning and Finance, Application of Income Tax Exemption on Reinvestment, Granted Under Myanmar Investment Law (No.1/2021, 30 June 2021).

⁵⁰ *PTTEP International Limited (Yangon Branch) v Internal Revenue Department*, (2022) Revenue Appellate Tribunal.

⁵¹ *Ibid.*

⁵² *PTTEP International Limited (Yangon Branch) v Internal Revenue Department*, (2022) Revenue Appellate Tribunal.

Law and the assessment with respect to reinvestment activities carried out by MIC.⁵³ However, as above-mentioned, the provisions with respect to reinvestment activities are issued by IRD. In this situation, the investors may have misunderstood that the reinvestment activities are carried out by the IRD rather than MIC. Thus, the provision with respect to this regime should be clear and consistent.

In my opinion, tax incentives should be built into the tax laws and should not be issued in special decrees or other *ad hoc* ways. Moreover, it should be supervised by the Ministry of Planning and Finance rather than giving authority to the MIC. The regular assessment of the benefits of the tax incentives compared to their costs in terms of the forgone revenue, administrative cost, economic inefficiency and encouragement of corruption and rent-seeking.⁵⁴ Moreover, it may result from the difficulties the tax administrations face in auditing taxpayers. Thus, the specific administration of the tax system in case of the tax incentives for FDI which may have an adverse impact to the revenue system, are important.

Conclusion

Foreign Direct Investments play a critical role in the development of Myanmar's economy. Thus, with the purpose of contributing to sustainable and inclusive development, tax incentives in the form of tax exemptions and reliefs for income tax, customs duties and other kinds of tax are offered under the Myanmar Investment Law, 2016 and the Special Economic Zone Law, 2014. Nonetheless, according to the nature of tax incentives, a serious disadvantage in case of attracting the FDI is that the tax revenue is lost without any corresponding benefits to the host state. Even though the tax incentives are offered to the targeted areas, it may not be significant in one project or business. However, while any one targeted incentive may not involve a significant revenue cost, the total for all the resulting incentives can sharply erode government revenues from the business sector. Moreover, at the time of making investment decisions, the investors often emphasize the unimportance of tax incentives compared with the other considerations. Thus, granting of the tax incentives may not be effective in attracting the FDI. Also in Myanmar, by studying the Myanmar Investment Law and the Special Economic Zone Law, the Myanmar Government offered generous incentives to the investors. Moreover, although the provisions stated the authority to offer the tax incentives incurred to MIC, in some cases, the Internal Revenue Department also has the power to examine such incentives. Thus, the provisions under Myanmar Investments Rules, 2017 are not consistent with the Myanmar Income Tax Law, 2011 and the Myanmar Investment Law 2016. Thus, in order to be effective taxation and to ease tax administration, the tax incentives under Myanmar Investment Commission should be included in the other relevant tax laws and assessing the application of tax incentives for foreign investors from MIC should be placed to the Internal Revenue Department. By providing a secure tax system, attracting to the foreign direct investment may be effective in achieving sustainable growth and significant development in Myanmar's economy.

⁵³ Sections-24,25, Myanmar Investment Law, 2016 and Rule 99 (a), Myanmar Investment Rules, 2017.

⁵⁴ Janet Stotsky, (2024) "Tax Incentives and Investment" *Asian Development Bank*, Issue 54, p-2.

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LEGAL CONTROL ON WATER POLLUTION THROUGH AGRICULTURE, INDUSTRY AND MINING IN MYANMAR

Thiri Sandar Aung¹

Abstract

Water pollution refers to the contamination of aquatic environments, including lakes, rivers, seas, oceans, and groundwater. It transpires when contaminants enter these water bodies untreated. Waste from residences, industrial facilities, and other structures contaminates water bodies, resulting in water pollution. This paper aims to elucidate the legal framework governing water pollution control in Myanmar. The research aims are to mitigate incorrect waste disposal, to avert water pollution by identifying and limiting principal sources of contamination, and to comprehend the effects of water pollution associated with agriculture, industry, and mining. Agriculture significantly affects the environment. Although the adverse effects are significant, encompassing pollution and the destruction of land, water, and air, agriculture can also influence the ecosystem. The industrial impact indicates that wastewater from manufacturing or chemical activities contributes to water pollution. The impact of mining includes the presence of life-threatening human infections in sewage, such as cholera, typhoid, and dysentery.

Keywords: water pollution, agriculture, industry, mining, environment

Introduction

Water is a vital natural resource required for humans, animals, and plants. Water pollution is primarily influenced by the discharge of sewage and other liquid wastes from domestic water consumption, industrial effluents, agricultural runoff from livestock, and irrigation drainage. A further cause of pollution is spreading of chemical on the land to increase crop yields. The problem of pollution of rivers and streams has assumed considerable importance in recent years as a result of the growth of industries and the increasing tendency to urbanization. Environmental damage may affect the soil, the air, nature, waterways or groundwater. damage of natural environment relating to agriculture is described that the environmental impact of agriculture is the effect that different farming practices have on the ecosystems around them. Environmental impact based on the production practices of the system used by farmers. Damage of natural environment relating to industry is stated that industry is a huge source of water pollution, it produces pollutants that are extremely harmful to people and the environment. Many industrial facilities use freshwater to carry away waste from the plant and into rivers, lakes and oceans. Damage of natural environment relating to mining is prescribed that environmental impacts of mining can appear at local, regional and global scales through direct and indirect mining practices. Impact can result in erosion, sinkholes, loss of biodiversity or the contamination of soil, groundwater, and surface water by the chemicals emitted from mining processes. Mining can have harmful effects on surrounding surface and groundwater. The Government has enacted different laws to regulate water pollution. Pollution can be mitigated by regulating the application of some hazardous pesticides and promoting the use of organic bio-fertilizers as an alternative to chemical fertilizers. Effective management of water pollution necessitates suitable infrastructure and strategic plans. Sewage treatment facilities and industrial wastewater treatment plants are typically mandated to safeguard water bodies from untreated effluent. The mineral resources remain vital to the nation's economy. The mining sector can mitigate environmental impact by

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recycling mining waste, rehabilitating mining sites, terminating unlawful mining operations, and enhancing mining sustainability.

The major sources of water pollution are classified in the following:

1. Agriculture
2. Industry and
3. Mining

Water pollution can disturb and negatively impact the water cycle. A lot of water pollution comes from human activity. This paper aims to study how Myanmar's laws control water pollution from agriculture, industry and mining and to find out whether these laws are effective or need improvement.

Agriculture

“Agriculture” is broader in meaning than “farming”; and while it includes the preparation of soil, the planting of seeds, the raising and harvesting of crops, and all their incidents, it also includes gardening, horticulture, viticulture, dairying, poultry, bee raising, and ranching.”²

The main agricultural water pollutants are nitrates, phosphorus, and pesticides. Rising nitrate concentration threaten the quality of drinking water, while high pesticide use contributes substantially to indirect emissions of toxic substances.³

Another polluting agent from agriculture is sediment load that enters in streams. Suspended sediment resulting from agricultural fields impairs aquatic life by reducing sunlight, damaging spawning grounds and becoming toxic to aquatic organisms.⁴

Case Analysis

In 2019, about five miles, East of Kone Ywar village, Myintha village Tract, Gangaw Township, Gangaw District, Magway Region, Naing Takhon Coal Mines Company and Shwe Bumi Coal Mines Company dumped waste about one and half miles. This waste with irrigation water of Htan Thi Gyi stream runoff into the irrigate farmlands and paddy fields.

The incoming mud comprises coal particles and contaminated blue dust, rendering the streams less drinkable than they once were. Annual sedimentation from waste coal mines devastates agricultural land and impairs the cultivation of seasonal rice and sunflower crops, while also posing a threat to human and animal health and drinking water.

In August, 2019, the owners of the farmlands and paddy fields, together with the village administrator, reported the damage and impact of their farmlands and paddy fields to the office of the Prime Minister of Magway Region, to the representatives of the Pyithu Hluttaw, Amyotha Hluttaw, and Regiain Hluttaw, of Gangaw Township, to the Ministry of Environmental Conservation and Forestry of Magway Region, and to the Ministry of Environmental

² Bryan A. Garner, *Black's Law Dictionary*, Thomson West, 8th Edition, 2004, P-213.

³ Santosh S Mali, *Water Pollution and Agriculture*, National Academy of Agriculture Sciences, 2015, P-4.

⁴ *Ibid*, P-6.

Conservation and Forestry of Union. As a result of the complaint, the Naing Takhon Coal Mines Company restored and re-excavated farmlands and the paddy fields that were damaged, by machinery to get back to normal as before damage. In addition, the company gave to the farmers only a small amount of crop damages per year. This compensation is insufficient and unsatisfactory for the proprietors of the farmlands and paddy fields.



Figure 1. Runoff Waste Water from Naing Takhon Coal Mines in Gangaw Township

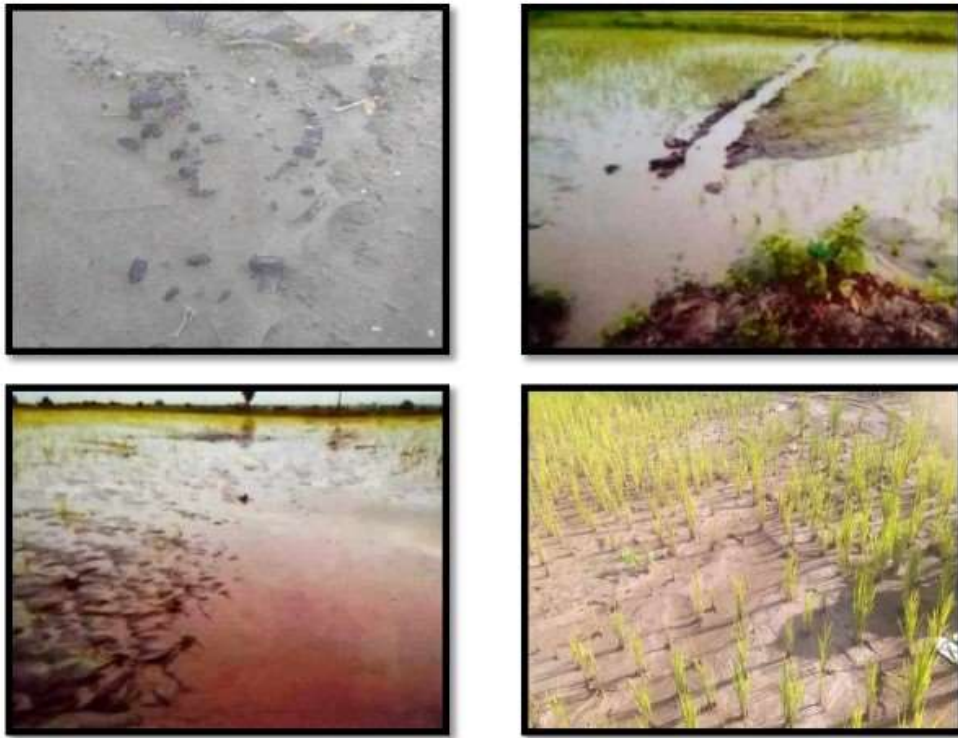


Figure 2. Impact and Damage of Farms and Paddy Fields by Waste Water from Naing Takhon Coal Mines in Gangaw Township



Figure 3. Re-excavation of Waste in the Farms and Paddy Fields

Industry

In Myanmar, numerous industries are the primary contributors to water pollution. Industries emit harmful chemicals and pollutants that contribute to water contamination. Industrial water pollution can exterminate wildlife and adversely affect the entire environment.

In Myanmar the cases relating to the water pollution from industries can be seen as follow: Mandalay Industrial Zone Area causes severe pollution such as tanneries, distilleries, sugar factories and battery factories. Since 2008, if not earlier, untreated wastewater has been released from the Zone into a canal that supplies water for the Nat Yay Kan fishery ponds and feeds into Taungthaman Lake.⁵

The pollution has caused a series of large die-offs in the several fish in Taungthaman Lake. Myanmar's Ministry of Industry made a list of 63 factories that were dumping wastewater into surrounding waterways, in 2013. Several factories have been found but none have agreed to stop dumping pollutants, despite the fact that the Mandalay City Development Committee is legally obligated to ensure that they do so.⁶

"Earth Right International efforts for appropriate remedies for the communities affected by the Mandalay Industrial Zone: these include an injunction to stop the pollution, remediation of the polluted waterways and ponds, and monetary compensation". In 2016, Earth right International organized a forum with communities affected by the Mandalay Industrial Zone and government stakeholders. Though several factories have since been ordered to close because of their emissions, many have continued to pollute with impunity. Taungthaman Lake in Myanmar is being slowly polluted by waste from Mandalay Industrial Zone.⁷

"The reason of Fish Death was as heavy as the rain these days driving sewage flows heavy from Industries into the Taungthaman Lake possible", remarked the cause Taungthaman Lake Fisherman.⁸

"Mandalay Industrial Zone, waste water has damaged ecosystems and livelihoods of communities. Earth Right International provides training and support to local lawyers and community groups on gathering evidence and legal strategies, so that they can seek injunctions before the courts to stop continuing pollution and pursue compensation. People have also pursued strategic litigation, action as legal Counsel for affected communities on complex large-scale pollution cases with the aim of setting precedents that can be used by other affected communities."⁹

"The Mandalay Municipal Government has suspended operations of 17 factories in one the City's largest Industrial Zones, citing diminished fish populations caused by water pollution in Taungthaman Lake."¹⁰

Wastewater from companies can provide health risks associated with microorganisms and harmful chemicals. Environmental authorities ought to oversee the methodical utilization of water.

⁵ [http:// www.mmtimes.com](http://www.mmtimes.com)> National -News/ indawgyi.

⁶ Ibid.

⁷ Ibid.

⁸ [http://www.7 day Daily News.com](http://www.7daydailynews.com).

⁹ [http:// www.mmtimes.com/news/burma](http://www.mmtimes.com/news/burma).

¹⁰ Ibid.



Figure 4. Wastewater discharge directly into water channel without pretreatment

Source: <https://www.nrdc.org>industrial> water pollution and its effects

This case pertains to the treatment of contamination from wastewater generated by dyeing facilities in Wundwin by technological means.

“As colorful as it is, the traditional Myanmar longyi had left rivers in Myanmar's Wundwin town murky from decades of dye and wastewater pollution. Here is a Japanese technology company. A few miles south of Mandalay lies the textiles town of Wundwin.”¹¹

For more than 60 years, the area has been the primary production hub of the longyi, a traditional Myanmar garment that is routinely dyed a variety of colors. “There are more than 500 factories that dye fabric in Wundwin, and for many decades wastewater from the factories has been discharged into the surrounding rivers. The technology used to analyze the scale of the pollutions in Wundwin was provided by Horiba, while the treatment process was provided by industrial services company Hitachi Zosen.”¹²



Figure 5. Polluted water in Wundwin. Image: Horiba

Source: <https://eco-business.com>> Japanese technology is cleaning Myanmar's polluted waterways

¹¹ [http:// www.mmmtimes.com>](http://www.mmmtimes.com>) Japanese technology in Cleaning Myanmar's polluted waterways.

¹² Ibid.

In Wundwin's water pollution problem, Horiba conducted survey of dyeing factories to gauge the scale of discharged water, and the impact on river in the area. After the initial assessment work was completed, a new method for cleaning the wastewater was tested. Some 2,000 liters of water was filtered per day using Hitachi Zosen's technology. This project lasted from September of 2015 to March 2017, Local workers were trained in wastewater treatment, using technology. In the end, the project lasted almost three years, and its effects were felt not only at the local level in Wundwin, but nationally.

Mining

Mining affects fresh water through heavy use of water in processing ore and through water pollution from discharged mine effluent and seepage from tailings and waste rock impoundments.

The Myanmar Mines Law provided that "Mine means place, excavation or worksite where mining is carried on or various operations, building, land, machinery and equipment connected with mining or mineral processing at any place contiguous to such place of mining, excavation or worksite. The said expression also includes quarries where industrial mineral and stone are mined."¹³

The Law Amending the Myanmar Mines Law described that "Mineral means metallic mineral, industrial mineral and stone obtained from the earth by mining or by any other means. The said expression also includes the minerals mined from the sea bed and underwater ground of the ocean, river, stream and lake."¹⁴

In Myanmar, there are case relating to the water pollution from mining as follows:

In Dawei, the Heinda mine is tin-ore mining project, run by Thai firm Myanmar Pongpipat Company limited and Myanmar state-owned firm Mining Enterprise No.2. Since 2008, pollution from the Heinda mine and wastewater from the mine's overflowing tailing ponds have contaminated the Myung Phyo creek, the source of the surrounding communities' water for drinking, domestic use and irrigation. The wastewater also impacts farmland, reportedly damaging the quality of soil. The communities rely on agriculture, cultivating betel nut, rubber, durian, coconut, vegetables, cashews and bananas to sell. Through the project affects over a dozen villages, one of the most impacted is Myung Phyo village, located two kilometers from the mining site. Villages in Myung Phyo have built an earth barrier and a series of trenches to keep the black wastewater out of their homes.¹⁵

"A civil suit by villages in Tanintharyi Division has been accepted by the local Court, with plaintiffs claiming to have suffered years of negative environmental impacts from the activities of a Thai company and a Burmese government firm operating in the area. The tort is seeking compensation for damages to houses and farmlands allegedly caused by wastewater from the Heinda tin mine, and the legal action was accepted on 19 May, 2014 by the Dawei District Court. Mee Gan, one of nine plaintiffs said she was asking for 39.9 million kyats (US\$ 41.000) in compensation for damages to her home and crops, located on two acres of land in the village. Her

¹³ Section 2(a), The Myanmar Mines Law, 1994.

¹⁴ Section 2(b), The Law Amending the Myanmar Mines Law, 2015.

¹⁵ [http:// www.mmtimes.com/new/burma](http://www.mmtimes.com/new/burma).

request lies on the upper end of villager's demands, with other asking for compensation ranging from 10 million to 30 million kyats. She said she had lost a monthly income of about 80, 000 to 100, 000 kyats since more than 200 poles of betel nut plants died out due to mining wastewater that flooded her crops in 2011, Mee Gan also claimed that although the whole village had suffered varying degrees damage.”

Around 2009, Eastern Mining Company signed a contract Mining Enterprise, a Myanmar State-owned firm, to develop a tin mine in Tanintharyi Region. The mining facilities are located near to two tributaries of Pauk Tine Stream. Since 2009, communities along this stream have seen severe impacts to their health and livelihoods due to environmental damages. Tailing ponds with waste from the mine have frequently flooded and continue to contaminate the tributaries of the Pauk Tine Stream.¹⁶



Figure 6. Heinda Tin Mine, Dawei, Myanmar

Source: <https://ejatlas.org>print>heinda> tin mine

Flooding has become more severe and frequent, streambeds lie empty in the dry season, groundwater, wells and streams are no longer usable for irrigation or bathing and livestock are dying off at an increased rate. Since 2014, there have reportedly been no fish or crawfish in the stream. Lead levels in Pauk Tin Stream were to times the level recommended by the World Health Organization's Drinking Water Standards. In 2016, Eastern Mining Company was ordered to stop operations by the Tanintharyi Ministry of Natural Resources and Environmental

¹⁶ [http:// www.irrawaddy. com/news/Burma](http://www.irrawaddy.com/news/Burma).

Conservation. In a judgment, the companies were asked to pay damages of up to K 114, 800, 000 (US\$ 82, 536) for each claimant. Both companies have appealed the judgments against them.¹⁷

In a judgment, the companies were asked to pay damages of up to K 114, 800, 000 (US\$ 82, 536) for each claimant. Both companies have appealed the judgments against them.¹⁸

Sagaing Region's Government says it has scrapped permission for a Chinese company to do studies for a new mine after a series of protests by residents. Myanmar Yang Tse Copper limited, a subsidiary of Beijing-based Wanbao Mining Limited, which is already running a controversial mine in Salingyi Township, had sought permission for preliminary ground inspections for another mine in Salingyi, Yinmabin and Kani townships. The proposed mine would span 40, 000 hectares with Myanmar Yang Tse first requesting permission in 2018.¹⁹

The company had been due to invest between US\$ 6 million and US\$ 10 million in the inspection which is due to take about five years, covering more than 120 villages, 86 schools, 139 monasteries and affecting more than 80, 000 residents. Let is a joint venture between the military-owned Union of Myanmar Economic Holdings Limited and Wanbao Mining launched in 2010. Farmers who lost crops in 2014 and 2015 during land confiscations for the mine project have demanded proper compensation from Wanbao. The company, however, has said that it has offered them money, but they refused to accept it. The Parliamentary inquiry commission on the Letpadaung project called for more transparency in Wanbao's land appropriation process and for policeraid-control training in the wake of a violent raid on protesters at the mine site in 2012.²⁰

The above cases mentioned that in agriculture pollution is the issues relating to Gangaw Township's farmlands. In this case, according to section 12 of the Environmental Conservation Law, 2012 prohibits causing environmental pollution without permission. And there are no specific legal standards for agricultural runoff, sedimentation or pesticide contamination. Company was ordered to re-excavate and compensate. This showed weak of legal enforcement mechanism.

In industry, although the provisions of Environmental Conservation Law, 2012 and Environmental Conservation Rules, 2014, industrial water pollution remains widespread. The Mandalay City Development Committee is legally obliged to oversee wastewater discharge. But it was lack of resources and technical capacity to monitor all factories.

In mining, while Myanmar has several laws governing mining activities, such as the Myanmar Mines Law (1994) and the Law Amending the Myanmar Mines Law (2015). These laws mainly regulate mineral extraction and licensing rather than environmental protection. There is lack of specific legal provisions on mine wastewater management. Existing mining laws do not contain clear standards or requirements for wastewater treatment, storage of tailing or prevention of water contamination.

¹⁷ Ibid.

¹⁸ [http:// www. frontiermyanmar.net/](http://www.frontiermyanmar.net/) the Burma of environmental justice.

¹⁹ [http:// www. frontiermyanmar.net](http://www.frontiermyanmar.net/)> Letpadaung mine.

²⁰ Ibid.

National Action Plans

The Government is implementing plans for water conservation with appropriate management and planning practices for the development of Country. Government has laid down many policies and has been implementing many projects to control water pollution.

The Constitution, 2008 provided that “the Union shall protect and conserve natural environment.”²¹

And then, the Constitution, 2008 provided that “every citizen has the duty to assist the Union in carrying out the following matters:

- (a) preservation and safeguarding of cultural heritage,
- (b) environmental conservation,
- (c) striving for development of human resources,
- (d) protection and preservation of public property”²²

With regard to the safety and health of the public or the environment, and ecosystem, defines that Environmental Emergency means the situation which may affect the safety and health of the public or the environment and ecosystem if nature or man-made disaster or pollution is not taken action immediately.²³

With respect to the protection, avoiding and mitigation environmental impacts, states that “Environmental Management plan means the method and the plan to be adopted to protect, avoid and mitigate environmental impacts due to each project phase like planning implementation, operation, decommissioning and after decommissioning of a project, business, service or activity or any other reasons because of the project. Such plan includes monitoring plan to monitor the change of environmental condition and environmental conservation activities and precautionary measures in response of environmental emergency.”²⁴

The legal definition of Environment Impact Assessment is defined in Environmental Conservation Rules, 2014 that means the process of systematic study which is required as business, service or activity whether there are potentials or impact processes that may cause an impact on physical environment, human and living things, social and socio-economic because of the project.²⁵

The process of Environmental Impact Assessment (EIA) is an important mechanism for the integration of environment and development. The establishment of a transparent and participatory process of environmental impact assessment shall bring about optimal integration of environment and development.²⁶

The Environmental Conservation Law, 2012 enacted some provisions. They are as follows;

- (a) to enable to implement to Myanmar National Environmental Policy;

²¹ Section 45, The Constitution of the Republic of the Union of Myanmar, 2008.

²² Section 390, *ibid*.

²³ Section 2(p), The Environmental Conservation Law, 2012.

²⁴ Section 2(g), The Environmental Conservation Rules, 2014.

²⁵ Section 2 (d), *ibid*.

²⁶ Myanmar Agenda 21, National Commission for Environmental Affairs, 1997, P-184.

(b) to enable to lay down the basic principles and give guidance for systematic integration of the matters of Environmental Conservation in the sustainable development process;

(h) to enable to cooperate with Government Departments, Government Organizations, International Organizations, Non-Government Organizations and individuals in matters of environmental conservation.²⁷

The Environmental Conservation Rules described that “the Ministry of Environmental Conservation and Forestry shall prepare the necessary policies relating to environmental conservation for each relevant sector in coordination with suitable organization or an individual from the Government Department, Government Organization and private sector concerned and submit them to the Union Government. Environmental Conservation policies approved by the Government shall be disclosed to the public with suitable means.”²⁸

The relevant Government Departments and Government Organizations shall, in accord with the guidance of the Union. Government and the Committee, carry out the conservation, management, beneficial use, sustainable use and enhancement or regional cooperation of the environmental natural resources;

(c) fresh water resources including underground water;

(d) mineral resources;

(e) agricultural resources;

(i) natural areas, wildlife, natural plants and biological diversity;

(j) other natural resources stipulated by the Union Government²⁹

The Environmental Conservation Rules provided that “the Department shall implement the plans for environmental conservation and enhancement, protection of pollution in environment control and reduction of pollution in environment in accordance with the guidance of the Ministry.”³⁰

In Myanmar, existing policy and regulations: “the importance of environmental protection in Myanmar is recognized in national and local policy, which is in part due to the country being a signatory to various multilateral environmental treaties and agreements, including the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel) 1989, the 2030 Agenda for Sustainable Development (SDGs) 2015 and the Paris Agreement on Climate Change 2016.”³¹

Myanmar's National Environmental Policy of 1994 instituted environmental regulations on the utilization, conservation and prevention of environmental degradation including water, land, forest, mineral, marine resources and other nature resources. Following the development of this national policy, the country prepared its Agenda 21 commitment (1997) to implement integrated management of nature resources. Myanmar's Environmental Conservation Rules (2014), the Procedure for Environmental Impact Assessment and Environmental Quality

²⁷ Section 3, The Environmental Conservation Law, 2012.

²⁸ Section 3, The Environmental Conservation Rules, 2014.

²⁹ Section 18, The Environmental Conservation Law, 2012.

³⁰ Section 23, The Environmental Conservation Rules, 2014.

³¹ Ministry of Natural Resources and Environmental Conservation, National Waste Management Strategy and Master Plan for Myanmar (2018-2030), P-16.

(Emission) Guidelines (2015) were instituted with a view to ensuring project developers implement appropriate measures for reducing pollution and promoting environmental conservation.³²

The strategic policy issues will require attention in many related sectors in Myanmar. Strategic policy frameworks and action plans under the National Environmental Policy will need to ensure these strategic policy issues are integrated into policy agendas for the following key sectors.

- (a) industry and manufacturing
- (b) urban areas
- (c) electricity and energy
- (d) agriculture
- (e) fisheries
- (f) mining
- (g) forestry³³

The Government of the Republic of the Union of Myanmar is dedicated to executing the National Environmental Policy via a strategic framework and a succession of master plans. The strategic framework implements the concepts of the National Environmental Policy across prioritized subject areas and sectors. It also delineates environmental governance prerequisites for effective execution, encompassing institutional fortification, oversight and enforcement, public engagement, conflict resolution, and funding. The strategic framework offers direction for the development of master plans for States and Regions, as well as for key theme areas and sectors. The master plans will contain specific activities, timeframes, budgets and performance targets for achieving the Strategic Framework objectives and ultimately, the National Environmental Policy vision.”³⁴

The Environmental Conservation Law provided that, “no one shall violate any prohibition contained in the rules, notifications, orders, directives and procedures issued under this law.”³⁵

The Environmental Conservation Law provided that. “no one shall, without permission of the Ministry, import, export, product, store, carry or trade any material which causes impact on the environment prohibited by the Ministry.”³⁶

The Environmental Conservation Law provided that, “whoever, without the prior permission, operates business, word-site or factory, work shop which is require 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.”³⁷

³² Ibid.

³³ The National Environmental Policy, 1994.

³⁴ Ministry of Natural Resources and Environmental Conservation, National Environmental Policy of Myanmar, 2019, P-13.

³⁵ Section 29, The Environmental Conservation Law, 2012.

³⁶ Section 30, Ibid.

³⁷ Section 31, Ibid.

Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to fifty thousand kyats or with both.³⁸

Governments have a crucial role in the conservation of surface water, groundwater, and the mitigation of pollution from agricultural, industrial, and mining waste. The Government should instruct and inform the people to recognize and implement wastewater treatment strategies for water contamination.

Research Methods

This study adopts a qualitative and analytical research approach to examine the legal framework governing control of water pollution in Myanmar, particularly in the sectors of agriculture, industry and mining. The research focuses on analysing existing laws, regulations and enforcement mechanisms. The study relies mainly on secondary sources and limited primary data. Primary data were collected from interviews and communications with the Administrator of Myintha Village Tract, Gangaw Township in Magway Region. Secondary data were obtained from academic literature, government publications, journal articles and newspaper like the Myanmar Times and the Irrawaddy and official report issued by the Ministry of Natural Resources and Environmental Conservation.

Research Questions

1. Why is water pollution increasing around the world?
2. What legal protections exist to prevent water pollution?
3. How should water pollution be reduced?

Research Findings

A primary cause of water contamination in Myanmar is the populace's inadequate comprehension of its detrimental effects. Consequently, national awareness of water contamination and its ramifications could be enhanced. The issue of water contamination stems from the inadequate enforcement of current rules and regulations designed to mitigate it. Myanmar lacks a dedicated law for the control of water pollution pertaining to agriculture, mining, and industry. Myanmar must implement measures to regulate water pollution. Citizens of Myanmar must adhere to the laws and regulations established by the Government for the reduction and control of water pollution. The Environmental Impact Assessment (EIA) must be conducted systematically, adhering to pertinent guidelines and regulations.

³⁸ Section 277, the Law Amending the Penal Code, 2016.

Conclusion

Pollution of water from agriculture, industries and mines wastewater has been taken up in recent years. Thus, the Government of Myanmar enacted the “Environmental Conservation Law” in 2012. In Myanmar, water pollution can be occurred by the agriculture, industry, and mining. In this water pollution, they occur in the respective in various types of water pollution. This water pollution can affect not only health of human beings but also the environment. Therefore, the Government and Respective Authority, and the people need to control the water pollution. Water pollution occurs when unwanted materials enter into water, changes the quality of water and harmful to environment and human health. The impact of agriculture on surface and groundwater is determined as negative. Agricultural pollution is the main important for the economic growth and development of a society and it can also be harmful to the environment. Mine can pollute drinking water and harm wildlife and habitat. Mines are responsible for significant environmental damage throughout the world. Chemicals from agriculture, industry and mining and trash dumping can also make people's water unsafe and cause illness such as skin rashes, cancers and other serious health problems. Reducing to hazardous chemicals from agriculture, industry and mining play an important role in Myanmar. Cooperation of men, social organizations, national government and non-governmental organizations need for control of water pollution through different curative measures. The government should also take reasonable steps for control of water pollution.

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ANALYZING FAIR USE: AN EXCEPTION FOR COPYRIGHT INFRINGEMENT UNDER COPYRIGHT LAW IN MYANMAR

Hsu Kay Thi Zaw¹

Abstract

Copyright law is an intricate area of law which regulates intangible property rights in literary and artistic creations. This intricacy only becomes more apparent when the rights of the public to enjoy freedom of expression and free access collides with the claims of copyright ownership. A copyright holder generally has the authority to prevent others from making reproductions, selling or distributing, performing in public, or broadcasting their copyrighted work. But such right is limited to control the monopoly of the copyright holders on the reproductions of their works. Fair use is the mechanism that has been developed to limit the rights of the copyright holders. In cases where the advantages of public use surpass the private benefits of the copyright holder, fair use allows the public to use copyrighted works without the authorization of the right holder. This paper uses the qualitative approach to understand fair use doctrine and its role in balancing the authors' rights and the public interest within the context of Copyright Law, 2019. It re-examines two historical copyright infringement cases through the fair use perspective to evaluate how similar disputes might be assessed under the current legal framework. The analysis reveals that the Copyright Law, 2019 allows fair uses of the copyrighted materials for personal, educational, informational and archival purposes while safeguarding the interests of the authors and copyright holders. Nevertheless, despite the provisions asserting compliance with fair use, the law needs a clear definition of fair use and the extent to which such use is permissible across various contexts. By integrating international standards such as the four-factor test and the three-step test, the current copyright framework can be strengthened and enhanced the co-existence of author protection and public access.

Keywords: Copyright, Copyright Infringement, Fair use

Methodology

This paper used the qualitative research approach to understand fair use doctrine and its role in balancing the authors' rights and the public interest. It uses both primary and secondary sources including legislation, books, academic papers and journals. Firstly, a literature review is conducted to trace the development of the copyright regime, thereby illuminating the nature of copyright protection and infringement. This paper then focuses on the fair use provisions incorporated under the Copyright Law of 2019 and examines two historical copyright infringement cases and reinterprets them through the fair use perspective under the Copyright Law 2019, to assess how the current legal framework balances protection and public access. Finally, the paper discusses potential enhancements to the fair use provisions to promote public access and mitigate the monopolistic tendencies of copyright holders.

Introduction

The copyright framework requires a careful balance between two conflicting goals. On the one hand, there is a strong principle that promotes the widest possible dissemination of knowledge, emphasizing the importance of making information freely available to the public. Copyright gives an intellectual work some attributes of private property, allowing the creator to control how the work is used and to make money from it if others are willing to pay for its use.

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On the other hand, copyright law imposes restrictions that can limit access to creative and intellectual works, which can hinder this principle. These restrictions can prevent other creators from utilizing existing works, thereby stifling innovation and competition. This tension illustrates the complex nature of copyright law, as it seeks to protect the rights of creators while also considering the public's need for access to knowledge and fostering a competitive economic environment.²

Development of Copyright Law

The beginnings of copyright are intrinsically linked to the advancement of printing technology, which facilitated the rapid and cost-effective reproduction of books.³ The increase in literacy rates generated significant demand for printed works, thereby highlighting the necessity of safeguarding authors and publishers against unauthorized reproductions. This context ultimately led to the establishment of the first copyright laws.⁴ The Statute of Anne, passed by the British Parliament in 1710, marked the first copyright law in the world. It stipulated that after a specified period, the exclusive rights held by the Stationers' Company to produce and distribute copies of literary works would revert to the authors. These authors were then entitled to transfer their rights to other publishers. While failure to register a book precluded the possibility of seeking damages from infringers, it did not nullify the copyright itself.⁵ The Statute was instrumental in fostering competition within the publishing industry by limiting monopolistic practices and acknowledging the author's right to authorize copying.⁶

Following this landmark legislation, the principles of copyright began to spread to other nations. It is widely accepted that copyright is territorial, and to protect works outside their country of origin, it is essential for bilateral agreements to be established with other nations. In the 1900s, such agreements emerged among European countries, though they lacked consistency and comprehensiveness. This gap led to the creation of the first international agreement for author protection, the Berne Convention for the Protection of Literary and Artistic Works, which was adopted on September 9, 1886, in Berne, Switzerland. Member countries formed the Berne Union to ensure that authors' rights were recognized and protected across all participating countries. The administration of the Berne Convention is overseen by the World Intellectual Property Organization (WIPO).⁷ Since its inception in 1886, the Convention has undergone multiple revisions, including updates in Paris, Berlin, and Stockholm throughout the 20th century.⁸

The Berne Convention addresses the protection of literary and artistic works and the rights of their authors, enabling creators to regulate the use of their works, determine the terms of such use, and identify the parties who are permitted to exploit their creations. It encompasses a range of provisions that stipulate the minimum level of protection required, along with specific provisions designed for developing countries that wish to utilize them. Under the Berne

² Leon E. Seltzer, (1977) *Exemptions and Fair Use in Copyright*, 1st ed., 3, United States: Harvard University Press.

³ Orit Fischman Afori, (2012) "The Evolution of Copyright Law and Inductive Speculations as to Its Future" *Journal of Intellectual Property Law*, vol. 19(2), 233.

⁴ International Bureau of WIPO, (2002) "International Protection of Copyright and Related Rights" WIPO, 2.

⁵ The Statute of Anne 1710.

⁶ International Bureau of WIPO, (2002) "International Protection of Copyright and Related Rights" WIPO, 2.

⁷ Ibid.

⁸ WIPO, (2013) *Summaries of Conventions, Treaties and Agreements Administered by WIPO*, 39.

Convention, copyright protection is granted automatically, without the need for formal registration.⁹

Regarding the duration of protection, the general principle is that it extends until the end of the 50th year following the author's death. In the case of anonymous or pseudonymous works, the protection term lasts for 50 years after the work is lawfully made available to the public, unless the pseudonym clearly indicates the author's identity or the author reveals their identity during that time, in which case the general rule applies. For audiovisual works, the minimum protection term is 50 years from the public release of the work or, in the absence of such a release, from its creation. For applied art and photographic works, the minimum protection period is 25 years from the date of creation.¹⁰

In Myanmar, the first Copyright law was enacted in 1914, based on the British Copyright Act 1911. Despite the existence of this law, there were no registration procedures in place, and it did not recognize copyrights obtained in other countries. On 24 May 2019, the Pyidaungsu Hluttaw enacted the Copyright Law (Law No. 15/2019), introducing a new framework for copyright protection. A significant aspect of the Copyright Law which came into force on November 30 2023, is its extension of protection to foreign copyright works. This marks a departure from the previous stance, which only granted protection to creative works published in Myanmar or created by its citizens. Works that are first published in Myanmar; or if it was published in another country, also published in Myanmar within 30 days from the first foreign publication, will be granted with copyright protection, irrespective of the nationality or habitual residence of the author.¹¹

Copyright Protection

Copyright pertains to the protection of literary and artistic creations, including books, music, paintings, sculptures, films, and technology-based works such as computer programs and electronic databases. "Literary and artistic works" encompasses all original works of authorship, regardless of their literary or artistic value. While the ideas expressed do not need to be original, the form of expression must be an original creation by the author. The Berne Convention addresses that protection must cover "every production in the literary, scientific, and artistic domain, regardless of the mode or form of expression."¹² Copyright encompasses two primary categories of rights: economic rights and moral rights. Economic rights enable right holders to receive financial benefits from the use of their works by others. Moral rights empower authors and creators to take actions that preserve their personal connection to their work. While the author or creator typically holds the economic rights, these rights may also be transferred to one or more copyright holders.¹³ Subject to certain allowed reservations, limitations or exceptions, the following are among the rights that must be recognized as exclusive rights of authorization:

- the right to translate,
- the right to make adaptations and arrangements of the work,
- the right to perform in public dramatic, dramatico-musical and musical works,

⁹ WIPO, "Berne Convention for the Protection of Literary and Artistic Works", <https://www.wipo.int/treaties/en/ip/berne>.

¹⁰ *Berne Convention for the Protection of Literary and Artistic Works* 1886 art 7.

¹¹ The Copyright Law 2019 s 12.

¹² *Berne Convention for the Protection of Literary and Artistic Works* 1886 art 2(1).

¹³ WIPO, (2016) *Understanding Copyright and Related Rights*, 9.

- the right to recite literary works in public,
- the right to communicate to the public,
- the performance of such works,
- the right to broadcast,
- the right to make reproductions in any manner or form,
- the right to use the work as a basis for an audiovisual work, and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work.¹⁴

The Berne Convention recognizes the moral rights of the authors, which include the right to claim authorship of a work and the right to prevent any mutilation, deformation, or other modifications that could harm the author's honor or reputation. Additionally, the Convention stipulates certain limitations and exceptions to economic rights, allowing for instances in which protected works may be utilized without the copyright owner's authorization and without compensation. These exceptions are often termed "fair uses" of copyrighted materials.¹⁵

The Copyright Law 2019 also provides exclusive economic rights and moral rights of the author or owner of copyright. Under Section 18, the author or owner of copyright shall have the exclusive economic rights to carry out or to authorize any other person to carry out the following:

- (a) reproduction;
- (b) translation, adaptation, arrangement or other alteration or modification;
- (c) distribution of the origin or a copy of the work to the public through sale or other transfer of ownership;
- (d) rental of the original or a copy of computer programme, an audiovisual work, a cinematographic work, a literary or artistic work embodied in a phonogram, a database or a musical work in the form of notation to the public;
- (e) public performance;
- (f) broadcasting;
- (g) communication to the public by any other means;
- (h) collection of literary or artistic works of his creation.¹⁶

The law allows the author or owner of copyright may transfer the economic rights to any person in accordance with the provisions contained in Chapter XIII of this Law. According to Section 20, the author, even where he is no longer the owner of the rights under section 18 regarding the literary or artistic work, shall have the following exclusive moral rights:

- (a) right to claim authorship and to have his name indicated as the author on the copies of any public use of his literary or artistic work;
- (b) right to use a pseudonym if it was originally described on copies of a literary or artistic work lawfully made available to the public;

¹⁴ WIPO, (2013) *Summaries of Conventions, Treaties and Agreements Administered by WIPO*, 39.

¹⁵ Ibid 40.

¹⁶ The Copyright Law 2019 s 18.

- (c) right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to his literary or artistic work which would be prejudicial to his honor or reputation.¹⁷

If the author is already dead, his inheritor according to the testament or law or a person or legal entity which has been transferred under the law before the death of the author has right to exercise any of exclusive moral rights. However, the author may waive the exercise of their moral rights for specific uses provided that such waiver is made in a signed, written agreement.

Copyright Infringement

Copyright infringement, commonly referred to as piracy, is the act of doing or causing another person to perform any of the restricted or prohibited activities relating a copyrighted work without the owner's license or permission or with a valid justification. It is the violation of copyright and the unauthorized use of an author's work.¹⁸ The actions that the copyright owner can use exclusive control over in relation to his work include copying, distributing copies to the general public, performing, exhibiting, or performing the work in public, and broadcasting the work. This implies that the owner has the authority to prevent other people from engaging in such behavior, either by filing a claim for infringement against any unauthorized performance of those activities, or issuing a license to a third party to do those actions.¹⁹

These restricted actions include any adaptation of the work which is protected as an original copyright work. The restricted activities will only constitute principal infringement if they are performed in regard to the entire or a major portion of the protected work, although they will be prosecuted whether committed directly or indirectly.²⁰ Secondary infringement occurs when people deal in infringing copies. The secondary infringer is one stage away from the act of illegal reproduction or performance. To conduct an act of secondary infringement, an act of primary infringement must first have occurred.

The remedies available to a copyright owner and to an exclusive licensee for copyright infringement are to bring a civil action for damages or an injunction, and delivery up or destruction of the copies, disclosure of the names of suppliers and sometimes customers, legal costs and interest and/or to prompt a criminal prosecution either privately or by the enforcement authorities for one or more of the criminal offences.²¹

Section 82 of the Copyright Law 2019 provides the copyright infringement which includes;

- (a) for commercial purpose, without the consent of the right holder;
 - (i) direct or indirect reproduction or communication to the public or distribution to the public, of the work protected by copyright or objects protected by related rights;
 - (ii) possessing or dealing pirated copyright or related rights goods;
 - (iii) importing pirated copyright or related rights goods into Myanmar;
 - (iv) acting in a way prohibited under sections 43 and 44.

¹⁷ The Copyright Law 2019 s 20.

¹⁸ Adetutu Deborah Aina-Pelemo & Glorious Oleoghene Akpojar, (2024) "Understanding Copyright and Fair Use in the Academic World" *University of Benin Journal of Business Law*, vol. 5(1), 158.

¹⁹ Tina Hart & Linda Fazzani, (1997) *Intellectual Property Law*, 1st ed., Macmillan Education, 143.

²⁰ Ibid.

²¹ Tina Hart & Linda Fazzani, (1997) *Intellectual Property Law*, 1st ed., Macmillan Education, 150.

- (b) possessing any materials or implements which has been used predominantly to produce copyright or related rights infringing goods.²²

Copyright infringement occurs when anyone, other than the copyright owner or someone authorized by him, does an act e.g., reproduction, translation, adaption, public performance, that is the exclusive right of the owner. The plaintiff must show that he owns the copyright, and:

- (a) that the defendant did an act prejudice to the exclusive right to which belongs to the copyright owner, in relation to the work or a “substantial part” of it; and
- (b) that the defendant did not have the plaintiff’s express or implied authority to do the act.

Once the plaintiff proves these elements, he has *prima facie* proved infringement. To avoid liability, the defendant must provide a valid defence: e.g., “fair dealing” in the U.K. and the Commonwealth, “fair use” in the United States, or some other specific exception.²³

Doctrine of Fair Use

For nearly three hundred years, since shortly after the birth of copyright in England in 1710, courts have recognized that, in certain circumstances, giving authors absolute control over all copying from their works would tend in some circumstances to limit, rather than expand, public knowledge. Courts thus developed the common law doctrine, eventually named fair use, which permits unauthorized copying in some circumstances, so as to further “copyright’s very purpose, to promote the Progress of Science and useful Arts”. The definition of fair use refers explicitly to the rational use system of copyright in the United States, which is extended and developed from the basis of the British fair dealing.²⁴

Fair use or doctrine of fair use is one of the exceptions to copyright infringement which allows an individual to use a copyrighted work without requesting permission from the owner or copyright holder. Fair use connotes that a person can utilize another person’s work without authorization and that utilization is considered legal. It allows an individual to engage in activities like research, educational and academic purposes, criticism, news reporting, news review, and public and private study without the fear of infringing on another’s copyright.²⁵

Fair use is one of the fundamental concepts of copyright laws which opines that it is a right of the public to have a free use of portions of a copyrighted material under specified circumstances.²⁶ The aim is to strike a harmonious balance between the rights of copyright owners and societal needs. This ensures that copyright doesn’t hinder innovation, scholarly inquiry, or the broad dissemination of knowledge.²⁷ This doctrine is marked by its flexibility and is applied on a case-by-case basis, taking into account the distinct characteristics of each situation.

²² The Copyright Law 2019 s 82.

²³ David Vaver, (2002) *Principles of Copyright: Cases and Materials*, WIPO, 128.

²⁴ Authors Guild vs. Google, Inc., (2015) 804 F 3d 202 (2nd Cir) 13.

²⁵ Adetutu Deborah Aina-Peleme & Glorious Oleoghene Akpojaro, (2024) “Understanding Copyright and Fair Use in the Academic World” *University of Benin Journal of Business Law*, vol. 5(1), 160.

²⁶ Ratan Singh Solanki, (2019) “Web-based Learning: How fair is Fair use?” *International Journal of Innovative Technology and Exploring Engineering*, vol. 8(10), 1485, 1486.

²⁷ Shuguang Zhang, (2024) “Comparing Fair Dealing with Fair Use: Why Fair Dealing Can Better Balance Copyright Interests?” *Advances in Economics Management and Political Sciences*, vol. 75(1) 248, 249.

The fair use doctrine is a central part of modern copyright law and the academics, critics, journalists, teachers, film makers, fan-fiction writers, and technology companies all rely on the fair use doctrine for a certain amount of freedom in dealing with other people's copyrights. This doctrine recognizes that very few works are created without some recognizable borrowing from earlier works. Fair use allows copyrighted material to be used without permission; in so doing, it sets limits on the expansive rights of copyright owners to control the reproduction and performance of their works. As part of copyright law's overall balance between authorial incentives and public freedom, the fair use doctrine "permits and requires courts to avoid rigid application of the copyright statute, when it would restrain the very creativity that law is designed to foster."²⁸

The fair use defense is a legal principle initially recognized as a doctrine before being formally enacted and codified in Legislation.²⁹ In the U.S. Copyright Act 1976, Congress codified its understanding of the fair use doctrine in a fact-seeking four-factor test. The test is a balancing test, with each of the factors weighed together to determine whether an unauthorized appropriation of a copyrighted work is an infringement of the copyright owner's rights, or a use permitted by law.³⁰ Section 107 provides that the fair use of a copyrighted work...for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use, the factors to be considered shall include:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.³¹

Courts typically focus most of their analysis on the first, fourth, and third factors, respectively. The first of the four fair use factors, "the purpose and character of the use," seems to be the most influential, as it assesses how compelling an unauthorized use may be. It raises questions such as whether the use of the work is transformative in a way that advances the goals of copyright law, whether the sole purpose for the use is commercial exploitation without a public benefit, and whether the use of the work serves non-profit educational purposes.³² The U.S. Supreme Court held that parody can be fair use, even if it's commercial, because it adds new expression and meaning (transformative use).³³ Transformative use is a sort of value-added

²⁸ Matthew Sag, (2011), "The Prehistory of Fair Use" *Brooklyn Law Review*, vol. 76(4) 1, 1.

²⁹ Pierre N. Leval, (1990) "Towards a Fair Use Standard" *Harvard Law Review*, vol. 103(5), 1105-1136.

³⁰ Trevor G. Reed, (2019) "Fair Use as Cultural Appropriation" *California Law Review*, vol. 109, 1373, 1403.

³¹ The U.S. Copyright Act 1976 s 107.

³² Matthew D. Bunker, (2019), "Decoding Academic Fair Use: Transformative Use and the Fair Use Doctrine in Scholarship" *Journal of Copyright in Education and Librarianship*, vol. 3(1) 1, 2.

³³ *Campell vs. Acuff-Rose Music, Inc.* (1994).

borrowing that emphasizes adding new meaning or message to the borrowed work or, in some cases, the use of the work in a different functional context.³⁴

The third factor, “the amount and substantiality of the portion used without permission in relation to the copyrighted work as a whole,” may also play a significant role, particularly when the copied proportion of the work seems excessive in comparison to any publicly beneficial use being claimed, or when the unauthorized use captures the “heart” of the original work.³⁵ The fourth factor, “the effect of the use upon the potential market or value of the copyrighted work,” is also highly influential. It addresses the potential changes in economic value an unauthorized use would impose on the current copyright owner and whether the use will preempt future authorized uses of the work, and compares these to the public benefits of the use of the work.³⁶

In the case of *Harper & Row Publishers, Inc. vs. Nation Enterprises* (1985), former President Gerald Ford sold plaintiff Harper & Row Publishers, Inc. the right to publish his memoirs. Time magazine paid Harper & Row for the exclusive right to serialize excerpts of the unpublished memoirs. Before Time began serializing, the defendant Nation Enterprises obtained an unauthorized copy of the unpublished memoirs and published an article, which constituted verbatim quotes taken from the manuscript. The Court held that although the excerpts constituted a quantitatively insubstantial portion of the memoirs, they represented “the heart of the book” and were qualitatively substantial in view of their expressive value and their key role in the infringing work. Consequently, noting that the effect of the use upon the potential market for the copyrighted work was the single most important element of fair use, the Court found that the defendant’s use directly competed for a share of the market and presented clear-cut evidence of actual damage.³⁷

In *Authors Guild v. Google, Inc.* (2015), Google collaborated with several major research libraries to digitize their collections for the Google Books project. Plaintiffs, the Authors Guild and individual copyright owners, complained that Google scanned more than twenty-million books without permission or payment of license fees. Google made the digital copies available to its library partners. It also maintained copies on Google servers and on backup tapes, created an electronic index, and displayed “snippets” of text in search engine results. Plaintiffs alleged that Google infringed by using copyrighted books without permission. The Court held that Google’s digitization and subsequent use of the copyrighted works was fair use, concluding that Google’s use was transformative.³⁸

The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) also explicitly stipulates the copyright limitations and exceptions. Under Article 10,

(1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

³⁴ Matthew D. Bunker, (2019), “Decoding Academic Fair Use: Transformative Use and the Fair Use Doctrine in Scholarship” *Journal of Copyright in Education and Librarianship*, vol. 3(1) 1, 2.

³⁵ Trevor G. Reed, (2019) “Fair Use as Cultural Appropriation” *California Law Review*, vol. 109, 1373, 1403.

³⁶ *Ibid.*

³⁷ *Harper & Row Publishers, Inc. vs. Nation Enterprises* (1985).

³⁸ *Authors Guild vs. Google, Inc.*, (2015) 804 F 3d 202 (2nd Cir).

(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.”

Article 2bis. (2) provides that: “It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses and other works of the same nature which are delivered in public may be reproduced by the press, broadcast, communicated to the public by wire and made the subject of public communication as envisaged in Article 11 (1) of this Convention, when such use is justified by the informatory purpose.”

As a general provision for exceptions, Article 9(2) recites: “It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.” These general provisions contain three conditions which are jointly known as the ‘three-step test’. As the name suggests, the test consists of three cumulative steps or requirements. Limitations or exceptions to exclusive rights must be confined to:

- (a) certain special cases
- (b) that do not conflict with a normal exploitation of the work and
- (c) that do not unreasonably prejudice the legitimate interests of the author.³⁹

The three-step test has become the international standard for assessing the permissibility of copyright exceptions generally. In 1994, the three-step test was incorporated into the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under Article 13 of TRIPS Agreement also provides for limitations on and exceptions to copyrights which provides that “Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.” The three-step test resembles the U.S. fair use provision in both form and function and it utilizes abstractly worded criteria for assessing the acceptability of certain types of uses of protected works.⁴⁰

Fair Use under Copyright Law 2019

The Copyright Law 2019 also includes several significant changes, one of which permits the reproduction of copyrighted works under specific conditions without the approval of the rights holder under Chapter XII. These statutory “fair use” defences include reporting current events; reproduction of literary and artistic works by libraries for non-commercial purposes such as study, teaching or private research; and the reproduction of the copy of a computer program as a back-up for personal use. According to Section 24, a person may make reproduction of a part of the published literary or artistic work for his personal use without authorization of the right holder and such production shall comply with fair use, shall not conflict with a normal

³⁹ Daniel J. Gervais (2015) *International Intellectual Property*, Edward Elgar Publishing Limited, 167.

⁴⁰ Pamela Samuelson & Kathryn Hashimoto, (2018) “Is the U.S. Fair Use Doctrine Compatible with Berne and TRIPS Obligations?”, *Universalism or Pluralism in International Copyright Law*, 8.

exploitation of the work or shall not unreasonably prejudice the legitimate interests of any right holder.⁴¹

Under Section 25, notwithstanding the provisions of subsection (a) of section 18, the following temporary reproduction of a literary or artistic work shall be permitted:

- (a) reproduction in the process of a digital transmission of the work or in an act of making a digitally stored work perceptible;
- (b) reproduction made by a person entitled to make that reproduction of the work under subsection (a).

Reproduction in the form of quotation is permitted under Section 26.

- (a) Notwithstanding the provisions of subsection (a) of section 18, the reproduction, in the form of quotation, of a part of a published work which has already been lawfully made available to the public shall be permitted without authorization of the right holder.
- (b) The reproduction under subsection (a) shall comply with fair practice and shall not exceed the extent justified by its purpose.
- (c) The quotation shall be accompanied by an indication of source and the name of the author, if his name appears in the work from which the quotation is taken.⁴²

According to Section 27, the following reproductions shall be permitted without authorization of the right holder. Provided that such reproduction shall comply with fair practice and does not exceed the extent justified by its purpose. The name of the author and the sources of reproduced literary or artistic work shall be indicated as far as practicable on all such copies:

- (a) reproduction of a part of a published work or a part of an article included in newspapers, magazines or journals for teaching purposes;
- (b) incorporating the copies made under subsection (a) into printed and electronic course packs to be used in the course of instruction by the educational institutions;
- (c) incorporating portions of works in printed or electronic form in assignments and portfolios, theses and dissertations for personal use and for library deposit by the persons receiving those instructions.⁴³

Moreover, any library or archive whose activities do not serve direct or indirect commercial gain may, without the authorization of the right holder, make a single copy of the work by the reproduction. This allows reproduction of a part or extract of the published article or other literary or artistic work on the request of a natural person and reproduction in order to preserve or replace a copy which has been lost, destroyed or rendered unusable to rent in the permanent collection of another similar library or archive.

Copies can be made for the purpose of duplication, preservation and libraries may supply each other, whether by post, fax or secure electronic transmission, with a copy of a work existing in their collections. But it is important that electronic files shall be deleted immediately after

⁴¹ The Copyright Law 2019 s 24.

⁴² The Copyright Law 2019 s 26.

⁴³ The Copyright Law 2019 s 27.

printing a paper copy from an electronic copy of a work. A paper copy may be supplied by the receiving library to a user of such library. This reproduction and supply process shall be non-recurring. A library or archive may, for the purpose of teaching or research, translate literary or artistic works lawfully acquired or accessed when those works are not available in a language required by such library or archive's users. A natural person or an organization may translate literary or artistic works from or into minority languages provided that such translation is non-commercial and for public information purposes.⁴⁴

Moreover, the law allows for the reproduction made for the purpose of reporting current events, broadcasting or communication to the public of current political, economic or religious articles included in a published newspaper without authorization of the right holder, subject to the obligation to indicate the source and the name of the author if his name appears on it.⁴⁵ The computer programmes may also be reproduced in a single copy or the adaption of the copy by the lawful owner of that copy shall be permitted without authorization of the right holder if the reproduction or the adaption is for personal use and for archival purposes.⁴⁶ Furthermore, the importation of a copy of a literary or artistic work by a natural person for non-commercial purposes shall be permitted without the authorization of the right holder.⁴⁷

Despite the existence of copyright law, there have been relatively few cases prosecuted solely under the previous copyright act. The analysis of the two case studies, *Maung Nyi Pu vs. East End Films* (1939) and *U Hla Win and two others vs. Daw Kyi Kyi @ Daw Yin Wai Lwin* (1999), reveals that both cases primarily involved direct copyright infringement under the Copyright Act of 1911. Although these cases were decided before the introduction of the Copyright Law 2019, analyzing them through the lens of the fair use doctrine helps illustrate how similar cases might be interpreted under the current legal framework. Such analysis is essential to illustrate the practical implications of introducing fair use into Myanmar's copyright regime.

The very first reported case is *Maung Nyi Pu vs. East End Films*, 1939.⁴⁸ The plaintiff, U Nyi Pu, who is the sole proprietor of a film-producing business called the "A1 Film Company" brought a suit against the "East End Films" for the violation of the copyright of A1 Film Company by using a photograph of Ma Than Tin in an advertisement or announcement of the forthcoming productions of the defendants in the *Burmese Cinema Journal*. The plaintiffs claimed that the reproduction of the photograph of Ma Than Tin was the infringement of the plaintiffs' copyright and also claimed an injunction against the defendants and Rs.100 by way of nominal damages. The court decided that there was an authorization by the defendant in the infringement of plaintiff's copyright and allowed the relief claimed by the plaintiff as to the infringement.

In this case, the defendants used a photograph owned by the plaintiff's film company for advertising purposes without authorization. When analyzed using the fair use factors, the purpose and character of the use were commercial rather than educational or transformative, which would weigh heavily against fair use. Although only one photograph was used, it represented the central promotional image of the plaintiff's work and therefore captured the "heart" of the original

⁴⁴ The Copyright Law 2019 s 28.

⁴⁵ The Copyright Law 2019 s 29.

⁴⁶ The Copyright Law 2019 s 30.

⁴⁷ The Copyright Law 2019 s 31.

⁴⁸ *Maung Nyi Pu vs. East End Films*, (1939) AIR (Rangoon) 266.

material. The commercial nature of the use and the potential harm to the plaintiff's economic interest in promoting his productions would likely prevent this case from qualifying as fair use under Section 24 of the 2019 Law, which requires that reproduction shall not conflict with normal exploitation of the work or unreasonably prejudice the legitimate interests of the right holder. The second reported case is the case of U Hla Win and two others vs. Daw Kyi Kyi @ Daw Yin Wai Lwin, 1999,⁴⁹ where Daw Kyi Kyi sued the producers of Phowa Video Production for the modification and reproduction as a video of the book written by her called "Hmine Wae Chit Tae Khet Thissa". Daw Kyi Kyi has written the book "Hmine Wae Chit Tae Khet Thissa" which is published in 1981 and from that time she had the copyright to the book according to Section 1(1) of the Copyright Act 1911.⁵⁰ Then she sold the manuscript to Daw Khin Than for video production with Myanmar Kyat 1,000. Daw Khin Than later sold the manuscript to Phowa Video Production and Phowa Video Production produced the video across the country under a slightly changed name of "Hmine Wae Chit Thaw Khet Thissa" but it did not get permission from Daw Kyi Kyi, the copyright owner. Therefore, the court decided that the owner and producers of Phowa Video Production has infringed the copyright of the author by making modifications to the work of the author including the contents and title of the manuscript, reproducing as a video, and broadcasting it nationwide. It also decided to compensate Myanmar Kyats 50,000 to the author.

Similarly, in this case, the defendants modified and reproduced the plaintiff's literary work as a video production without permission. Although the adaptation might appear transformative, the alteration primarily served a commercial purpose and did not introduce new meaning, commentary, or expression that would benefit the public. Under the fair use analysis, the purpose and character of the use were commercial, the amount and substantiality of the copied portion encompassed the essence of the original work, and the effect on the market was significant since the video adaptation competed directly with the author's original book. Therefore, this case would also fail to qualify as fair use under the Copyright Law 2019.

Discussion

It can be seen that while fair use operates as a legal safeguard to promote education, research, and access to information, its boundaries are defined by the balance between public benefit and private rights. The Copyright Law 2019, particularly in Sections 24, 26, and 27, embodies this balance by permitting reproduction for personal, educational, and informational purposes, provided that such acts comply with fair use and do not conflict with normal exploitation of the work. However, these provisions refer to the concept but do not specify the factors for determining when a particular use is fair.

To achieve greater consistency and predictability, it is essential for Myanmar's copyright framework to include a clearer definition of fair use and practical guidelines that illustrate permissible uses. Drawing on international standards, such as the U.S. four-factor test and the Berne Convention's three-step test, could provide useful guidance for future judicial reasoning. It should explicitly define that uses for education, research, criticism and reporting and transformative purposes are presumptively fair, while commercial uses are not, unless they add substantial new value. The fair use analysis in Myanmar should consider both quantitative and

⁴⁹ U Hla Win and two others vs. Daw Kyi Kyi @ Daw Yin Wai Lwin, (1999) MLR 208.

⁵⁰ The Copyright Act 1911 s 1(1).

qualitative aspects of copying. Even where the proportion copied is minimal, if the material constitutes the core or commercially valuable part of the work, the use should not qualify as fair. Furthermore, the law or guidelines could specify that if the unauthorized use substitutes for or competes directly with the original, it is not fair. However, if it serves a new purpose without harming the market, it may qualify as fair use. Therefore, developing interpretive guidance or judicial precedents will be crucial to ensure consistent and equitable application of the fair use doctrine under the Copyright Law, 2019.

When compared with international jurisprudence, the outcomes of Myanmar's historical copyright cases reflect a stricter interpretation of infringement, with limited flexibility for transformative or socially beneficial uses. For instance, in *Harper & Row* case, the Court held that even a small excerpt from President Gerald Ford's unpublished memoir constituted infringement because it captured the "heart" of the work, thereby undermining its market value. Conversely, in *Authors Guild* case, the Court recognized Google's large-scale digitization of books as fair use, emphasizing the transformative purpose of creating a searchable database that benefited the public without substituting for the originals. These contrasting outcomes illustrate how U.S. courts apply a flexible, purpose-based analysis under the four-factor test. In Myanmar, however, the absence of judicial precedents on fair use and the need to develop statutory definitions in the Copyright Law 2019 could lead to rigid interpretations that prioritize protection over transformation. Therefore, developing judicial precedents or guidelines aligned with international standards would not only ensure that the fair use doctrine evolves but also balance the rights of authors with the broader social function of copyright.

Conclusion

Fair use is considered as a fundamental concept of copyright law which asserts that the public is entitled to access and use limited portions of copyrighted materials under certain defined circumstances provided that such usage is deemed proportionate to its purpose. As a legal defence to copyright infringement, fair use permits a limited degree of borrowing from copyrighted materials even in the absence of consent or payment to the copyright holder. However, the Copyright Law, 2019 does not contain separate provisions on fair use but the limitations and exceptions provisions under Chapter XII provide different circumstances in which a part of the copyrighted works is allowed to use without authorization from the copyright holder. Fair use under Myanmar's Copyright Law 2019 remains conceptually evolving and largely untested in judicial practice. This paper views that depending on the nature of the intended use, the allowable scope of fair use may vary significantly. The purpose behind the use of the copyrighted work plays a critical role in determining the extent to which fair use can be applied. Therefore, the law needs to develop clear definitions and guidelines based on the four-factor test of the US Copyright Act and the three-step test under the Berne Convention and TRIPS Agreement. Clearer judicial interpretation will not only enhance predictability but also strengthen the balance between protecting authors' rights and ensuring public access to knowledge.

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LEGAL IMPLICATIONS OF RESERVATION TO INTERNATIONAL TREATIES

Moh Moh Win¹

Abstract

The capacity of States to conclude treaties is the most important ground of their personalities. International Law recognizes that States may be able to become parties to treaties without accepting all of the provisions. Even though States excluded the legal effect of some provisions in the treaty, these States may become parties to the treaty with reservation clauses. States can adopt and apply the reservation, due to the increase in organizing countries and participation in treaties. Most international jurists said that reservations to international treaties are becoming more and more important at the present time. Reservations played an important role in the conclusion of treaties. In the law of treaties, the reservation process is a complex and difficult problem in the practice of States relating to concluding treaties. This research paper aims to understand the substances and the impact of reservations. This paper is a kind of doctrinal legal research, and it analyzes the statutory provisions, legal principles, and cases relating to reservation by using the qualitative method. States need to find out whether a treaty is serving the national interests of the State, to be aware of the treaty for verification, and to predict what may happen in the future as a result of the treaty. Moreover, States require knowing not only the objectives and principles but also the essence of each clause or provision before entering into a treaty. It is considered that these clauses or articles are consistent with the position of the State, not only the current situation, but also the long-term situation of the State. In order to achieve Goal 16 of the Sustainable Development Goals, this research expects to partly support strengthening the capacity of institutions and cooperating in international relations by concluding more treaties.

Keywords: *treaties, reservations, substances, national interest, international relations*

Introduction

The concept is deeply rooted in the basis of International Law, namely, the consent of States. A treaty is an international agreement concluded in written form between two or more States with their consent and is subject to International Law. Treaties define the international legal rights and obligations. And also, treaties have been used to end wars, settle disputes, and even establish new countries. Besides, the most important element of treaties is to ensure stability, reliability, and order in international relations. Treaties are the primary source of International Law. According to the doctrine of '*pacta sunt servanda*', the parties to a treaty are bound to observe its terms in good faith. Although, reservation is the process that intends to exclude the legal effect of some provisions in the treaty because these provisions are not implemented and are not suitable for the State's situation. The importance of the reservation is in expanding the scope of the treaty to include more from different ideological countries. When States are unable or unwilling to accept any responsibilities specified in a treaty, reservations are meant to provide flexibility within the system of treaty obligations. The principles of reservations develop to cooperate in international relations, to respond to the reality of international development, and to correspond with the political and legal requirements. In 2015, the United Nations established the Sustainable Development Goals. Among these goals, the official wording of Goal 16 is: 'for sustainable development, encourage inclusive and peaceful societies, ensure that everyone has access to justice, and establish inclusive, accountable, and efficient institutions at all levels.' Then, international conventions are the most important instruments for the peaceful

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coexistence of the States and create the prosperous lives of all mankind. Therefore, this research aims to participate more in international treaties, to develop the State level in the international community, and to ensure the prosperity and sustainability of the situation of State.

Material and Methods

This paper reviews and analyzes the legal concepts, procedures, and consequences relating to reservations in the conclusion of treaties, based on the relevant provisions of International Conventions and the views of some eminent jurists. For the research of this topic, this paper aims to analyze on the basis of qualitative methods. This paper has also focused on doctrinal legal research. It cites the appropriate solutions to the problems raised by the subject of reservations to treaties.

Findings

International treaties are the most important instruments for States to coexist peacefully and create prosperous lives for all mankind. States have the right to make a reservation on specific clauses or provisions of any treaty, but this reservation clause does not affect the essential elements and the general concept of the treaty. In the law of treaties, reservation is a good way for States to quickly ratify the treaties without delay. Before making a reservation to the treaties, States need to know the context of clauses or provisions of a treaty, to understand the substance of a treaty, and to consider their national interest. Besides, States can partially or completely withdraw their reservation clauses at any time if they can implement or observe the obligations of a treaty. So, the reservation process plays an essential part of the law of treaties.

Discussion

General Overview of the Concept of Reservation

The 1969 Vienna Convention on the Law of Treaties (VCLT) is a treaty concerning the treaties between States in the International Field. As a result of both codification and progressive development of international law, VCLT plays an important role. On 23 May 1969, it was adopted and opened to signature, and it entered into force on 27 January 1980. It has been ratified by 116 sovereign States as of January 2018. Myanmar ratified the VCLT on 16 September 1998. Article 2(1) (d) and Articles 19-23 of the VCLT are the relevant provisions of reservations to treaties.

Under Article 2(1)(d), 'a reservation is a unilateral declaration, regardless of how it is worded or referred to, made by a State at the signing, ratification, acceptance, approval, or acceding to a treaty that aims to exclude or modify the legal significance of specific treaty provisions in their application to that State.'²

The three elements are essential in the above definition. They are form, time, and distinctive character. In regard to the form, a reservation is a 'unilateral statement'. It is external to the treaty provisions and is made by a State on its own. The second element is the temporal requirement of a reservation. Although a unilateral statement could be made at any time, it will only have the character of a reservation when it is made by the State at the time of expressing its consent to be bound by the treaty, i.e., when "signing, ratifying, accepting, approving or acceding to a treaty". Finally, the essence of a reservation lies not in its wording or nomenclature, but in

² Vienna Convention on the Law of Treaties 1969, art 2(1)(d).

the effect it intends to produce. The phrase "however phrased or named" indicates that the form or name of the statement is irrelevant and that its content and substance are decisive.³ The key element of a reservation is 'States purports to exclude or modify the legal effect of certain provisions of the treaty in their application'.⁴

In the International Law Commission's practice guide on reservations to treaties, a 'reservation is any unilateral declaration created by a State or international organization with the intention of reducing the obligations imposed by the treaty. The parties' intention to implement the obligations derived from the treaty in a different way, which the author of the statement deems equivalent to those specified by the treaty, will also be taken into consideration as a reservation made at the time of ratification, acceptance, approval, or accession'.⁵

Besides, in this guide, a State may make a reservation in order to change the legal effect of the treaty while maintaining the integrity of the internal law, but it does not affect the fundamental elements and the general concept of the treaty.⁶

The two or more States can agree to make the reservation, although a reservation is 'unilateral' in the sense that it has not been agreed by the negotiating States. A reservation may be distinguished from 'derogations'. Derogations are statements authorized by a treaty by which a party is able to exclude certain provisions in their application to it during a particular period, such as a public emergency.⁷

Reservations cannot be made in respect of custom, although there exists a similar mechanism for the exclusion of a customary rule's opposability by way of raising a persistent objection in the process of rule formation. There are divergent views on this question. In the North Sea Continental Shelf cases, the International Court of Justice (ICJ) seems to reject the possibility of making reservations to a customary rule of international law.⁸

In the General Comment No. 24(52) of the Human Rights Committee of the CCPR, described that 'provisions of the Covenant that present customary international law (and a fortiori when they have the character of peremptory norms) may not be subject to reservations.'⁹ This proposition is doubtful with respect to a rule of customary law (except *jus cogens*) which, by its very nature as *jus dispositivum*, is subject to modification by treaty law.¹⁰

Furthermore, in the context of the treaty, customary international rules are treaty provisions so long as they are mentioned in a treaty. In the field of treaty relations, they are operating as treaty rights and obligations and are subject to the rules relating to treaty interpretation and application. The legal effect and applicability of the treaty provision as a whole would be impacted by a reservation made regarding it. Where the rule in its customary form has been existed independently of the treaty provision, it would not affect the operation of the

³ Su Wei, (2023), "Reservation to Treaties and Some Practical Issues", *Asian Yearbook of International Law*, vol 7, Ko Swan Sik et al., eds. Kluwer Law International, p. 109.

⁴ Ibid, p. 110.

⁵ ILC (2011), "Guide to Practice on Reservations to Treaties", vol. II, Part Two, art 1.1.

⁶ Ibid, art 3.1.5.5.

⁷ Aust, Anthony (2000), *Modern Treaty Law and Practice*, Cambridge University Press, p.105.

⁸ Su Wei, (2023), "Reservation to Treaties and Some Practical Issues", *Asian Yearbook of International Law*, vol 7, Ko Swan Sik et al., eds. Kluwer Law International, p. 132.

⁹ Human Rights Committee of ICCPR, General Comment No.24 (52), 2 IHRR (1995) No. 1: 10- 15 at 11, Comment by M. NOWAK, 16 HRU (1995) 381.

¹⁰ Ibid.

identical rule as a customary norm. When recognizing the emergence of a customary rule, it is important to consider any relevant factors, such as a reservation regarding a treaty clause that may have contributed to the formation of the customary rule.¹¹

Reservation in international law is a caveat to a State for accepting and concluding a treaty. Moreover, the reservation process is more useful for the extensive participation of States in multilateral treaties. Through more concluding treaties, International Law is more strengthened and binding force over States. So, reservation is one of the most important processes in concluding treaties.

Permissibility and Impermissibility of Reservations

According to Article 19 of the VCLT, ‘a State may make a reservation when signing, ratifying, accepting, approving, or acceding to a treaty, unless:

- (a) the treaty prohibits the reservation;
- (b) the treaty stipulates that only specified reservations, excluding the reservation in question, may be made; or
- (c) in cases not failing under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.’¹²

In some cases, treaties specifically prohibit reservation. For example, Article 120 of the Rome Statute of the International Criminal Court, 1998, provides: ‘reservation may not be made to this Statute.’ Similarly, reservations are prohibited in many environmental treaties. Article 309 of the United Nations Convention on the Law of the Sea 1982 prohibits reservations to this Convention. Article 7 of the European Convention on the Place of Payment of Money Liabilities 1972 also prohibits any reservation.

The problem with inadmissible reservations happens more often in human rights treaties, although many reservations have been made by States to these treaties. Where the treaty prohibits reservation, it is difficult to distinguish whether the declaration attached to the instrument of ratification is a reservation or a mere interpretation. A reservation allows a State to participate in a multilateral treaty in which the State would otherwise be unwilling or unable to implement some provisions.¹³

In the International Law Commission’s practice guide on reservations to treaties, ‘a unilateral declaration made by a State or international organization party to a treaty with the intention of defining or clarifying the meaning or purpose of the treaty or its specific provisions is known as an interpretative declaration.’¹⁴

Unlike reservations, interpretative declarations do not purport to exclude or modify the legal effect of a treaty. An interpretative declaration aims to clarify the meaning of certain provisions of the treaty. Some treaties specifically provide for interpretative declarations.¹⁵ For example, a State may make declarations with a view to harmonizing its laws and regulations with

¹¹ Su Wei, (2023), “Reservation to Treaties and Some Practical Issues”, *Asian Yearbook of International Law*, vol 7, Ko Swan Sik et al., eds. Kluwer Law International, p. 133.

¹² Vienna Convention on the Law of Treaties 1969, art 19.

¹³ UN, Treaty Handbook (2013), “Prepared by the Treaty Section of the Office of Legal Affairs”, p.70.

¹⁴ ILC (2011), “Guide to Practice on Reservations to Treaties”, Vol. II, Part Two, art 1.2.

¹⁵ UN, Treaty Handbook (2013), “Prepared by the Treaty Section of the Office of Legal Affairs”, p.3.

the provisions of that convention, when signing, ratifying or acceding to the United Nations Convention on the Law of the Sea, 1982, it provided that such declarations or statements do not purport to exclude or modify the legal effect of the provisions of the convention in their application to that State.¹⁶

In the *Belilos* case 1988, it explains how difficult and subjective it is to distinguish between a reservation and an interpretative declaration. When ratifying the European Convention on Human Rights (ECHR), Switzerland had made two 'reservations' and two 'interpretative declarations'.¹⁷ The applicant contended that the declaration could not be equated with a reservation and the European Commission also concluded that the declaration did not have the effect of a reservation in view of the wording and preparatory work of the declaration and of the fact that Switzerland had made both reservations and declarations at the same time in which case the latter could only exceptionally be equated with the former.¹⁸

In cases where the reservations have been prohibited in the treaty, States can choose from the other options that aim to avoid the full effect of the treaty. The objective of an interpretative declaration is often to establish an interpretation of the treaty that is consistent with the national law of the State concerned. A reservation seems to exclude or modify the legal effect of a treaty, and an interpretative declaration is to clarify the meaning of certain provisions or the entire treaty. Therefore, the distinction between a reservation and an interpretative declaration has been difficult to decide in State practice.

Some treaties described the specified reservations under Article 19(b). For example, the International Convention for the Suppression of the Financing of Terrorism 1999 stated in Article 24, and the Convention Relating to the Status of Refugees 1951 also described in Article 42.

The phrase 'object and purpose' of a treaty has become noted in the law of treaties, since the advisory opinion in the *Reservation Case*. It has been played as the primary factor for the validity of a reservation. It appears to be an objective yardstick, as every treaty would have its object and purpose. But it is seldom that a treaty has clear provisions on its object and purpose. In actuality, the concept is so abstract that it can hardly be considered objective. The identification of the object and purpose is the outcome of subjective activities by States parties, even though its sources may be objective. These activities include the parties' appreciation and evaluation of the facts, including the agreed-upon treaty text, the background of treaty negotiation, and the preparatory work that has led to the conclusion of the treaty.¹⁹

For example, due to Burundi's reservation to the 1973 Convention on Crimes against Internationally Protected Persons being incompatible with the OP, Italy, Israel, and the United Kingdom objected, preventing the establishment of treaty relations.²⁰ In another case, however, eleven European States objected to the United States' second reservation to the Covenant on Civil and Political Rights (CCPR), clearly stating that the reservation is incompatible with the object and purpose of the Covenant or with the specific article in question. However, their

¹⁶ United Nations Convention on the Law of the Sea 1982, art 310.

¹⁷ *Belilos v. Switzerland* (1988), 88 ILR 657-658.

¹⁸ *Ibid*, 663-665.

¹⁹ Su Wei, (2023), "Reservation to Treaties and Some Practical Issues", *Asian Yearbook of International Law*, vol 7, Ko Swan Sik et al., eds. Kluwer Law International, p. 109.

²⁰ Multilateral Treaties deposited with the Secretary-General, status as at 31 December 1994, at 696-697.

objections did not constitute an obstacle to the entry into force of the Covenant between the United States and these European States.²¹

In any event, reservations that are compatible with the object and purpose of the treaty are void under Article 19 of the VCLT. Therefore, States can make a reservation to a treaty if not only the treaty allows a reservation but also the reservation clause complies with the legal provisions.

Acceptance and Objection of Reservations

Article 20 of the Vienna Convention 1969 is the provision regarding acceptance of and objection to reservations. The Convention system of acceptance and objection can, therefore, be summed up like this. When a State makes a reservation to a treaty, the other States can make the following four points:

- (a) Express acceptance: they may expressly declare that they accept the reservation;
- (b) Implied acceptance: they do not make any objection, and after the period of 12 months, they are presumed to have accepted the reservation;
- (c) Mere objection: they just make an objection without any further statement; or
- (d) Objection plus a further statement that the treaty shall not enter into force between the reserving and the objecting State.²²

Moreover, the procedures for making the reservation under Article 23 of the Vienna Convention 1969 are;

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.
2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case, the reservation shall be deemed as having been made on the date of its confirmation.
3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.
4. Any objection to a reservation or the withdrawal of a reservation must be made in writing.²³

In the case of the depositary, the Secretary-General circulates such modifications and grants the States concerned a specific period within which to object to them. In the absence of any objection, the Secretary-General accepts the modification in deposit. In the past, the Secretary-General's practice as depositary had been to stipulate 90 days as the period within which the States concerned could object to such a modification. However, since the modification of a reservation could involve complex issues of law and policy, the Secretary-General decided that this period was inadequate. As a result, on 4 April 2000, the Secretary-General advised that

²¹ Ibid, at 131-134.

²² Abdul Ghafur Hamid @ Khin Maung Sein (2011), *Public International Law: A Practical Approach*, 3rd edition, Sweet & Maxwell Asia, p.193.

²³ Vienna Convention on the Law of Treaties 1969, art 23.

the time provided for objections to modifications would be 12 months from the date of the depositary notification containing the modification.²⁴

If a State makes a reservation in any provision of a treaty, it needs to do a written expression of its intentions. The secretariat will publish the relevant documents to other member States. After twelve months later, that reservation will bind on the Reservation State if other members do not take any objection to its reservation. It means that a reservation will be effective on members when the other parties accept it.²⁵

Because a State is attempting to modify the terms of the treaty by expressing to be bound by it subject to a reservation, reservations raise an important question of principle. Therefore, the traditional view was that for reservations to be effective, all the contracting States had to accept them.²⁶

In the advisory opinion on the Reservation to the Genocide Convention, the court established the “compatibility” test after refusing to follow the traditional view. The court ruled that, unless the treaty expressly states otherwise or it is incompatible with its object and purpose, a reservation may be made.²⁷

The Court considered that a State could not be bound by a reservation to which it had not given its consent, with regard to the implications of the reservation in relations between States. Therefore, every State was free to decide for itself whether or not the State that created the reservation was a party to the Convention.²⁸ Even though some States object to its reservation, the effectiveness of the treaty cannot be nullified between reserving and objecting States except for the reservation clauses. Without the consent of objecting States, the treaty is not able to bind them.²⁹

The objecting States have a right to exclude from the effectiveness of reservation clauses between them.³⁰

In the case of the Anglo-French Continental Shelf Case 1979, France made declarations with regard to Article 6 of the 1958 Geneva Convention of the Continental Shelf. The United Kingdom objected to French declarations with respect to Article 6. In that case, the court concluded that all French declarations are indeed constituted as reservations. The court noted that in order to constitute a reservation, it was not required to show that a statement in question modified the actual terms of the treaty; it is sufficient to show that the French third reservation to article 6 purposes to modify the legal effect of certain provisions in their application to the Reservation State. The court concluded that the words used in the French declaration did have such an effect.³¹

²⁴ UN, Treaty Handbook (2013), “Prepared by the Treaty Section of the Office of Legal Affairs”, pp. 15-16.

²⁵ Henriken, Anders (2019), *International Law*, 2nd edition, Oxford University Press, p.52.

²⁶ Abdul Ghafur Hamid @ Khin Maung Sein (2011), *Public International Law: A Practical Approach*, 3rd edition, Sweet & Maxwell Asia, p.191.

²⁷ Ibid.

²⁸ Reports of Judgments, Advisory Opinion and Orders, Reservation to the Convention on the Prevention and Punishment of the Crime of Genocide, (ICJ May 28, 1951).

²⁹ Ibid.

³⁰ Henriken, Anders (2019), *International Law*, 2nd ed, Oxford University Press, p.52.

³¹ Boyle, A. E. (1980), *The Law of Treaties and the Anglo-French Continental Shelf Arbitration*, 29 ICLQ, p 498.

The fact that Article 6 is not applicable as between the Parties to extend that it is excluded by the French reservations does not mean that there are no legal rules to govern the delimitation of the boundary in areas where the reservation operates.³²

However, many States have not expressed their objection. When States make objections, the treaty is not in force between them and the reserving State, but the treaty is in force on the reserving State, except for the reservation clause. Then, these objections cannot influence the reserving State to eventually accept all the provisions in the treaty.

Withdrawal of Reservations and Objections

It has the right to withdraw reservations and objections at any time, unless the treaty in question specifies otherwise. It is not necessary to have the consent of the objecting State or the parties who have accepted the reservation in order to withdraw. Since the purpose of a reservation is to modify or exclude a clause from a treaty for the benefit of the reserving State and to the detriment of the treaty's integrity, the withdrawal of the reservation which will restore the integrity of the treaty would be very much in line with the interests of the original accepting party, and thus its consent should not be required.³³

Regarding to the withdrawal of reservations and of objections to reservations, the provision is described in Article 22 of VCLT. They are;

1. A reservation may be withdrawn at any time, unless the treaty specifies otherwise, and the approval of a State that has accepted the reservation is not necessary for its withdrawal.
2. An objection to a reservation may be withdrawn at any time, unless the treaty specifies otherwise.
3. Unless otherwise specified in the treaty, or it is otherwise agreed:
 - (a) the withdrawal of a reservation only takes effect with regard to another contracting State after that State has received notice of it;
 - (b) the withdrawal of an objection to a reservation only takes effect after the State that created the reservation has received notice of it.³⁴

Withdrawal of reservations and objections to reservations is specifically provided in Article 22 of the Vienna Convention. According to Article 23(4), withdrawal must be in writing in order to prevent the conduct of abandoning a reservation or objection. The requirement of writing certainly makes it easier to specify the point in time at which the withdrawal takes effect, and that is the time of notification to the objecting or the reserving party, as the case may be. No consent is needed on either side. Naturally, the original text of the treaty is restored when a reservation is withdrawn.³⁵

³² Anglo-French Continental Shelf Case (1979) I 8. ILM 397.

³³ Su Wei, (2023), "Reservation to Treaties and Some Practical Issues", *Asian Yearbook of International Law*, vol 7, Ko Swan Sik et al., eds. Kluwer Law International, p. 109.

³⁴ Vienna Convention on the Law of Treaties 1969, art 22.

³⁵ Bowett, D.W. (1976-1977), *Reservation to Non-restricted Multilateral Treaties*, 48 BYIL, p.87.

For example, Germany withdrew the reservation to the Convention on the Rights of the Child in 2011. The reservation excluded children without German citizenship or legal residency status from protection by the CRC.³⁶

The following table describes Myanmar made ratification or accession to international treaties and reservations to these treaties.

Treaty Description	Treaty Name	Ratification Date, Accession(a), Succession Date	Reservation (r), Declaration (d)	Withdrawal of Reservation Date
Convention on the Prevention and Punishment of the Crime of Genocide, 1948	-	14 March 1956	Article 6 (r), Article 8 (r)	-
Convention on the Rights of the Child, 1989	CRC	15 July 1991 (a)	Article 15 (r), Article 37 (r)	19 Oct 1993
Convention on the Elimination of All Forms of Discrimination against Women, 1979	CEDAW	22 July 1997 (a)	Article 29 (r)	-
Convention on the Rights of Persons with Disabilities, 2006	CRPD	07 Dec 2011 (a)	-	-
Optional Protocol to the Convention on the Rights of the Child on the sale of children Prostitution and Child Pornography, 2000	CRC-OP-SC	16 Jan 2012 (a)	-	-
International Covenant on Economic, Social and Cultural Rights, 1966	CESCR	06 Oct 2017	Article 1 (d)	-
Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in armed conflict, 2000	CRC-OP-AC	27 Sep 2019	Article 3(2) (d)	-

Source: Own Collection from United Nations Treaty Collection website (as of November 2024).

These are arranged in chronological order based on accession date.

The reserving State can withdraw its reservations partially or completely in a certain situation if a State can implement the obligations of a treaty in its territory. Nevertheless, States have to comply with the principles of the VCLT regarding the validity of reservations.

³⁶ United Nations Treaty Collection, *Convention on the Rights of the Child 1989* (Web page) <https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4>.

Legal Effects of Reservations

In regard to ‘the legal effects of reservations and of objections to reservations, the provisions are mentioned in Article 21 of VCLT. They are;

1. A reservation established with regard to another party under articles 19, 20, and 23:
 - (a) modifies the treaty provisions to which the reservation relates to the extent of the reservation for the reserving State in its relations with that other party; and
 - (b) modifies those provisions to the same extent for that other party in its relations with the reserving State.
2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.
3. When a State objecting to a reservation has not obstructed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.’

The application of the so-called “principle of reciprocity” in Article 21(1) (b) can be found in the Libyan People’s Bureau Incident. Libya made a reservation to the Vienna Convention on Diplomatic Relations 1961, permitting it to open a diplomatic bag when it had strong doubts as to the legitimacy of its contents. That reservation was not objected by the UK. According to Article 21(1)(b), the obligation in the Vienna Convention not to open another State’s diplomatic bag was modified to the extent of the reservation and by virtue of the principle of reciprocity, both Libya and the UK are able to rely on that reservation. Thus in the Libyan Peoples Bureau Incident, the UK contended that it could open the Libyan diplomatic bags if it had strong doubts as to their contents.³⁷

The essence of Article 21(3) is that “the reservation is effective”. Thus, it appears to be more favourable to the reserving State. That is why, if it cannot accept any reservation made by that other State, it should not merely object but explicitly state that the treaty shall not be enforceable between the two of them.³⁸

‘Regarding the validity of a reservation, a State needs to register a treaty after ratifying or acceding to the United Nations’ Secretariat.’³⁹ Where the Secretary-General, as depositary, accepts a reservation after the deposit of the instrument of ratification, acceptance, approval, or accession that meets all the necessary requirements, the Secretary-General circulates the text of the reservation to all the States concerned. The Secretary-General accepts the reservation in deposit if any State does not inform the Secretary-General that it does not wish him to consider the reservation to have been accepted for deposit.⁴⁰

If States want to change the legal effect of the treaty by making a reservation. In that case, this reservation clause does not affect the essential elements and the general concept of the treaty. Treaties should include clauses relating to the permissible or impermissible nature of the

³⁷ Abdul Ghafur Hamid @ Khin Maung Sein (2011), *Public International Law: A Practical Approach*, 3rd edition, Sweet & Maxwell Asia, p.194.

³⁸ Ibid, p.195.

³⁹ Charter of the United Nations 1945, art 102.

⁴⁰ UN, Treaty Handbook (2013), “Prepared by the Treaty Section of the Office of Legal Affairs”, p.12.

reservation, and they should also clearly describe the important concept of the treaty that justifies the reservation.

Some Issues relation to Reservations

Reservations may be made to any treaty, including bilateral treaties and multilateral treaties, through a theoretical approach. Reservations in bilateral treaties are practically meaningless since they would be interpreted as a lack of agreement on the matter at hand. A reservation to a bilateral treaty, according to the International Law Commission, has no issues because it essentially amounts to a new proposal that reopens the two States' negotiations over the terms of the agreement.⁴¹

The traditional rules on reservations to multilateral treaties were developed based on the idea that a treaty is similar to a contract in the municipal legal system, where the terms can only be modified with the consent of the parties. Therefore, a reservation of a State can be assimilated to an offer that needs to be accepted by all contracting parties in order for it to produce legal effect.⁴²

For instance, the reservation States of the Islamic, which may interfere with public order in those countries with secular law, which is based on the principle of equality between people of men are alike, and who all have equal rights and duties regardless of their religions, beliefs, or colors. Nowadays, international conferences or organizations are used to conclude treaties, and some of the texts contained in those treaties may be in violation. Where the treaty provides for equal inheritance provisions between men and women, this is incompatible with the provisions contained in the tolerant Islamic law.⁴³ Furthermore, the Latin American countries made reservations to the treaties if the treaties are organized to secure the protection of their sovereign rights.⁴⁴ So, States can make a reservation as a unilateral statement when signing, ratifying, accepting, approving, or acceding to a treaty in accordance with the provisions of international conventions. Then, reservation to the treaty shall not be prohibited according to the above causes.

Regarding Article 19(c) of the VCLT, regarding the compatibility test and its objectivity, the convention is silent. Consequently, the parties will have to evaluate this matter since there are no clear standards by which the compatibility test of the reservation with the object and purpose of the treaty will be made.⁴⁵

States have a chance to make a reservation on specific clauses or provisions of any treaty if it conforms with the provisions of the VCLT. However, they need to know the context of clauses or provisions of a treaty before making any reservation. Regarding the contextual matters, the ICJ delivered a judgment on the case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide between the Republic of The Gambia and the Republic of the Union of Myanmar.

⁴¹ Su Wei, (2023), "Reservation to Treaties and Some Practical Issues", *Asian Yearbook of International Law*, vol 7, Ko Swan Sik et al., eds. Kluwer Law International, p.109.

⁴² Ibid.

⁴³ Dr. Abdul- Jaleel Ismael Hasan, Dr. Mohammed Qahtan Farhan, Dr. Mohanad Qasim Zghair, (March, 2020), "The Scope of Reservations to International Treaties", *Palarch's Journal of Archaeology of Egypt/Egyptology* vol.17 (03), ISSN 1567-214x, pp 2725-2735.

⁴⁴ Ibid.

⁴⁵ Fjorda Shquarri (March 2015), "Reservation to Treaties, Prohibited Reservations and some Unsolved Issued Related to Them", *Mediterranean Journal of Social Science*, vol. 6(2).

The Convention on the Prevention and Punishment of the Crime of Genocide was adopted on 9 December 1948 and entered into force on 12 January 1951. Myanmar ratified this Convention on 14 March 1956 with reservations on Articles VI and VIII. The reservation clauses are;⁴⁶

- (1) With reference to Article VI, the Union of Burma (later the Myanmar) makes the reservation that nothing contained in the said Article shall be construed as depriving the Courts and Tribunals of the Union of Jurisdiction or as giving foreign Courts and tribunals jurisdictions over any cases of genocide or any of the other acts enumerated in article III committed within the Union territory.
- (2) With reference to article VIII, the Union of Burma makes the reservation that the said article shall not apply to the Union.⁴⁷

The full provision of the article VI of the Convention on the Prevention and Punishment of the Crime of Genocide are 'persons charged with genocide or any of the other acts listed in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.'

Article VIII of this Convention provides 'any contracting party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate to prevent and suppress acts of genocide or any of the other acts listed in article III.'

In the "Gambia V. Myanmar case, The Gambia applied a case to the ICJ that is Myanmar had breached Articles I, III, IV, and V of the Genocide Convention. Conversely, Myanmar raised four preliminary objections to the jurisdiction of the Court and admissibility of the Application on 20 January 2021. In brief, these objections are:

- (1) whether the Gambia is the "real applicant" in this case;
- (2) the Gambia's standing to bring the case before the Court;
- (3) the Myanmar's reservation to article VIII of the Genocide Convention and
- (4) existence of a dispute between the parties.

As the third preliminary, it explored that the court did not have jurisdiction in this case. Since Myanmar made reservations on Articles VI and VIII of the Genocide Convention, the Court could not have any authority to accept and settle Gambia's proposed case. One of the reasons is that Myanmar excluded the jurisdiction of the court or tribunal of the Union and of foreign countries relating to any case of genocide or acts which are mentioned in Article III of the Genocide Convention.⁴⁸

Another reason is the term of the competent organs of the UN that was provided in Article VIII. When Myanmar made a reservation on Article VIII, it removed the prerogative of the ICJ, which is one of the UN organs. In addition, it proposed considering the intention of the State when it made a reservation to this Convention.

⁴⁶ Convention on the Prevention and Punishment of the Crime of Genocide, (December 9, 1948).

⁴⁷ Ibid.

⁴⁸ Application of the Court on the Prevention and punishment of the Crime of Genocide, (The Gambia V Myanmar) (ICJ July 22, 2022).

In short, the International Court of Justice (ICJ) delivered its judgment on the preliminary objections of Myanmar on 22 July 2022. The ICJ expressed that Myanmar made the reservation on Articles VI and VIII but did not reserve Article IX when it ratified to the Genocide Convention. In the case of *Gambia V. Myanmar*, the Court referred to Article IX of the Genocide Convention for its jurisdiction. Article IX provided that any party to the dispute can bring the case before the Court regarding the breach of obligations in this Convention. Moreover, the ICJ interpreted the term of competent organs that was provided in Article VIII. Under the UN charter, the ICJ is one of the competent organs, but its functions are not the same as the functions of competent organs under Article VIII of the Genocide Convention. So, the Court concluded that it has jurisdiction over the alleged case of the Gambia under Article IX based on contextual clauses.⁴⁹

This fact is considered to be due to the need to make reservations at the time of ratifying the treaty, and the substance and contextual clauses may not be considered carefully. So, this case should be considered as good evidence in the future. States should clearly state their intention when making reservations to treaties, and only then will their stance and purpose be strong.

Conclusion

Treaties play an important role in getting common agreements between member States and in promoting international cooperation. The most important fact is that States need to implement and observe the treaties in good faith. If States conclude more treaties, they can develop more in various fields, promote the cooperation of international relations, and become friendlier and loving between themselves. Reservation is a good way for States that may belong to different legal systems to expand participation in the treaty. Reservation is a caveat to a State's acceptance of a treaty. A reservation allows a state to exclude or modify the legal effect of specific treaty provisions that it finds unsuitable. Reservation aims to ensure a wider participation of the States even if they do not accept all the treaty's provisions. The role of reservations is becoming a key for members of treaties to protect the interests of the people. By making a reservation, states get privileges from the treaty because they can exclude any provisions of a treaty that do not apply or are not implemented in their territories. States have a chance to make reservations on specific clauses or provisions of any treaty, but this reservation clause does not affect the essential elements and purposes of the treaty. In considering what rule on reservations to formulate, States need to take into account the national interest and the substance of the treaty, in particular, the core elements of an international instrument. In addition, they need to know the context of clauses or provisions of a treaty and to understand the substance of a treaty before making any reservation. When a state is able and willing to fulfill or comply with the treaty's commitments, it may at any time withdraw all or part of its reservations. Treaties should include clauses relating to the permissible or impermissible nature of the reservation, and then they should also clearly describe the important concept of the treaty for making the reservation. If possible, reservation clauses should be permitted in treaties. As a result, States should know the scope and processes of reservation in a treaty; they will reduce the possible issues in relation to reservation, and they will conclude treaties without hesitation or delay.

⁴⁹Ibid.

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THE SETTLEMENT OF DISPUTES FOR MICRO, SMALL, AND MEDIUM ENTERPRISES (MSMEs) IN MYANMAR

Aye Mar Win¹

Abstract

The Micro, Small, and Medium Enterprises (MSMEs) play an important part in the economy of Myanmar, making substantial contributions to both employment and gross domestic product (GDP). Nevertheless, the commercial environment for these companies is burdened with conflicts that emerge from contractual disagreements, financial transactions, and regulatory compliance constraints. Robust dispute resolution systems are essential for the long-term development of MSMEs. This study analyzes the current legal frameworks and procedures for resolving disputes among MSMEs in Myanmar, encompassing both formal judicial procedures and an alternative way of dispute resolution (ADR). The paper examines the effectiveness, availability, and financial consequences of these methods, highlighting significant obstacles such as insufficient knowledge, inappropriate legal framework, and procedural intricacies. Furthermore, it describes the impact of government efforts and international collaboration on strengthening the ability to resolve disputes. The implementation of these steps can provide a more favourable environment for the expansion and sustainability of MSMEs in Myanmar's economic progress. The findings indicate that although Myanmar has made progress in enhancing its legal system, there is a requirement for more specialized and easily accessible dispute resolution services specifically designed to meet the distinct requirements of MSMEs. The recommendations include the creation of specialized MSMEs dispute resolution centres, enhanced training for legal professionals in alternative dispute resolution (ADR) methods, and a stronger focus on preventive legal measures through educational and capacity-building initiatives for MSMEs.

Keywords: Access to Justice, Dispute Resolution, Economic Development, MSMEs, Legal Mechanism

Introduction

The Micro, Small, and Medium Enterprises (MSMEs) play an important role in the economic progress of several nations, Myanmar included. These firms provide a substantial contribution to employment, innovation, and the general economic ecosystem. Nevertheless, similar to any commercial organization, MSMEs frequently encounter conflicts that might impede their functioning and expansion. Robust dispute resolution systems are crucial for ensuring the sustained success of these enterprises. The Micro, Small, and Medium Enterprises (MSMEs) are the fundamental support system of Myanmar's economy, constituting a significant share of the corporate sector. Their operations span multiple sectors, encompassing agriculture, manufacturing, and services. The significance of MSMEs has been acknowledged by the government of Myanmar, which has therefore enacted many laws aimed at fostering their expansion and progress.

The Small and medium enterprises (SMEs) are classified according to the key criteria outlined in the Small and Medium Enterprises Development Law, 2015, including the number of employees, type of business, capital invested, and turnover level. In comparison to the Private Industrial Enterprise Law, 1990, the maximum number of employees for labour-intensive businesses, as well as the maximum values for capital and turnover, have observed an increase. The research objectives are to examine the legal framework governing dispute resolution for MSMEs in Myanmar, to assess the effectiveness of existing dispute resolution in addressing the

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needs of MSMEs, to identify the challenges and gaps in the current legal and institutional framework, and to offer recommendations for improving the dispute resolution process for MSMEs. The following Table (1) illustrated how this law categorizes MSMEs into manufacturing, labour-intensive manufacturing, wholesale, retail, services, and other sectors in order to acknowledge the importance played by industries other than manufacturing.

Table 1. Legal definition of SMEs

Classification	Employees	Capital (Kyats million)	Turnover (Kyats million)
SMALL			
Manufacturing	Up to 50	Up to 500	
Labour-intensive manufacturing	Up to 300	Up to 500	
Wholesale	Up to 30		Up to 100
Retail	Up to 30		Up to 50
Service	Up to 30		Up to 100
Other	Up to 30		Up to 50
MEDIUM			
Manufacturing	51-300	500-1,000	
Labour-intensive manufacturing	301-600	500-1,000	
Wholesale	31-60		100-300
Retail	31-60		50-100
Service	31-100		100-200
Other	31-60		50-100

Source: Myanmar Micro, Small and Medium Enterprises Survey, 2017

Research Method

This research employs the document analysis to examine the legal framework encompassing laws, procedures, policies, court rulings (including common dispute and legal precedents), reports on MSMEs development and challenges, as well as international conventions and standards for MSMEs dispute resolution. This study undertook the interviews with the government officials engaged in the development and resolution of MSMEs, legal professionals specialising in commercial law and dispute resolution, representatives of the Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI), and individuals responsible for the Myanmar International Arbitration Centre (MIAC).

Research Questions

1. Which are the main legal procedures accessible to MSMEs in Myanmar for resolving disputes?
2. How does an alternate methodology of conflict resolution address the issues faced by MSMEs?

Methods for Dispute Resolution

The Small and medium-sized enterprises (SMEs) are important for their contributions to employment, innovation, economic growth and diversity.² While the size of SMEs varies significantly between states, many of their common features and corresponding obstacles to international dispute resolution are largely universal. In an increasingly globalized world, SMEs must be given genuine access to efficient international dispute resolution systems in order to develop and succeed. There is no shortage of effective international dispute resolution mechanisms available to entities operating across borders; however, many MSMEs are not in a position to reap the benefits of these mechanisms. Fundamentally, MSMEs involved in international trade need to have the resources, time, and insight to plan ahead and create their own route to effective dispute settlement because of the current structure of international dispute resolution.³

The many contractual relationships between seller and buyers, seller and issuing bank, buyer and issuing bank, and seller and shipowner that arise in the course of an international sale transaction will become sources of disputes. The different forms of dispute resolution are litigation, arbitration and mediation.⁴ The most commonly used to resolve disputes between parties: negotiation, arbitration and litigation. Arbitration or litigation is typically used as the final method of dispute resolution for international transactions.⁵

Dispute settlement methods refer to established procedures or systems designed to reconcile disputes or conflicts between parties, typically without the need for litigation. These measures play a vital role in many domains, such as international trade, business, investment, and even interpersonal or labour conflicts. They assist in guaranteeing that conflicts are settled justly, effectively, and in alignment with the principles of legal governance. Dispute settlement techniques can be broadly classified into two main categories: litigation and alternative dispute resolution. The Table 2 provided different aspects of each process to allow for a quick comparison between them and to determine what can be achieved with each of them.

The Small and Medium Enterprises Development Rules, 2017 and the Arbitration Law, 2016 are the laws that deal with MSMEs and their dispute resolution procedures. If any dispute arises between entrepreneurs, between entrepreneurs and any organizations or government department in respect of the small and medium enterprises, the agency and agency branch offices shall assist to settle the dispute arisen.⁶

If the dispute cannot be settled, it shall be undertaken step by step in following ways:

(a) to be followed in accordance with the prescribed settlement mechanism if the dispute settlement mechanism is designated in the relevant agreements concluded between the entrepreneurs, any organizations or the government department;

(b) if the dispute settlement mechanism is not designated in the relevant agreement;

² OECD, SMEs and Entrepreneurship: Available Online at [<http://www.oecd.org/cfe/smes/>] (Last accessed January 2017).

³ Petra Butler and Hanneke van Oeveren, *SMES and International Commercial Dispute Resolution*, International Commercial Law Issues, 2021, p.50.

⁴ Indira Carr and Peter Stone, *International Trade Law*, Sixth Edition, Routledge, 2018, p.499.

⁵ Case Study Book on International Transaction, 2019, p.101.

⁶ Rule 71, the Small and Medium Enterprises Development Rules, 2017.

(i) resolving and handing over the issues to respective department with the formation of arbitral tribunal comprising with the persons not less than three or not more than five (odd number) from the agency, agency branch office and the persons agreed by both parties

(ii) resolving in accordance with relevant existing laws if it cannot be settled.⁷

The selection of dispute resolution process for MSMEs in Myanmar is contingent upon several elements, including the intricacy of the dispute, expenses, time, and the interrelationship among the involved parties. Although negotiation and mediation are favoured for their adaptability and cost efficiency, arbitration and litigation offer more formal approaches when necessary. The use of Alternative Dispute Resolution (ADR) methods is a favourable advancement towards effective conflict resolution specifically designed for the requirements of industrial enterprises in Myanmar.

Table 2 Primary dispute resolution processes

Characteristics	Negotiation	Mediation	Arbitration	Adjudication
Voluntary/ Involuntary	Voluntary	Voluntary In some cases, involuntary (mandated mediation)	Voluntary (when based on contract clause mandatory)	Involuntary
Binding/ non-binding	If agreement, enforceable as contract	If agreement, enforceable as contract, sometimes agreement embodied in court decree	Binding, subject to review on very limited grounds.	Binding, subject to appeal
Third party	No third-party facilitator	Outside facilitator chosen by the party	Party-selected decision-maker frequently with specific knowledge	Imposed, third-party neutral decision- maker, generally with no specialist expertise in the issue subject
Degree of formality	Usually informal, unstructured	Generally informal, partially organized	Procedurally less formal than litigation; procedural rules and substantive law can be drawn up by parties	Formalized and highly structured by predetermined, rigid rules
Nature of processing	Unbounded presentation of evidence, arguments and interests	Unbounded presentation of evidence, arguments and interests	Opportunity for each party to present proofs and arguments	Opportunity for each party to present proofs and arguments

Litigation

The process of resolving disputes through the court system is referred to as litigation. For the Micro, Small, and Medium Enterprises (MSMEs) in Myanmar, litigation is one of the formal methods available for dispute resolution. The dispute is resolved in a court of law, where a judge

⁷ Rule 72, the Small and Medium Enterprises Development Rules, 2017.

makes a binding decision based on the application of legal principles and evidence. Litigation is governed by the relevant procedural laws of the jurisdiction in the Code of Civil Procedure in Myanmar. Civil Procedure Codes regulate litigation processes, including the jurisdiction of courts, procedural rules, and the enforcement of judgments. While litigation is a more formal and often more costly method of dispute resolution than, it is essential for disputes that cannot be resolved through other methods.

All civil lawsuits should be subject to trial by the courts, with the exception of those whose cognizance is expressly or implicitly prohibited.⁸ The Myanmar court's jurisdiction over the civil or commercial suit is generally determined under the Code of Civil Procedure.

Company A in Myanmar executed a sales agreement to purchase a machine for use in its factory from Company B, a company located in Country X. When Company A received the machine, Company A's inspection revealed that the machine contained defects and was useless. Company A brought a lawsuit against Company B in the Myanmar courts to demand the cancellation of the sales agreement and claim damages for Company B's breach of contract. The jurisdiction of the court explained the Figure 1 in respect of the sale agreements in Myanmar.

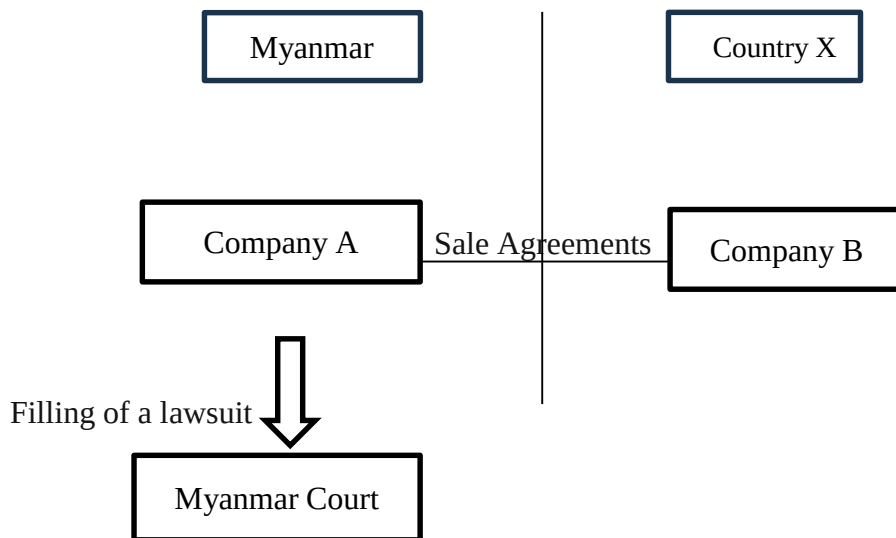


Figure 1 Jurisdiction of Myanmar Court

Each suit must be filed in a court which is situated within its local jurisdiction:

- (a) the defendant, or each defendant if more than one, who, at the time the suit is filed, lives in an actual and voluntary residence, carries out business, or works for personal benefit; or
- (b) any defendant if more than one, who, at the time the suit is filed, lives in an actual and voluntary residence, carries out business, or works for personal benefit, provided that in such case either the leave of the Court is given, or the defendants who are not residing, or carries out business, or works for personal benefit, as aforesaid, allow to such an institution; or
- (c) the cause of action, in full or in part, arises.⁹

⁸ Section 9, the Code of Civil Procedure, 1909.

⁹ Section 20, Ibid.

While litigation remains an essential tool for resolving disputes, MSMEs in Myanmar often find it challenging due to the costs, time, and complexity involved. The development of more accessible and efficient dispute resolution methods, including ADR, is crucial to support the growth and stability of MSMEs in the country.

Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution is usually used as ADR, which is a process or procedure in which a neutral third party engages to help resolve matters in conflict, other than determination by a presiding judge in court proceedings.¹⁰ The term alternative dispute resolution (ADR) describes the various ways in which conflicts can be settled out of trial. Arbitration, neutral evaluation, and mediation are common ADR processes. Compared to ordinary court proceedings, these procedures are typically less formal, more confidential, and less stressful.¹¹

Other well-known types of ADR are early neutral evaluation (ENE), and mini-trial (executive tribunal) and Med-arb. In ENE, the parties present their cases in an adversarial manner, which is evaluated by a neutral third party, and the parties negotiate on the basis of this negotiation. Mini-trial is conducted with a panel comprising a third party and a senior executive from each side with no connection to the dispute. After hearing the submission, the senior executives negotiate for a settlement. In Med-arb, a hybrid of mediation and arbitration, parties start with mediation to try to find a mutually acceptable solution. In the event of failure, the mediator takes on the guise of arbitrators to issue a binding decision.¹²

Alternative Dispute Resolution (ADR) methods are widely recognized and utilized in international law as effective methods for resolving disputes involving Small and Medium Enterprises (SMEs). ADR provides alternatives to traditional litigation, offering faster, more cost-effective, and flexible solutions for cross-border disputes.

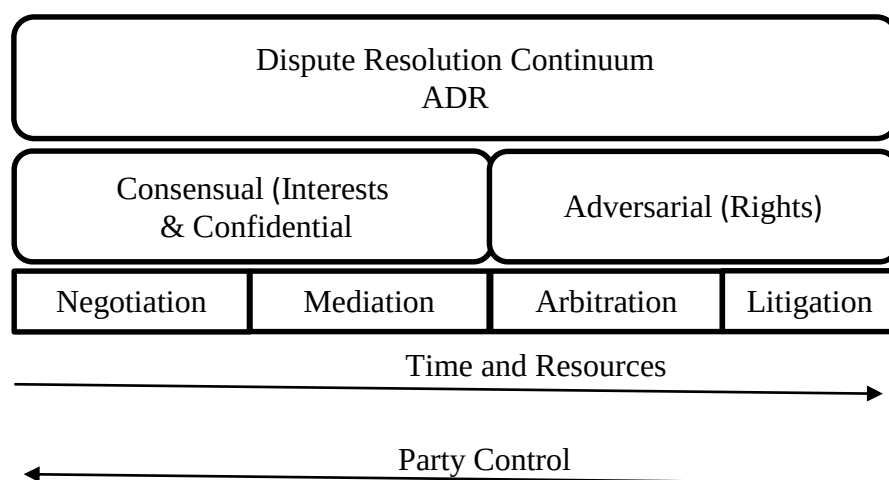


Figure 2 Dispute Resolution Continuum

¹⁰ Alternative Dispute Resolution Manual: Implementing Commercial Mediation, Small and Medium Enterprise Department, The World Bank Group, 2006, p.167.

¹¹ What is ADR? Alternative Dispute Resolution, New York State Unified Court System. Available Online at [https://ww2.nycourts.gov/ip/adr/What_Is_ADR.shtml#:~:text=These%20processes%20are%20generally%20confidential,saves%20money%20and%20speeds%20settlement.] (Last accessed March 2024).

¹² Indira Carr and Peter Stone, International Trade Law, Sixth Edition, Routledge, 2018, p.654.

Arbitration

An alternative to standard court proceedings is arbitration. Therefore, arbitration is crucial that courts recognize contract arbitration terms and stay their proceedings if a party points out that the other filed its claim in violation of an arbitration clause. Arbitration is a form of alternative dispute resolution (ADR) that allows the disputes between the parties to be resolved outside of the traditional court system. The parties to a dispute in an arbitration case will refer it to one or more persons known as "arbitrators" or an "arbitral tribunal," whose decision or award they agree to be bound.¹³ International arbitration processes can be divided into two main categories:

- (1) *Ad Hoc* arbitration and
- (2) Institutional arbitration

In their arbitration agreement, the parties have the right to choose between these two options. The functions and duties of the agency are advising and settling the disputes of small and medium enterprises and assisting to settle the disputes by means of arbitration.¹⁴

Ad Hoc Arbitration

Ad Hoc arbitration is described as “conducted without the assistance of an arbitral institution to assist the parties in the administration of the arbitration in accordance with rules established by the arbitral tribunal or agreed upon by the parties themselves”.¹⁵

The parties may draft their own rules, or they may choose to use the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, which are frequently used in *ad hoc* arbitration (UNCITRAL itself does not administer arbitrations and is not an arbitral institution). Almost, time and money can be saved by adopting a suitable arbitration rule of which the best known are the UNCITRAL Arbitration Rules. *Ad hoc* arbitration is an arbitration that is specifically designed by the parties for a particular dispute. According to Article 1 (2) (b) of the 1961 Geneva Convention, where *ad hoc* arbitration is defined as “settlement by arbitrators appointed for each case”.¹⁶

Ad hoc arbitration is more flexible than institutional, as the parties are completely free to adapt the proceedings to the particulars of the case. The advantages of *Ad hoc* arbitration are as follows: *Ad hoc* arbitration is administered and smoothly proceed in accordance with the arbitration rules of an arbitral institution. The administrative services of an arbitral institution renders include the appointment of arbitrators, the decision on the challenge of arbitrators, collecting fees, fixing the arbitrator’s fees. The parties have the maximum degree of flexibility in arbitral procedure and arbitration may be shaped to meet the wishes of the parties rather than be subjected to institutional administration or control. The parties need not to pay the charges for the administration services rendered by an arbitral institution.

¹³ Trey Hendershot, what is the difference between Arbitration and Litigation? 2021. Available online at [<https://www.hchl.com/blog/2021/march/what-is-the-difference-between-arbitration-and-litigation/>] (Last accessed on 22 May 2024)

¹⁴ Section 14 (k), Small and Medium Enterprises Law, 2015.

¹⁵ Albert Zaw Min, The advantages and disadvantages of institutional arbitration in general in comparison with *ad hoc* arbitration, 2019, p.1.

¹⁶ Ulrich G. Schroeter, *Ad Hoc* or Institutional Arbitration- A clear- Cut Distinction, A Closer Look at Borderline Cases, Asia Arbitration Journal, 2017, p-14.

On the other hand, there are also disadvantages in the *ad hoc* Arbitration. The disadvantages of *ad hoc* arbitration are as follows: The parties have to pay additionally the fees charged by an arbitral institution for its services. However, it generally does not account for the large part of the total costs. The effectiveness of arbitration depends on the cooperation between the parties and their lawyers and it is easy to delay arbitral proceeding because of not administrative supports by an arbitral institution. A time-consuming process to determine special rules for the arbitral proceedings. Practically, time and money can be saved by adopting the suitable arbitration rules of which the best known are the UNCITRAL Arbitration Rules.¹⁷

Institutional Arbitration

Institutional arbitration means one in which parties choose to conduct their arbitration procedure in accordance with the rules and assistances of an arbitral institution. An institutional arbitration is defined as one that is conducted in accordance with its own arbitration rules and is administered by a specialized arbitral institution.¹⁸

Institutional arbitration refers to the practice where parties opt to organize their arbitration process following the regulations and support provided by an arbitral institution. An institutional arbitration refers to a type of arbitration where a specialised institution, defined by its permanent nature, intervenes and takes on the responsibilities of assisting and managing the arbitral process, as stipulated by the regulations of that institution.

The advantages of institutional arbitration are the availability of pre-established rules and procedures which ensure the arbitration proceedings begin promptly. Administrative assistance from the institution will provide an arbitration court or secretariat. The primary disadvantages of institutional arbitration are the administrative costs for services and facility utilization, which can occasionally be high if this is a large amount at dispute, more than the actual amount in dispute. An institutional arbitration is administered by an arbitral institution under its own rules of arbitration and there are more than 100 arbitral institutions all over the world.¹⁹

The Republic of the Union of Myanmar is a signatory country of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) (the “New York Convention”), and the Myanmar’s Arbitration Law (2016) was enacted based on the New York Convention. Under this treaty and legislation, even if a party to a contract files a lawsuit to the Myanmar courts, the relevant court shall refer the parties of the suit to arbitration and issue a stay order at the request of a party if the parties have agreed in the relevant contract to resolve all disputes through arbitration.²⁰

Myanmar’s accession to the New York Convention is an essential development to encourage and provide stability for interested foreign investors, as it provides parties the freedom to agree to arbitration under agreed-upon organizational rules, applying either local or international law, and taking place in a forum and jurisdiction of their choice. This is important because it gives investors control over some variable of the dispute resolution process and

¹⁷ U Maung Maung Ohn Myaing, General Knowledge of Arbitration, Published by Ye Aung Sapay, 1st Edition, June, 2017, p.21-22.

¹⁸ Ulrich G. Schroeder, Ad Hoc or Institutional Arbitration- A Clear-Cut Distinction, A Closer Look At Borderline Cases, Asia Arbitration Journal, p.146.

¹⁹ U Maung Maung Ohn Myaing, General Knowledge of Arbitration, Published by Ye Aung Sarpay, 1st Edition, June, 2017, p.22

²⁰ Case Study Book on International Transaction, Supreme Court of the Union, Nay Pyi Taw, 2029, p.114.

reduces risk components. It should be mentioned that foreign investors' rights to contracts for dispute settlement are expressly recognized by the recently enacted Foreign Investment Law.²¹

The "Myanmar Arbitration Centre" (MAC) in accordance with the Arbitration Law, 2016 promotes arbitration, as does the Federation of Chambers of Commerce and Industry of the Republic of the Union of Myanmar. As a result, it was created on March 11, 2019. With the creation of the new MAC, issues between local and foreign businesses can now be settled in Yangon, the commercial centre of Myanmar, saving a substantial amount of time and money, and permitting arbitrators situated in Myanmar to settle more cases under local laws. There isn't an arbitration or settlement in place right now.²²

Arbitral awards shall be enforced by each contracting state in accordance with the rules of procedure of the local jurisdictions in which the awards are relied upon, under the conditions laid down in the following articles. The recognition or enforcement of arbitral awards to which this Convention applies shall not be imposed with substantially more onerous conditions or higher fines or charges than are imposed on the acceptance or implementation of domestic arbitral awards.²³

Every agreement that completely prevents a party from exercising his rights under or in respect to a contract by standard legal procedures in ordinary tribunals or that places a time limit on when he can do so is null and void in that matter.²⁴

The explanation of this Section explicitly affirms that a voluntary agreement to use arbitration as a means of resolving disputes is legally binding. An agreement to settle a dispute in the courts of a foreign country will not fall under the aforementioned "absolute" limitation and will be found legally binding. This notion is widely acknowledged not only in other jurisdictions of common law but also in jurisdictions of civil law. According to a renowned academic expert, the courts will dismiss a plaintiff's claim that such agreement is illegal due to its violation of public policy.

Any party may request to have the arbitration referred by the court when filing any statement regarding the content of the dispute, provided that the application is made before the court prior to which the action is brought in a matter regulated by an arbitration agreement. If the court determines that the agreement is valid, enforceable, and able to be carried out, it may submit the parties to arbitration for this application;²⁵ (d) the court shall order to stay the suit, if the court refers the parties to arbitration;²⁶ (e) no appeal shall be allowed against the court's order which refers to arbitration applied under subsection (a);²⁷ (f) appeal shall be allowed upon the decision of the court which refuses to refer to arbitration applied under subsection (a).²⁸ In other words, when a party submits a request to the court to refer the parties to arbitration, the court must confirm the existence of an arbitration agreement.

²¹ Michael Ramirez, *Arbitration of Commercial Disputes: Myanmar's Evolution, A Guide to Doing Business in Myanmar, The-American Business*, Volume 5, 2013, p.28.

²² Interviewee 1, Myanmar Arbitration Centre, Office Staff.

²³ Article III, Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

²⁴ Section 28, the Contract Act, 1872.

²⁵ Section 10 (a), the Arbitration Law, 2016.

²⁶ Section 10 (d), *Ibid*.

²⁷ Section 10 (e), *Ibid*.

²⁸ Section 10 (f), *Ibid*.

Myanmar Economic Holdings Public Co., Ltd. (MEHL) (applicant) requested the court to wind up Myanmar Brewery Limited (respondent). The court decided that Myanmar Brewery Limited was not well represented, thus it did not take into account its defence and instead focused on questions of law that a court must make an ex officio decision without considering a party. In this logic, it was held that Section 10 (a) of the Arbitration Law and an injunction by a court in Singapore restraining MEHL from pursuing the case in Myanmar to be irrelevant. The court did not comment on the factor that these points were argued by Kirin Holdings Singapore (opponent), which was properly represented, and not by the respondent.²⁹ The court denied the referral to arbitration in this case. If the arbitration agreement cannot be fulfilled, the court may decline to set up the lawsuit and fail to send the dispute to arbitration. It has been found that enforcing an arbitration agreement is often challenging.

In the case of Taw Win Family Construction Co., Ltd. Vs. Inno International Development Co., Ltd., civil review 183/2019, the Supreme Court of the Union, it was held that even if the place of arbitration is not expressly specified in the agreement, As the Arbitration Law has provisions covering all situations, the court may decide to send the case to arbitration: (i) the arbitration will take place in Myanmar; (ii) the arbitration's place elsewhere; and (iii) place of arbitration not designated or determined upon. The parties will be referred to arbitration by the court unless it finds that the arbitration agreement is void. The court shall issue a stay unless it determines that the arbitration agreement is unlawful, inoperative, or incapable of being carried out.

Shiseido Singapore (Co.) Pte Ltd. Vs. Taw Win Oo Co. Ltd, Civil appeal No.358/2018, the Supreme Court of the Union, Taw Win Oo Co. Ltd was suing Shiseido for damages alleging that a distributorship was terminated wrongfully. In response, Shiseido obtained an interlocutory order from a court in Singapore restraining Taw Win Oo Co. Ltd from "starting any additional civil lawsuits and bringing any claims and accusations, such as those in civil case 31/2017" in Yangon, which is referred to as the "exclusive distribution agreement" between the parties for the months of January 1, 2016, through December 31, 2016, included an arbitration clause that stated that any dispute resulting from or related to the agreement was to be arbitrated in Singapore. The Supreme Court held that the Singapore interlocutory order did not hinder Taw Win Oo Co. Ltd from pursuing proceedings in the courts of Myanmar, except that "the Singapore court may take any separate action". Furthermore, as Taw Win Oo Co. Ltd "filed the case on 16-3-2017, after the contract expired" and Shiseido did not present "enough evidence to show that the agreements in the contract are still in effect after the term has expired," the Myanmar court refused to stay the proceedings of the case in order to refer it to arbitration. It has been observed that the enforcement of an arbitration agreement presents considerable challenges.

Techo Corporation Pte Co.Ltd. Vs. Aye Family Co., Ltd., civil appeal 724/2018; the Supreme Court of the Union, the Supreme Court held: the agreement specifies that disputes shall be negotiated first and then resolved through arbitration. Since this process was not followed the plaintiff had no right of action, and the suit had to be dismissed according to Rule 11 (a) of Order 7 under the Code of Civil Procedure.

²⁹ Myanmar Economic Holdings Public Company Limited vs. Myanmar Brewery Limited and Kirin Holdings Singapore Pte. Ltd., Yangon Western District Court, civil miscellaneous case 68/2021. Available online at [<https://rcms.usc.gov.mm/main>]. (Last accessed February 2024).

Amalgamated Telecom Management Co., Ltd. Vs. Pan Asia Majestic Eagle Ltd. +2, civil appeal 389/2018; the Supreme Court of the Union, the agreement was only signed by defendant 1, not by defendants 2 and 3, which therefore could not be parties to arbitration. The lower court additionally argued that the plaintiff wanted a permanent injunction to stop an infringement of its intellectual property in a product design, which the court determined that the "master agreement for site investigation, site acquisition, civil mechanical and electrical works and other tower-related services" did not apply to the scope.

Interim Measures

In essence, interim measures are remedies meant to maintain and protect a party's position until the arbitral tribunal makes a decision about the merits of the case. A court or an arbitral tribunal itself may issue them. A court may enforce interim measures ordered by a foreign arbitral tribunal in Myanmar. If the arbitration will take place in a country other than the State, or if the place of arbitration has not been chosen or decided upon.³⁰ Any interim award made in the State or outside of the State by an arbitral tribunal in the course of arbitration is enforceable by the court in the same way that a court's orders and decisions.³¹

A party may request a court in Myanmar for foreign arbitral proceedings to order interim measures. When a party requests to the court for any of the matters concerning the arbitral procedures, the court must have the same authority to make orders as any cases before it, unless the parties have agreed otherwise:

- (i) taking of evidence;
- (ii) preservation of any evidence;
- (iii) making of a decision regarding any property connected to an arbitration dispute or an issue resulting from such proceedings;
- (iv) examination, recording, preservation, retaining, and the capture of any property under dispute;
- (v) collecting a sample from, observing, or carrying out research on any property under dispute;
- (vi) granting permission for anyone to enter any land under the control or possession of a party to the arbitration for such purposes;
- (vii) selling of any property that is the subject matter of the arbitration proceedings;
- (viii) a receiver being appointed or an interim injunction being granted.³²

A court would enforce interim measures ordered by a foreign court in Myanmar.

- (1) When a District Court receives a certified copy of a decree from any superior Courts in any corresponding territory, the decree may be executed in the Union of Myanmar as if the District Court had allowed it.
- (2) The certified copy of the decree must be filed with a certificate from the superior court describing the extent, if any, to which the decree has been satisfied or adjusted and for the purposes of the proceedings under this section, the certificate in question will be considered as conclusive proof of the degree of such adjustment or satisfaction.

³⁰ Section 2 (b), the Arbitration Law, 2016.

³¹ Section 31 (a), *Ibid.*

³² Section 11 (a), *Ibid.*

- (3) The provisions of Section 47 will be applicable to District Court proceedings for the execution of decrees as of the filing of the certified copy of the decree under this section, and if it can be seen to the satisfaction of the Court that the decree involves within any of the exceptions stipulated in clauses (a) to (f) of Section 13, the District Court shall reject execution of such decree.

Explanation: "Reciprocating territory" refers to any nation or territory that the President may declare as such for the purposes of this Section at any time by publishing a notice in the Gazette, and 'Superior Courts' with reference to any such territory, refers to any courts that may be mentioned in the previous notification.

Explanation: "Decree" in the sense of a Supreme Court refers to any decree or judgement made by that Court requiring payment of a sum of money that has not previously been paid. in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in on case include an arbitration award, even though the award can be enforced as a decree or judgment."³³ Myanmar Courts have the same authority on interim measures ordered by foreign courts. A District Court can execute a certified decree from a superior court in a reciprocating territory as if it were issued by the District Court itself. A certified copy of the decree must be filed along with a certificate detailing its satisfaction or adjustment, which serves as conclusive proof of its status. If the decree falls under specific exceptions, the District Court may reject its execution.

Enforcement of a Foreign Arbitral Award

In Myanmar, a foreign arbitral award can be enforced with the same effect as a decree of the District Court. A foreign arbitral award is presumed to be enforceable by the court and is enforced accordingly, unless the foreign arbitral award is not recognized or enforced at all under Sub-Sections (b) and (c). Competent is "the District Court having jurisdiction over the relevant geographical area", which is to mean the court in whose area the judgment debtor resides or carries on business or has his property. The statute of limitations for the judgment creditor applying for enforcement is 3 years from the date of the arbitral award. In addition to the many defences that a judgment debtor may request the court to;³⁴

(i) reject the application in the event that the judgment creditor failed to provide the foreign arbitral award additional evidence as required by Section 45 Arbitration Law, and/or

(ii) refuse enforcement of the foreign arbitral award if it suffers from any of the defects enumerated in Section 46 (b) and (c) the Arbitration Law. The court will, among others, reject enforcement if doing so would be "contrary to the national interest," which is described as having "effects such as environmental damage to the nation's air, water, and land, violation of the interests of all citizens, and damage to the national cultural heritage." District Courts have so far ordered the recognition and enforcement of a small number of foreign arbitral awards.

The issue with enforcement in Myanmar is that Rule 10 of Order 21 under the Code of Civil Procedure provides for many gateways for dishonest judgment debtors to draw out proceedings (especially if immovable property is to be attached and sold), and indeed, the enforcement (of ordinary court decrees) seems too often take years. Apart from the requirements

³³ Section 44 A, the Code of Civil Procedure, 1909.

³⁴ Order 21, the Code of Civil Procedure, 1909.

under the Arbitration Law, an application for enforcement of a foreign arbitral award must contain the minimum contents specified in Rule 11 of Order 21 (Appendix E, form 6). Among others, this means that the judgment creditor must tell the court what assistance the court should render, which depends on the contents of the foreign arbitral award.

Mediation

A neutral third party, the mediator, helps two or more disputants get to a voluntary process negotiated settlement of their disagreements through mediation, a flexible, non-binding method of resolving disputes. The parties have supreme control of the decision to settle and the terms of resolution. The mediator does not have the authority to make decisions; instead, they assist the parties in reaching a solution by using a variety of skills and strategies. The parties remain the decision makers. In general, mediation is considered an interest-based process as opposed to a rights-based procedure because it is to assist the parties in identifying any underlying motives or interests. The mediator may also assist the parties in showing the advantages and disadvantages of their respective legal positions, improving communication, considering the consequences of not settling, and generate settlement options. Sometimes mediation sessions result in creative solutions, including those where both sides can profit from the settlement terms. Consequently, mediation transforms the distributive, zero-sum game into a value-creating situation. Mediation sessions also are generally confidential. The parties sometimes enter into formal confidentiality agreements before the start of the mediation. Such agreements may prohibit a party from subsequently utilizing information or documents that were acquired during mediation but were obtained elsewhere in litigation or arbitration. Although such a confidentiality agreement is not required, mediation law often includes this confidentiality provision. Also, the fact that the parties meet the mediator privately often motivates them to share some of their private information.³⁵

The intervention of an acceptable, unbiased, and neutral third party with no decision-making power into a dispute or negotiation is known as mediation. The purpose of this intervention is to help the parties in voluntarily coming to a mutually agreeable decision on issues in dispute. If the parties have been unable to start a constructive conversation or have been speaking but have come to a stalemate, it seems inviolable mediation might be useful. Similar to a facilitator, a mediator primarily provides procedural suggestions on how parties can come to an agreement. At times, a mediator may provide some substantive alternatives to motivate the parties to broaden the choices of potential solutions being considered. In many cases, a mediator collaborates with the parties separately, in caucuses, to investigate viable settlement alternatives or to develop ideas that can help the parties come near to a resolution. Mediators vary in their level of directive or control while intervening with conflicting parties. Some mediators establish the conditions for negotiation, provide few procedural recommendations, and then step in the negotiations solely to prevent or resolve a deadlock. Other mediators are significantly more engaged in deliberately fabricating the specifics of a settlement. The mediator serves as a

³⁵ Alternative Dispute Resolution Manual: Implementing Commercial Mediation, Small and Medium Enterprise Department, The World Bank Group, 2006, p.171.

catalyst, allowing the parties to take the initiative and move toward their own settlement of the issues at present, regardless of how directive they are.³⁶

Mediation is entirely voluntary. Both parties must agree to participate. All discussions and agreements reached during mediation are confidential. The mediator is impartial and acts as a facilitator, not a judge. Parties can negotiate the mediator's fees, making mediation more accessible to MSMEs. While mediators can be experts in various fields, it's not a requirement. The mediator's primary role is to facilitate communication and help the parties reach an agreement.³⁷

MSMEs should also be encouraged to include mediation clauses in their contracts. Parties to such agreements will be obliged to meet for mediation and attempt to mediate (in some jurisdictions there is also a requirement to mediate “in good faith”). Since mediation is a non-binding process, parties still can decide whether they want to settle and cannot be forced to do it. It is not clear whether mediation clauses are enforceable and how the sanctions for non-compliance will vary under different jurisdictions.³⁸ Two local MSMEs entered into a partnership but later disagreed on profit-sharing. They chose to mediate rather than go to court. A mediator helped them reach a settlement, preserving their business relationship and allowing the partnership to continue.

Sustainable Development Goals and MSMEs Dispute Resolution

MSMEs are vital for economic growth and employment in Myanmar. They contribute significantly to the country's GDP and provide jobs to a large portion of the population, particularly in rural areas. MSMEs in Myanmar often face challenges such as limited access to finance, technology, and markets, which can hinder their growth and sustainability in accordance with Goal 8.

Access to justice is crucial in resolving disputes that may arise in their operations. Effective dispute resolution methods are essential to ensure that MSMEs can resolve conflicts without resorting to costly and time-consuming litigation. In Myanmar, formal legal methods for dispute resolution may be challenging for MSMEs due to the complexity and cost of litigation. Alternative dispute resolution (ADR), such as arbitration and mediation, can provide more convenient and effective ways to settle disputes.

Encouraging the use of ADR methods in Myanmar can help achieve both SDG 8 and SDG 16. By providing MSMEs with accessible means to resolve disputes, ADR can help maintain business continuity, foster economic growth, and reduce the burden on the formal legal system. Building the capacity of MSMEs to understand and utilize ADR mechanisms is critical. This includes training on legal rights, negotiation skills, and understanding the available dispute resolution options. The government and relevant institutions need to create policies that support the development of ADR mechanisms tailored to the needs of MSMEs. This could involve simplifying procedures, reducing costs, and ensuring that ADR services are available in local languages and regions.

³⁶ Alternative Dispute Resolution Handbook, p.5-6. Available online at [<https://www.opm.gov/policy-data-oversight/employee-relations/employee-rights-appeals/alternative-dispute-resolution/handbook.pdf>],(Lasted accessed 19 January 2024).

³⁷ Interviewee 2, UMFCCI

³⁸ Alternative Dispute Resolution Manual: Implementing Commercial Mediation, Small and Medium Enterprise Department, The World Bank Group, 2006, p.176.

The successful implementation of dispute resolution for MSMEs in Myanmar is essential for achieving the SDGs. By promoting accessible and efficient dispute resolution options, Myanmar can support the growth and sustainability of its MSMEs, contributing to broader economic development and the establishment of strong institutions.

Discussion

Myanmar's legal framework for MSMEs dispute resolution is shaped by a combination of traditional litigation through the courts and alternative dispute resolution (ADR) methods, including mediation and arbitration. ADR methods are gaining traction, supported by institutions like the Myanmar Arbitration Centre, which provides a platform for mediation and arbitration. The court system in Myanmar faces a significant backlog, leading to delays in the resolution of disputes. This can be particularly damaging for MSMEs that require quick resolutions to maintain operations.

Both litigation and alternative dispute resolution (ADR) are significant components of the developing legal procedures for MSMEs dispute resolution in Myanmar. Nevertheless, there are still notable obstacles that persist, namely including issues of accessibility, cost, and efficiency. In order to foster a more conducive climate for small enterprises to prosper and make valuable contributions to the economic development of Myanmar, it is imperative to advocate for Alternative Dispute Resolution (ADR), enact legislative changes, and enhance awareness among MSMEs.

The legal methods for MSMEs dispute resolution in Myanmar are integral to achieving the SDGs, particularly those related to economic growth, justice, and equality. While challenges remain, there are significant opportunities to strengthen these methods through reforms, capacity building, and the promotion of ADR. By aligning dispute resolution practices with SDG goals, Myanmar can create a more supportive environment for MSMEs, fostering sustainable development across the country.

Mediation offers a viable alternative for MSMEs in Myanmar to resolve disputes without engaging in lengthy and costly litigation. The flexibility in choosing mediators, despite their lack of specialized expertise, allows parties to focus on practical solutions rather than legal formalities. However, the effectiveness of mediation may depend on the willingness of the parties to comply with the mediated agreement and the mediator's ability to facilitate a fair outcome.

Conclusion

Dispute resolution (ADR) is a feasible and frequently favoured option for small and medium-sized enterprises (SMEs) in Myanmar to settle conflicts. The legislative framework, namely the Arbitration Law (2016), endorses the use of Alternative Dispute Resolution (ADR), and with the increased awareness, it is expected to become a more fundamental for Small and Medium-sized Enterprises (SMEs). However, obstacles like as enforcement and low awareness must be overcome to optimize the potential of Alternative Dispute Resolution (ADR) for Small and Medium Enterprises (SMEs) in Myanmar.

For the small and medium-sized enterprises involved in global commerce, alternative dispute resolution (ADR) provides a valuable option to conventional litigation. Small and

medium-sized enterprises (SMEs) might employ arbitration, mediation, negotiation, or conciliation as effective means to settle conflicts, preserve commercial connections, and avoid the details and expenses linked to judicial processes. Gaining a comprehensive understanding of the details of each alternative dispute resolution (ADR) approach and choosing the suitable mechanism is essential for small and medium-sized enterprises (SMEs) to safeguard their interests and attain positive results in the international conflicts.

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RESEARCH CONTRIBUTIONS OF ACADEMIC STAFF TO THE MYANMAR ACADEMY OF ARTS AND SCIENCE (2001-2022)*

Yu Yu Naing¹

Abstract

This paper presents and analyzes the status of research papers submitted to the Myanmar Academy of Arts and Science (MAAS) to develop research contributions of academic staff in various fields of arts and sciences. The purpose of compiling this research is to reveal the efforts of researchers in various fields of arts and science in Myanmar. Literature search method and interview method were used to carry out this paper. This paper analyzes the research contributions of award-winning researchers from 5708 research papers and 557 research reports presented by academic staff at MAAS annual research conferences from 2001 to 2022. Among them, the papers and reports of winners for Best Paper Award and Academy Award of MAAS are analyzed by content. There are 391 research papers for Best Paper Award and 106 research reports for Academy Award during (2001-2022). A research conference has been held annually since 2001 to allow academic staff from universities and colleges to present research findings from various disciplines. These papers were presented at research conferences led by MAAS in Yangon. The result findings show that the literature and research capabilities of academic staff appeared in the Myanmar Academy of Arts and Science, and the areas of interests of the researchers are well known.

Keywords: Research Contributions, the Myanmar Academy of Arts and Science, Academic Staff, Best Paper Awards, Academy Awards

Introduction

Research is vital in education. Educational research provides insight into how students learn and how teaching can be improved to facilitate learning. It also allows educators to develop new teaching methods, technologies, and materials that can help students to achieve their full potential. Educational research has also contributed to the development of new fields, such as online education and distance learning. (Atienza, 2023). Academic research helps students in their personal growth as well.

The contributions of researchers worldwide have significantly enhanced the quality of human life. Among these contributions, research conducted by universities and colleges has been found to play a particularly prominent role. As the Myanmar government works to improve the nation's education system, the Myanmar Academy of Arts and Science is actively participating by producing valuable research results.

Myanmar Academy of Arts and Science

The Myanmar Academy of Arts and Science (MAAS) is an academic organization of around 717 members constituted on 16 August 1999 by the Ministry of Education with the approval of Government of Myanmar to carry out research activities and produce experts under the guidance of Senior General Than Shwe, Chairman of the State Peace and Development Council (SPDC). (MAAS 1st Annual Report, 2000, 1, 3). The MAAS consists of 23 subject specializations such as 11 of Arts, 8 of Science, and 4 of social of 4. (MAAS 10th Annual Report, 2009, 35)

* Special Award (2024)

¹ Department of Library and Information Studies, East Yangon University.

Members of the Academy are mostly professors, associate professors, researchers and PhD degree holders who once served or are now serving in the various universities, colleges and institutions of the Ministry of Education. The first president of the Myanmar Academy of Arts and Science is U Than Oo from the Department of Teaching and Learning in Higher Education. (Than Oo, U, 2003). The motto of MAAS is “Pyinnya Swam Ar Pyint Swam Ar (ပညာစွမ်းအား ပြည့်စုံမ်းအား)”.



Figure 1. Logo of the Myanmar Academy of Arts and Science

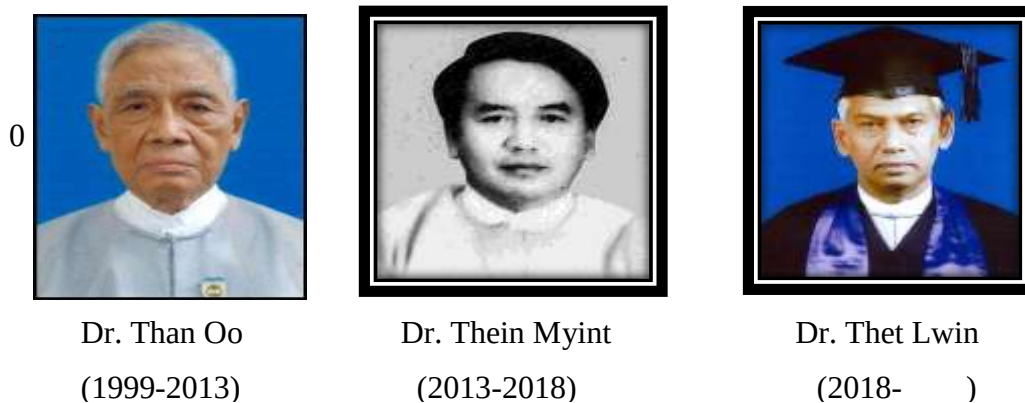


Figure 2. Presidents of the Myanmar Academy of Arts and Science

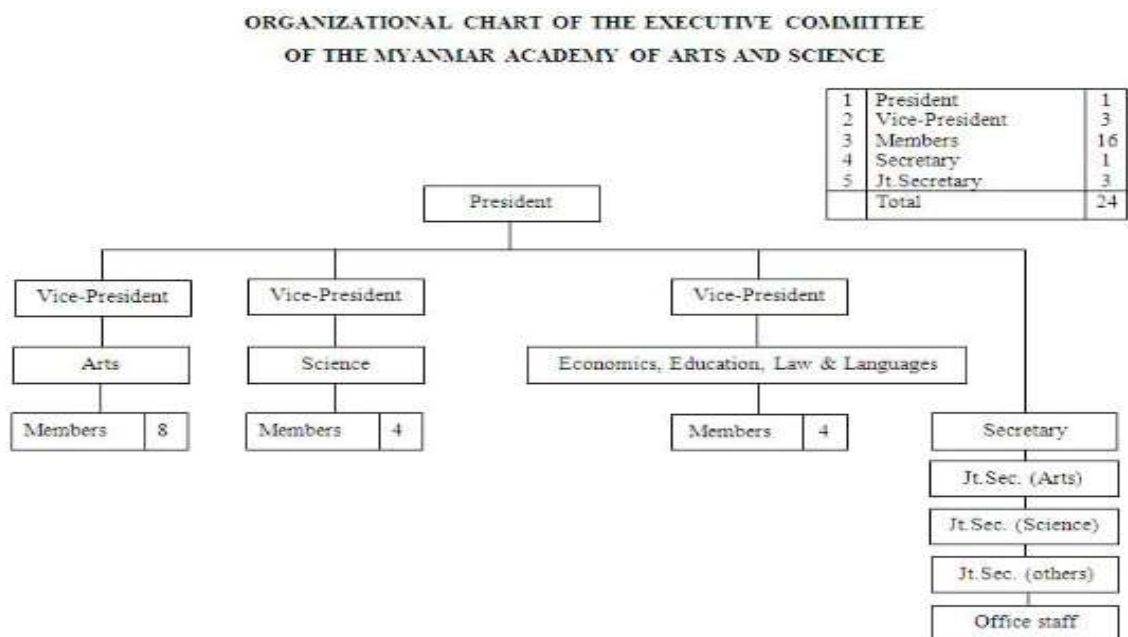


Figure 3. Organizational Chart of the Executive Committee of the MAAS

The Myanmar Academy of Arts and Science Office was opened at the UNESCO (Myanmar) Office in 1999. On September 12, 2005, it was moved to Ohn Daw Hall in Hlaing University campus and opened. From November 18, 2014, it moved again to Diamond Jubilee Hall (1st Floor), Yangon. (MAAS 16th Annual Report 2015, 5).



Figure 4. The Office of the Myanmar Academy of Arts and Science (2014-)

Annually a research conference has been held since 2001 to enable academic staff of universities and colleges to present their research findings of various disciplines. These conferences were held in Diamond Jubilee Hall, University of Yangon, Yangon University of Economics, National Center for English Language (Malar Hall) from 2001 to 2020. Due to the covid-19 pandemic, the 21st research conference was held online. In 2022, 22nd annual research conference was held at the University of Yangon Foreign Languages. The 23rd Arts and Science Research Conference was held at the Naypyitaw State Academy. Senior General Min Aung Hlaing, State Administration Council Chairman Prime Minister, gave speech on this inaugural occasion.



Figure 5. The Members and 23rd Research Conference of MAAS

The MAAS annual research conference has been held regularly since 2001. Only 24 research papers were read at the first conference, which were published as proceedings. From the papers read at the conference from 2001 to 2022, high-level papers were published as journals, reaching volume number XXI in 2022. A significant feature of the MAAS is the presentation of 'Arts and Science Awards' to outstanding research papers, promoting the academic and intellectual endeavors of scholars from universities in Myanmar.



Figure 6. Covers of Proceeding, Journal, Research Report and Certificate of Honour for Best Paper Award

The Best Paper Awards in each subject have been awarded being conferred for academic excellence and significant research contributions since 2005. The papers are judged by respective selection committees comprising scholars in each field. (MAAS Newsletter 2008, 2) The winners were awarded a cash prize, a certificate of honour by the Myanmar Academy of Arts and Science. (MAAS 7th Annual Report 2006, 17)

Since 2007, the awards for the best doctoral dissertations and research reports in the specified fields have been conferred by the Myanmar Academy of Arts and Science.

The winners were awarded a cash prize, a certificate of honour, scrolled and enclosed in a traditional lacquerware cylinder and in contrast, a modern stylized commemorative plaque by the Myanmar Academy of Arts and Science. (MAAS Newsletter 2008, 2)



Figure 7. Myanmar Academy of Arts and Science Awards

The Myanmar Academy of Arts and Science published (2) proceedings and (210) Journals from 2001 to 2022. Firstly, two proceedings were published in 2001.

Table 1. List of Proceedings and Journals of MAAS (2001-2022)

Sr. No	Year	Proceeding and Journal of MAAS	
		Volume of Proceeding and Journal	No. of Journals
1.	2001	Proceeding, 2002, Vol. I-II	2
2.	2002	Journal, 2003, Vol. I, No. 1-3	3
3.	2003	Journal, 2004, Vol. II, No. 1-6	6
4.	2004	Journal, 2005, Vol. III, No. 1-6	6
5.	2005	Journal, 2006, Vol. IV, No. 1-8	9
6.	2006	Journal 2007, Vol. V, No. 1-7	10
7.	2007	Journal, 2008, Vol. VI, No. 1-7	10
8.	2008	Journal, 2009, Vol. VII, No. 1-9	11
9.	2009	Journal, 2010, Vol. VIII, No. 1-9	10
10.	2010	Journal, 2011, Vol. IX, No. 1-9	11
11.	2011	Journal, 2012, Vol. X, No. 1-11	11
12.	2012	Journal, 2013, Vol. XI, No. 1-10	10
13.	2013	Journal, 2014, Vol. XII, No. 1-10	11
14.	2014	Journal, 2015, Vol. XIII, No. 1-11	11
15.	2015	Journal, 2016, Vol. XIV, No. 1-10	10
16.	2016	Journal, 2017, Vol. XV, No. 1-10	11
17.	2017	Journal, 2018, Vol. XVI, No. 1-9	12
18.	2018	Journal, 2019, Vol. XVII, No. 1-9	12
19.	2019	Journal, 2020, Vol. XVIII, No. 1-9	20
20.	2020	Journal, 2021, Vol. XIX, No. 1-9	16
21.	2021	Journal, 2022, Vol. XX, No. 1-3	3
22.	2022	Journal, 2023, Vol. XXI, No. 1-7	7
		Total	212

Now, the MAAS' office is situated Diamond Jubilee Hall, (1st Floor), University of Yangon and email is "maas1999.edu@gmail.com." (MAAS Newsletter 2019).

Mission of MAAS

The primary mission of the Academy of Arts and Science is to participate and contribute to the changes and reforms that are needed to prepare future generation to meet and overcome the challenges of the new millennium.

Aims and Objectives of MAAS

The main aims of MAAS are to form a research guidance group and produce researchers. The objectives are as follows.

- (1) To help in the building of a peaceful, modern and developed nation with the expertise and knowledge of the members of the Academy
- (2) To undertake research that will benefit the nation and people as well as to provide guidelines for young researchers

- (3) To inspire and motivate new generations of scholars and technocrats who will serve the nation
- (4) To lay down firm foundations for the pursuit of the arts and sciences which are essential for the development of the nation, and
- (5) To pursue programs and measures for improving the educational aspirations, training and proficiency of all those citizens who are actively involved in the development of the nation. (MAAS Newsletter 2019)

The MAAS annual research conference has been held regularly since the year 2001, with the Best Paper Award being conferred for academic excellence and significant research contributions in each subject since 2005. The papers are judged by respective selection committees comprising scholars in each field. The opening ceremony of the 1st Research Conference was held at the Yangon University Diamond Jubilee Hall on 5th to 6th February. (MAAS Newsletter 2008, 2). The winners were awarded a cash prize, a certificate of honour by the Myanmar Academy of Arts and Science. (MAAS 7th Annual Report, 17)

This academic organization has four working committees: These are:

- A committee for the dissemination of modern methods and techniques of teaching and learning
- A committee for the promotion of research and providing guidelines for research programs and projects
- A committee for the dissemination and propagation of knowledge and expertise among the general public
- A committee for the promotion of measure aimed at the generation proliferation of competent researchers, academicians and technocrats (MAAS Newsletter 2019)

The MAAS became a member of Science Council of Asia (SCA) at the 14th Conference, 2014, Malaysia.

The Myanmar Academy of Arts and Science Award of arts, science and social science were conferred in 2007 for the best doctoral dissertation and research report in the specified field after the Annual Research conference. The winners were awarded a cash prize, a certificate of honour, scrolled and enclosed in a traditional lacquerware cylinder and in contrast, a modern stylized commemorative plaque by the Myanmar Academy of Arts and Science. (MAAS Annual Newsletter 2008, 5)

In the selection of research papers and research reports, the following marking schemes were described for Best Paper Awards and Academy Awards of arts, science, and social science fields.

(1) Contribution to the National Interest	(20) mark
(2) Originality	(20) mark
(3) Systematic / Scientific Approach	(20) mark
(4) Contribution to the Subject	(20) mark
(5) Presentation	(20) mark
Total (100) mark (MAAS 9th Annual Report 2008, 25)	

The Myanmar Academy of Arts and Science also scrutinizes research papers submitted by the Department of Higher Education that should be transferred to the state and contribute to the development of the country. (MAAS 16th Annual Report 2015, 14)

Objectives of the Study

This study examines the research contributions of academic staff in Myanmar, with a focus on submissions to the Myanmar Academy of Arts and Science (MAAS). The key objectives of the study are as follows:

- To recognize and honor the research contributions submitted to MAAS by researchers.
- To assess the academic performance of MAAS members in the fields of arts and science from library and information studies point of view.
- To analyze research contributions based on institution, subject area, academic position, awards received, and journal publications.
- To encourage award winning researchers among academic staff.
- To contribute to national development through the research activities of academic staff.
- To promote the production of research that benefits the state and its people.
- To explore the role of MAAS and academic staff in supporting the research activities of local universities and colleges for national development.

Research Methodology

The disciplinary contributions in this study were examined through content analysis of the research contributions submitted by academic staff to the Myanmar Academy of Arts and Science (MAAS) across various research topics. Data were collected using interview and literature search methods. Information regarding the academic staff was obtained from the official website of MAAS (<https://www.maas.edu.mm>) and its library. Additionally, interviews were conducted with staff of MAAS and a librarian to ensure the accuracy of the data on research contributions.

Research Scope

This study aims to examine the research contributions of academic staff in the fields of arts and science from about 40 universities and colleges under the Ministry of Education, as submitted to the Myanmar Academy of Arts and Science (MAAS). This paper analyzes winning research papers and research reports submitted to MAAS from 2001 to 2022. The research contributions of academic staff within the local network were evaluated based on awards for research papers, research reports, and journal publications. The study reveals the best research papers and research reports by analyzing gender-wise, year-wise, authorship, subject area, academic institution, most contributed, and the positions of award winners. In this study, a total of 391 papers for Best Paper Awards and 106 research reports for the Academy Awards were presented. As of 2022, the journal has reached Volume XXI, with a total of 212 proceedings and journal volumes were published.

Research Questions

Research questions of the study are listed below.

- (1) What are the benefits of submitting research to the Myanmar Academy of Arts and Science?
- (2) What are the research contributions of MAAS to national development?
- (3) How can MAAS help to promote the academic interests of researchers?
- (4) How do the researchers' results benefit for the country?
- (5) Which universities, departments and academic staff submitted the most research papers and research reports to MAAS?

Research Outcome

The study highlights the efforts of the Myanmar Academy of Arts and Science (MAAS) and researchers, encouraging more academic staff to engage in research activities. Emphasizing the achievements of award-winning researchers may further inspire others to pursue excellence in their research. The study also documents the MAAS Annual Research Conference, the research papers and reports presented, as well as the status of journal publications and awards. These findings underscore the dedication of MAAS and the academic staff, reflecting the significant role they play in advancing higher education in Myanmar with respect and pride.

Review of Literature

A literature review is an excellent research methodology. It surveys prior research published in books, scholarly articles, and any other sources relevant to a particular issue, area of research, or theory, and by so doing, provides a description, summary, and critical evaluation of these works in relation to the research problem being investigated. (USC Library, 2024)

Pertti Vakkari, Yu-Wei Chang and Kalervo Järvelin, analysed contributions to Library and Information Science (LIS) by researchers representing various disciplines. Correspondence analysis reveals three clusters of research, one focusing on traditional LIS with contributions from LIS and Humanities and survey-type research; another on information retrieval with contributions from Computer Science and experimental research; and the third on scientific communication with contributions from Natural Sciences and Medicine and citation analytic research. In this study, LIS scholars' share of contribution with 36% is the largest among disciplines followed by Computer Science (21%), Business and Economics (16%), and Social Sciences (10%) can be found. Thus, most of the contributions to LIS come from other disciplines. These four largest disciplines cover 83% of all contributions. (Vakari, Chang and Jarvelin 2022, 1706-1718)

Hye-Young Lee (2015), this research uses a new approach to analyze the extent of influence journal papers have on the progress of varied research fields by estimation of subject-based influence on research other than impact factor that relies on citation index. The analysis results show the order of citation rate to be highest from Computer Science (2,221 cases), Business & Economics (2,191 cases), and Information Science & Library Science (1,901 cases). The citation history of the journal, nonetheless, indicates increase in citation during 2-3 years after the earliest publication till it achieves constant citation. The objective of this study is to help understand the current status of article reference by chronological analysis and to determine

along with Clustering and One-way analysis of variance, so to determine significant change in the citing research field of the journal with the change of publication year. (Lee 2015, 66-74)

Hnin Ei Ei Hlaing revealed about contributions of the faculty members of university of Yangon to research journals published in Myanmar during 2002-2008. The research method of this study is content analysis in this study, research performance of faculty members of University of Yangon Research Journal, Universities Research Journal and Journal of the Myanmar Academy of Arts and Science were included. The findings of the study are the publications of articles in journals have witnessed an increasing trend from 2002-2008, physics is the most leading subject in research journal, the total cited numbers are 24585 items, and etc. (Hnin Ei Ei Hlaing 2021, 1-68)

Data Collection and Analysis

The data was collected from the library of Myanmar Academy of Arts and Science and its website. The researchers' bio data and research papers were organized by their university, position, best paper award, academy award, and names of winners. This paper emphasizes the Best Paper Awards during (2005-2022) and Academy Awards (2007-2022) of MAAS. The data collection of Best Paper Awards and Academy Awards from 2001 to 2022 is described in the following tables.

Best Paper Award

Conference of the Myanmar Academy of Arts and Science has held annually to promote the education of academic staff of arts and science field since 2021. The best paper awards have been awarded since 2005.

Year-wise Distribution of Research Papers of Winners

At the annual conferences of MAAS, 5708 papers were read by academic staff and (391) winning papers were awarded as Best Paper Awards between 2005 and 2022.

Table 2. Year-wise Distribution of Research Papers of Winners

Year	Reading Papers	Winning Papers	Percentage (%)
2005	254	13	3.32
2006	273	20	5.12
2007	267	23	5.88
2008	299	23	5.88
2009	282	22	5.63
2010	229	22	5.63
2011	228	20	5.12
2012	204	23	5.89
2013	220	20	5.12
2014	232	22	5.63
2015	219	22	5.63
2016	197	24	6.14
2017	307	25	6.39
2018	455	23	5.88
2019	850	26	6.64
2020	862	26	6.64
2021	93	13	3.32
2022	237	24	6.14
Total	5708	391	100%

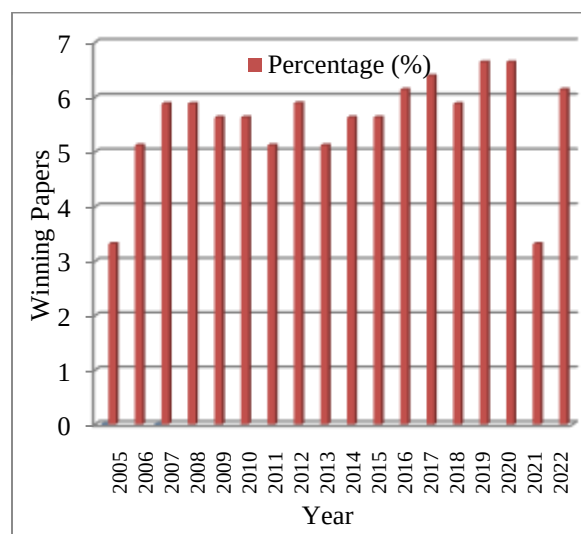


Figure 8. Year-wise Distribution of Research Papers

Gender-wise Distribution of Winners

There are 391 winners for Best Paper Award between 2005 and 2022. The table shows gender of the winners.

Table 3. Gender-wise Distribution of Winners

Gender	No. of Winners	Percentage (%)
Male	108	27.62
Female	283	72.38
Total	391	100%

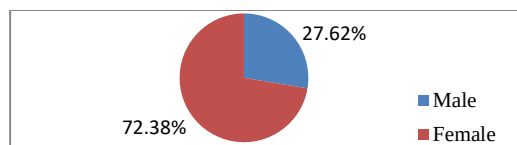


Figure 9. Gender-wise Distribution of Winners

Position-wise Distribution of Winners

The positions of winners are not only academic staff but also academic students, external professionals, and basic education staff.

Table 4. Position-wise Distribution of Winners

Position of Winners	No. of Items	Percentage (%)
Rector (Retd.) EC Member of MAAS	1	0.26
Pro-Rector (Acting)	1	0.26
Professor and Head	27	6.91
Professor	31	7.92
Associate Professor	49	12.53
Lecturer	130	33.24
Assistant Lecturer	87	22.25
Tutor	20	5.12
Demonstrator	21	5.37
Head of Academic Affairs	1	0.26
Deputy Director General (Retd.)	1	0.26
Deputy Director	1	0.26
Assistant Director	1	0.26
Post-Doc Research Fellow, Geography, University of Cologne/Germany	1	0.26
External Professional	1	0.26
Captain	1	0.26
Senior Assistant Teacher (BEHS)	4	1.02
Orchidologist and PhD Candidate	1	0.26
EMPA 6 Batch	1	0.26
PhD Candidate	3	0.77
Prelim Student	7	1.79
MRes Student	1	0.26
Total	391	100%

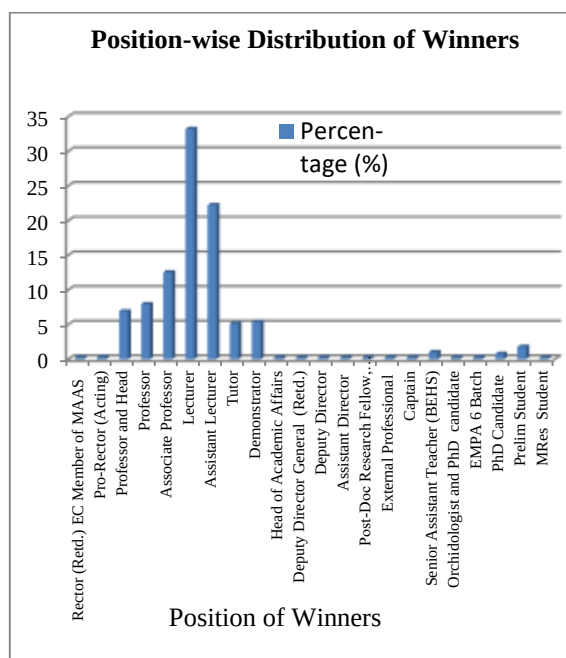


Figure 10. Position-wise Distribution of Winners

Subject-wise Distribution of Winners

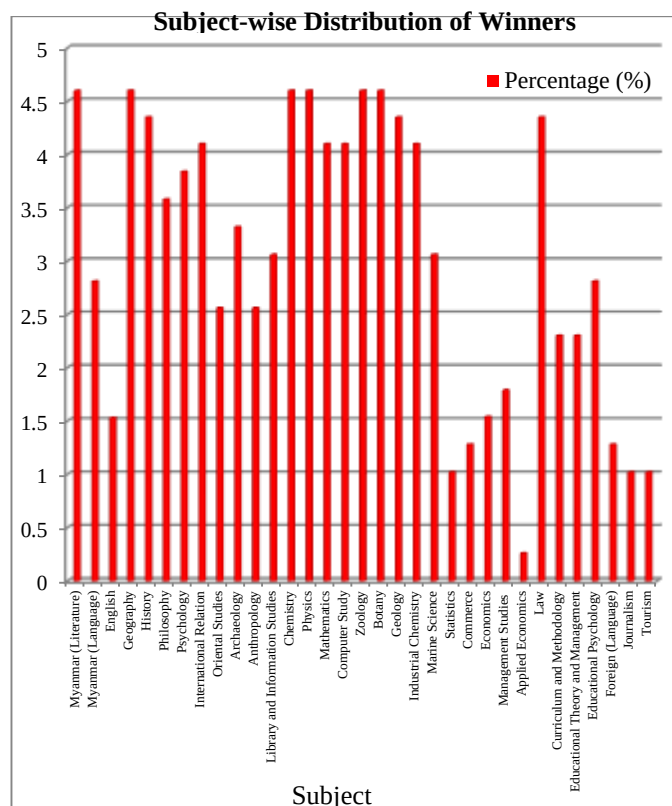
There are many subjects contributed to MAAS in the academic field. The subjects below are awarded by MAAS. Researchers from most disciplines of science and arts submit research papers to MAAS each year and receive awards in their respective fields.

Table 5. Subject-wise Distribution of Winners

Subject	Award Winning Papers	Percentage (%)
Myanmar (Literature)	18	4.60
Myanmar (Language)	11	2.81
English	6	1.53
Geography	18	4.60
History	17	4.35
Philosophy	14	3.58
Psychology	15	3.84
International Relations	16	4.10
Oriental Studies	10	2.56
Archaeology	13	3.32
Anthropology	10	2.56
Library and Information Studies	12	3.06
Chemistry	18	4.60
Physics	18	4.60
Mathematics	16	4.10

“Table 5 - Continued”

Subject	Award Winning Papers	Percentage (%)
Computer Study	16	4.10
Zoology	18	4.60
Botany	18	4.60
Library and Information Studies	12	3.06
Geology	17	4.35
Industrial Chemistry	16	4.10
Marine Science	12	3.06
Statistics	4	1.02
Commerce	5	1.28
Economics	6	1.54
Management Studies	7	1.79
Applied Economics	1	0.26
Law	17	4.35
Curriculum and Methodology	9	2.30
Educational Theory and Management	9	2.30
Educational Psychology	11	2.81
Foreign (Language)	5	1.28
Journalism	4	1.02
Tourism	4	1.02
Total	391	100%

**Figure 11. Subject-wise Distribution of Winners**

Academic Institutions-wise Distribution of Winners

The institutions of the researchers who submitted their papers to MAAS and won the Best Paper Awards are (55) in total. Most of the award winners are from (44) universities and colleges of the Ministry of Education, while the remaining (11) are from the MAAS; Technological University (Maubin); Directorate of Hotels and Tourism; Defence Services Obstetrics, Gynecological and Children Hospital; external professional; Department of Traditional Medicine, Ministry of Health; Basic Education; University of Cologne, Germany; Defence Services Science and Technology Research Center, Pyin Oo Lwin; National Centre for English Language; Ministry of Construction. The table below shows the top eight research submitting institutions from 2005 to 2022.

Table 6. Academic Institution-wise Distribution of Winners

Institution	Award Winners
University of Yangon	148
University of Mandalay	27
Yangon University of Education	22
Dagon University	17
Yangon University of Economics	14
East Yangon University	12
West Yangon University	11
Myeik University	10

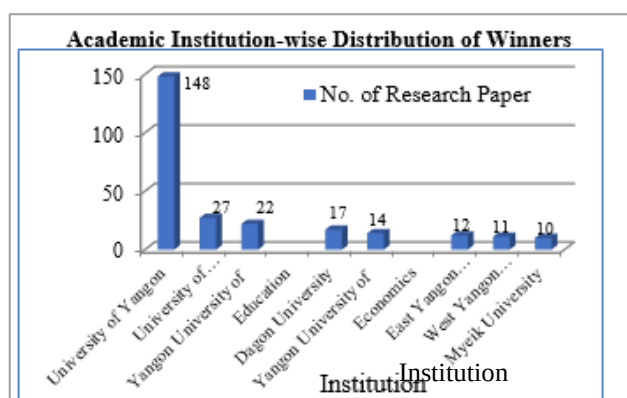


Figure 12. Academic Institution-wise Distribution of Winners

Most Contributed by Winners

The following authors are the most winners of the Best Paper Award of MAAS from 2001 to 2022. The table below lists the authors who have received three or more Best Paper Awards.

Table 7. Most Contributing Winners

Winner	Department	No. of article
Dr. Yin Myo Thu	International Relations	8
Dr. Zaw Linn Aung	History	7
Dr. Khin Ma Ma Tin	English	4
Dr. Aung Kyaw	Geography	4
Dr. Seinn Lei Aye	Industrial Chemistry	4
Dr. Than Win	Myanmar	3
Dr. Thet Thet Naing	Philosophy	3
U Tin Aung Moe	Psychology	3
Dr. Tun Naing Zaw	Geology	3
Dr. Myint Myint Kyi	Management Studies	3

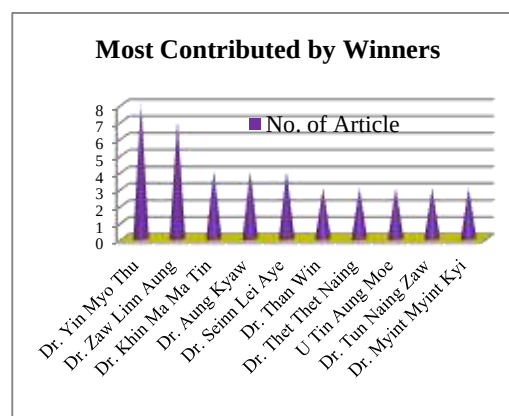


Figure 13. Most Contributed by Winners

Findings

The findings of research contributions of winners for Best Paper Award are shown in the above tables and figures. The following data is found by research activities of researchers in academic field.

In the description of above table 2, award winning research papers are the most in 2019 and 2020 (6.64%) and second is 2017 (6.39%), and the third is in 2016 and 2022 (6.14%). The least is in 2005 and 2021 (3.32%)

Table (3) shows the gender distribution of the award winners, out of 391 awardees, 108 were male (27.62%) and 283 were female (72.38%). It can be seen that there are more females than males.

According to table 4, a study of the positions of the awardees revealed that they included various positions of academic staff. Moreover, external professionals and basic education teachers were given awards. Of these, 130 lecturers (33.24%) were the top award winners, followed by 87 assistant lecturers (22.25%), 49 associate professors (12.53%), 31 professors (7.92%), 27 professors and heads (6.91%), 21 demonstrators (5.37%), 20 tutors (5.12%), 7 pre-doctoral fellows (1.79%), 4 senior assistant teachers (BEHS) (1.02%) and 3 PhD candidates (0.77%). For the remaining positions, only one award-winning paper was awarded.

In this study, frequency distribution of subject is presented in table 5. It can be seen that Myanmar (literature), Geography, Chemistry, Physics, Zoology, and Botany 18 (4.6%) are the maximum number of subjects. History, Geology, and Law 17(4.35%), International Relations, Mathematics, Computer Study, Industrial Chemistry 16(4.1%), and etc. were followed. The minimum number is Applied Economics 1(0.26%).

Researchers submitted at annual conference of MAAS from various academic institutions. University of Yangon is the greatest of university in Myanmar. This study also found that in table 6. The University of Yangon (148) that imported the most research and University of Mandalay (27), Yangon University of Education (22), Dagon University(17), University of Economics (14), East Yangon University(12), West Yangon University(11), and Myeik University(10) are followed. This is followed by Mawlamyine University, Taungoo University and National Management Degree College (9), Yadanabon University (8), Yangon University of Foreign Languages (7), Patheingyi University, Hinthada University and Yangon University of Distance Education (6), and Sittway University, Monywa University, Bago University (5), and etc.

The names and departments of researchers with the most frequency number of Best Paper Award winners can be seen in the table 7. Dr. Yin Myo Thu from the Department of International Relations won the most Best Paper Awards with 8, followed by Dr. Zaw Linn Aung from the Department of History with 7, and Dr. Khin Ma Ma Tin from the Department of English, Dr. Aung Kyaw from the Department of Geography, and Dr. Seinn Lei Aye from the Department of Industrial Chemistry with 4 awards each. Dr. Than Win from the Department of Myanmar, Dr. Thet Thet Naing from the Department of Philosophy, U Tin Aung Moe from the Department of Psychology, Dr. Tun Naing Zaw from the Department of Geology, and Dr. Myint Myint Kyi from the Department of Management Studies with 3 awards, respectively. Therefore, there is 1 researcher who has won 8 awards, 1 researcher who has won 7 awards, 3 researchers who have

won 4 awards, 5 researchers who have won 3 awards, 24 researchers who have won 2 awards, and the remaining 357 researchers have won only 1 award each.

From 2005 to 2015, only one award was given for the Myanmar, but since 2016, two awards have been given for Myanmar (Literature) and Myanmar (Language).

Myanmar Academy of Arts and Science Award

In 2006, the Academy initiated a nationwide Contest of Research Reports of doctoral theses in various fields of study. Since 2007, Myanmar Academy of Arts and Science Awards have been awarding to outstanding scholars who have conducted research reports that will benefit the country and have written and compiled doctoral dissertations. These awards are divided into 3 categories according to academic field such as Myanmar Academy of Arts and Science (Arts), Myanmar Academy of Arts and Science (Science), and Myanmar Academy of Arts and Science (Social Science). The awards given by the MAAS each year are listed in the tables below.

Year-wise Distribution of Research Reports to MAAS

Researchers submitted to research reports of doctoral dissertations for Myanmar Academy of Arts and Science Award. First presentation for Myanmar Academy of Arts and Science Awards held a contest for researchers engaged in research work for the doctoral degree in the year 2006. A total report is 557 between 2007 and 2022.

Table 8. Year-wise Distribution of Research Report to MAAS

Award Winning Year	Calendar Year of PhD	Research Reports	Percentage (%)
2007	2006	120	21.54
2008	2007	42	7.54
2009	2008	44	7.90
2010	2009	29	5.21
2011	2010	27	4.85
2012	2011	33	5.92
2013	2012	25	4.49
2014	2013	28	5.03
2015	2014	26	4.67
2016	2015	22	3.95
2017	2016	27	4.85
2018	2017	34	6.10
2019	2018	46	8.26
2020	2019	33	5.92
2021	2020	5	0.90
2022	2021	16	2.87
Total		557	100%

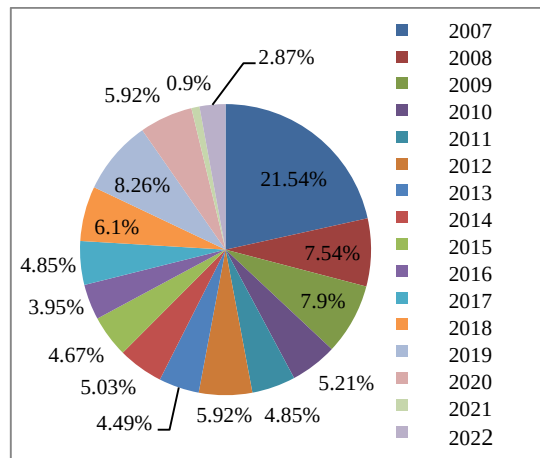


Figure 14. Year-wise Distribution of Research Reports

Year-wise Distribution of Academy Award

The best research reports of doctoral dissertation are listed by categories of the Myanmar Academy of Arts and Science Awards. These categories are Arts, Science and Social Science.

The Academy Awards for Calendar Years from 2006 to 2021 were held during at the between 7th and 22nd Research Conference of MAAS. These were given below –

Table 9. Year-wise Distribution of Academy Award Winning Doctoral Dissertation

Year	Academy Award			Total	Percentage (%)
	Arts	Science	Social Science		
2007	1	1	1	3	2.83
2008	1	1	1	3	2.83
2009	2	2	2	6	5.66
2010	2	2	2	6	5.66
2011	2	2	2	6	5.66
2012	2	2	2	6	5.66
2013	2	2	1	5	4.72
2014	2	3	2	7	6.60
2015	2	3	2	7	6.60
2016	3	3	1	7	6.60
2017	4	3	2	9	8.49
2018	5	4	2	11	10.38
2019	3	4	2	9	8.49
2020	3	4	3	10	9.43
2021	1	1	1	3	2.82
2022	4	2	2	8	7.55
Total	39	39	28	106	100%

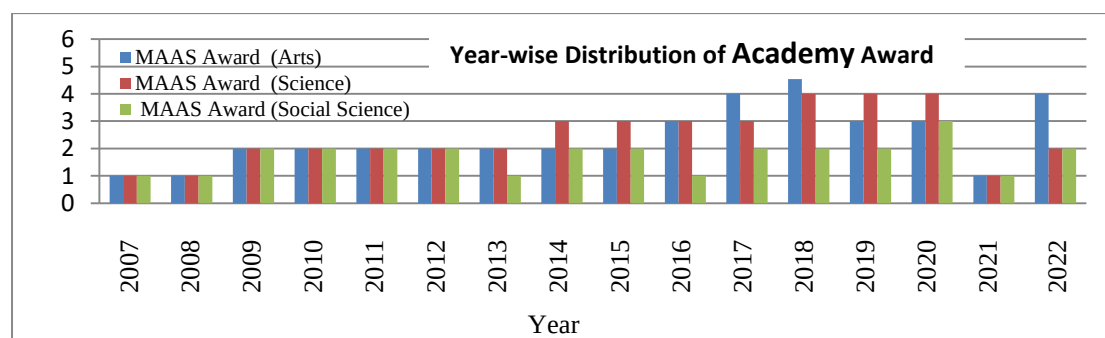


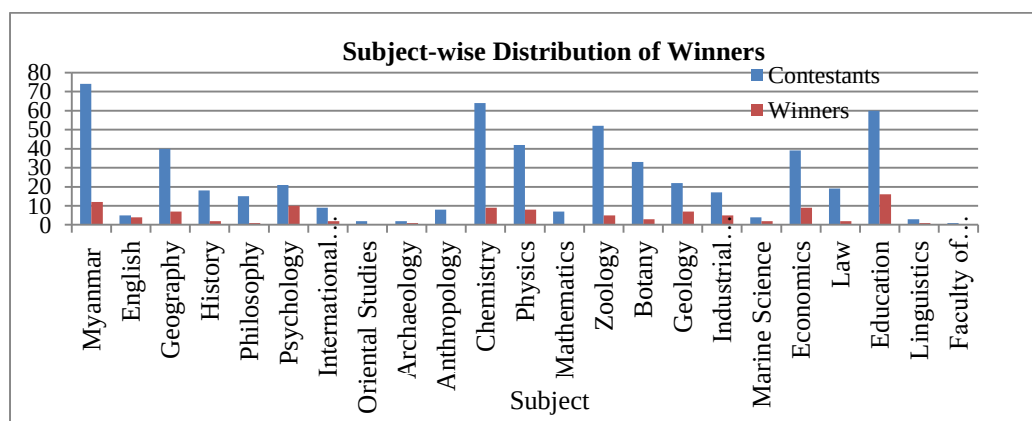
Figure 15. Year-wise Distribution of Academy Award

Subject-wise Distribution of Winners

The MAAS Award winners are chosen on the research reports of PhD dissertation submitted to the MAAS from various subjects. The following table shows a total of contestants and award winners at the Research Conference from 2007 to 2022.

Table 10. Subject-wise Distribution of Winners

Subject	Contestants	Winners	Percentage (%)
Myanmar	74	12	11.32
English	5	4	3.77
Geography	40	7	6.60
History	18	2	1.89
Philosophy	15	1	0.94
Psychology	21	10	9.43
International Relations	9	2	1.89
Oriental Studies	2	-	-
Archaeology	2	1	0.94
Anthropology	8	-	-
Chemistry	64	9	8.49
Physics	42	8	7.55
Mathematics	7	-	-
Zoology	52	5	4.72
Botany	33	3	2.83
Geology	22	7	6.60
Industrial Chemistry	17	5	4.72
Marine Science	4	2	1.89
Economics	39	9	8.49
Law	19	2	1.89
Education	60	16	15.09
Linguistics	3	1	0.94
Faculty of Natural Science	1	-	-
Total	557	106	100%

**Figure 16. Subject-wise Distribution of Winners**

Findings

According to the table 8, 2007 was the highest number of research report submissions, followed by 2019, 2009, 2008 and 2018. The year with the lowest number of reports submissions is 2021. As shown in Table 9, there were 106 Academy Awards between 2007 and 2022. Among them, the number of Academy Awards (Arts) and (Science) is the same as the highest. In Table 10, Myanmar had the highest number of Contestants and the second highest number of awards. Chemistry had the second highest number Contestants and the fourth highest number of winners. Education had the third highest number of Contestants and the first highest number of winners. Faculty of Natural Science had the lowest number of Contestants and no winner. The subjects that competed in the competition but did not win awards were Oriental Studies, Anthropology, Mathematics, and Faculty of Natural Science. There are also some subjects that did not submit reports from 2007 to 2022. Among the subjects, Library and Information Studies, Computer Study, Foreign Language, Journalism, and Tourism are found to be unable to submit research reports to MAAS.

Conclusion

It can be seen that the Ministry of Education is working in various ways to continuously raise and improve the intellectual horizons of the people of Myanmar. The teachers and staff under the Ministry of Education strive to improve the knowledge and skills of teachers and education staff. The purpose of compiling this paper is to inform academic staff and the public about the capabilities of the Myanmar Academy of Arts and Science and the capabilities of the researchers who are working to develop many human resources and the country. By studying this paper, researchers, teachers and students in academic field can do more research. The study would reflect increasing specialization and diversity in research areas as Myanmar's higher education and scientific community developed. The academic staff's contributions to national knowledge, particularly in key fields such as arts, sciences, and interdisciplinary studies, are likely recognized as essential to the cultural and intellectual development of Myanmar.

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AN EMPIRICAL ANALYSIS OF SOCIAL MEDIA USAGE AMONG UNDERGRADUATE LIBRARY AND INFORMATION STUDIES (LIS) STUDENTS AT YADANABON UNIVERSITY

Thet Mon Swe¹

Abstract

The study examines social media usage among undergraduate students in the Department of Library and Information Studies at Yadanabon University, Myanmar. The research applied a quantitative method and also involved 90 students from first-year to third-year honors. Results showed that most students use social media for academic and non-academic purposes, with the highest usage levels among fourth-year students. However, students reported less frequent sharing of academic content, limiting their activity to "sometimes." The study found a significant difference in social media usage across academic years, suggesting that student year level influences the time spent on social media. No significant correlation was found between the frequency of social media usage and content-sharing behaviors for academic purposes. The findings suggest the need for further research on factors influencing social media usage among LIS students to promote academic engagement and improve digital literacy skills.

Keywords: Social Media Usage, Undergraduate Students, Library and Information Studies, Myanmar

Introduction

In the 1990s, the internet revolutionized information access and consumption, transforming the way people share and consume knowledge. As technology evolves, innovative educational tools and platforms will likely reshape how future generations engage with knowledge (McHaney, 2023).

Similarly, the internet is a vital tool in the 21st century, transforming daily life and enabling personal and professional growth. Because of its rapid development, web-based services such as websites and social media platforms have emerged. Digital literacy is crucial for informed decision-making and active community participation. The evolution of internet technologies promises to further enhance connectivity and information access, shaping the future in unprecedented ways (Anurogo, Ramba, Putri and Putri, 2023).

According to Page et al. (2022), internet-based sites and services define social media as platforms that promote social interaction among users. The study also highlights that the language used in social media has attracted significant attention from linguists. This interest stems from the unique ways in which social media shapes communication, influences language evolution, and fosters new forms of expression. As social media continues to evolve, it will be crucial for researchers to explore its impact on linguistic trends and user interaction.

Consequently, Web 2.0 technologies have significantly impacted student behavior, with social media (SM) emerging as an open-source platform for sharing information. This shift enhances collaborative learning, networking, and academic support, providing diverse perspectives and global connections (Vikas and Nanda, 2020). Undergraduate students widely use social media, which significantly impacts their academic and social lives (Taylor, 2020). The research indicates that nearly all students engage with these platforms for various reasons, highlighting the prevalence of social media in their daily routines. Because of its widespread use,

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students can now access different points of view and knowledge, improving their learning and building global connections.

While some studies (Ko, 2019; Tonnesson, Oo, and Aung, 2022; Smith and Smith, 2022; Hamza et al., 2024) have focused on various topics related to social media usage among users in Myanmar, some local scholars are also examining social media usage in relation to their respective professional fields. Oo, Soe, and Oo (2021) also emphasized the importance of internet utilization and internet addiction (IA) among third-year medical students in Myanmar's medical institutions. They highlighted internet addiction among medical students in Myanmar, highlighting research gaps, the need for longitudinal studies, comparative studies, and targeted guidelines.

A study by Win et al. (2017) conducted at Kyaukse University in Myanmar found a significant association between social network addiction (SNA) and anxiety among university students aged 16–23. Of the 400 students, 27.5% were addicted to SN, and 36.5% suffered from anxiety. The study suggests that parents, teachers, and authorities should be involved in controlling internet use and encouraging similar research to explore other SNA side effects in different populations and age groups.

Moreover, numerous universities across different countries have conducted studies to examine this phenomenon. A study on social media usage among LIS students at Dhaka University highlights its potential for transforming education in Bangladesh. However, the low response rate and limited sample size limit its applicability to all students. The department and the University of Dhaka need further research to explore how these platforms can enhance teaching and learning (Atikuzzaman, 2021).

Besides, Buarki and Sung (2024) carried out a comparative study on how students in Kuwait and Taiwan use social media (SM) to access information about Library and Information Science (LIS) programs, including the amount of time they spend, the tools they use, the reasons they use them, and their usage patterns. The study also aimed to identify the challenges encountered in facilitating LIS learning and collaboration.

However, some scholars have overlooked the specific focus on social media usage among undergraduate students in various subjects at public universities in Myanmar. Oo, S. H. (2019) investigated the purpose of using social media in female students' master programs at Yangon University of Economics. Similarly, Phyo (2020) analyzed the benefits and risks of using the Internet and social media among 210 undergraduate students from Yangon University of Economics. Therefore, this article highlights the primary purpose of social media usage among undergraduate students in the Library and Information Studies (LIS) program at Yadanabon University.

To explain this in more detail, Yadanabon University, established in 1999 in Amarapura Township, Myanmar, aims to provide quality education and support regional development. It has expanded to include 21 departments of art and science, including library and information science, and is committed to academic excellence and research, significantly impacting the educational landscape in upper Myanmar.

Additionally, the Department of Library and Information Studies (LIS) at Yadanabon University was established in 2002 to equip students with skills in library and information management. As of 2024, it serves a growing number of students, highlighting the field's

importance in the digital age. The curriculum balances theoretical and practical knowledge for diverse career opportunities. Faculty members have increased from 7 to 14, enhancing expertise and student support, with a commitment to advancing the LIS field. Currently, the department is also offering courses from undergraduate to master's degrees and postgraduate diplomas. Nevertheless, this study focused only on the social media usage of the LIS undergraduate students of social media usage. As a research gap, there was no specific focus on undergraduate students any of the specific fields at public universities in Myanmar. Therefore, the main reason for this paper is to investigate the LIS undergraduate students' primary purpose usage on social media regarding their academic performance and knowledge acquired.

Aim and Objectives

The initial objective of this study is to explore how the Library and Information Studies undergraduate students of Yadanabon University are using various social media platforms for their primary purpose regarding information seeking, knowledge acquiring, and academic performance.

1. To investigate the approach of information searching by undergraduate students of LIS
2. To discriminate the most frequently used social media platforms by undergraduate students of LIS
3. To identify the primary purpose of use for social media
4. To analyze the relationship between social media usage regarding academic performance and knowledge improvement
5. To provide suggestions for social media usage effectively

Scope of The Study

This study investigated social media usage among undergraduate students in Library and Information Studies (LIS) at Yadanabon University. The study area was defined by academic year: 1st year, 2nd year, 3rd year, 4th year, First Year Honors, Second Year Honors, and Third Year Honors. This approach was strata and also chosen to capture the diverse experiences and perspectives of students regarding their use of social media for academic purposes.

Research Methods

According to Bartlett, Kotrlik, and C.Higgins (2001), Cochran's Sample Size Formula is appropriate for a small sample size. Therefore, this study applied the formula $n_0 = Z^2 \cdot P \cdot (1-P) \div E^2$ and the adjusted finite population correction $n = n_0 / 1 + n_0 - 1/N$. As a result, 73 respondents are appropriate and sufficient sample size for this study. Therefore, this research employed a stratified random sampling method to ensure representation across different academic levels of undergraduate students in the Library and Information Science (LIS) department at Yadanabon University. This study combines descriptive and cross-sectional survey research using a quantitative method. These methods were chosen for two key reasons: first, they provide a statistically robust way to gather data from undergraduate students specializing in Library and Information Studies at Yadanabon University, Amarapura Township, Mandalay Division. Second, this study represents pioneering research within this population, aimed at exploring how

LIS undergraduate students use social media to acquire general knowledge and for academic purposes, reflecting the trends of the modern era.

Research Questions

1. How do the respondents approach information searching for their acquiring knowledge?
2. Which type of social media platform is most frequently used?
3. What is the primary purpose of using social media?
4. What is the relationship between social media usage regarding academic performance and knowledge improvement?
5. How to give suggestions for social media usage effectively?

Research Outcomes

As a result, this research revealed that undergraduate students were most interested in using social media, particularly Facebook, primarily for entertainment and, to a lesser extent, for academic purposes to enhance their educational knowledge. Consequently, LIS teachers should guide students on how to use social media effectively for academic development and provide training on AI platforms to further enhance their academic skills. Additionally, teachers should consider setting up a page or website related to the LIS program in the Myanmar language to motivate and engage LIS students.

Literature Review

Nowadays, social media platforms have become essential components of university students' everyday routines, exerting influence on their social behaviors, academic pursuits, and career growth. Therefore, this literature review presents the increasing reliance on social media among university students around the world.

Subsequently, Arslan (2018) also researched the social media usage of undergraduate students of 13 Universities from 23 countries. The result points out that there is a weak but positive role of social media in increasing class participation and preparation, which is related to higher academic performance. Following the assumption, undergraduate students in many countries have applied the social media since during 2015-2016 Academic Year.

Furthermore, Alshalawi (2022) investigated the influence of social media networks (SMNs) on the academic performance of (453) undergraduate students from five public universities in the Kingdom of Saudi Arabia. The study identifies that female students tend to spend more time on social media for both general and academic purposes compared to male students. However, there are no significant gender differences in multitasking with social media during schoolwork.

Similarly, Alamri (2019) also conducted that social media usage for personal purposes is positively related to academic performance, but no significant relationship is found for educational and occupational purposes in Saudi Arabia. The study was also based on a small sample size of 132 undergraduate students in the Education College at King Faisal University in Saudi Arabia (Alamri, 2019).

Additionally, Lau (2017) also analyzed about the undergraduate students' use of social media for academic performance at a comprehensive university in Hong Kong. According to the result, using social media for academic purposes does not significantly predict academic

performance, whereas using it for non-academic purposes, such as video gaming, and multitasking with social media negatively impacts academic performance.

However, Agholor, Agholor, and Aborisade (2020) clarified that social media use significantly negatively impacts students' academic performance when assessed using a real-time observation approach and time management equation. Hence, social media usage is very trending in human society including academics for many years in other countries. Also, the positive and negative impacts have been reported by many fields of scholars.

In their studies, many professional scholars in their respective fields have explored specifically the social media usage of university students on public universities in Myanmar (Kyaw Sann Win and et al. 2017; Phyo, 2020; Oo S. H., 2019; Oo, Soe, and Oo, 2021). Therefore, the reviews aim to provide a comprehensive understanding of the topic and identify gaps that need to be addressed, particularly in Library and Information Science (LIS) education at Yadanabon University, Mandalay Division, Amarapura Township.

As a result, the study contributes to social media usage behavior and knowledge acquired among LIS undergraduate students, highlighting the benefits of effective information use and providing insights for faculty based on social media usage of undergraduates' academics. Besides, it provides an empirical analysis of their usage patterns, motivations, and outcomes, aiming to fill a gap in research on how social media platforms are integrated into their academic and social lives.

Data Collection and Analysis

The study aimed to cover undergraduate students of during 2023-2024 academic year from undergraduate students and got responses from a total of 90 students at Yadanabon University. The survey began in the first week of September 2024 and continued through the second week of September 2024. The type of questionnaire is self-administrated and also included various sections to assess students' social media usage behaviors, academic engagement, and perceptions of the impact of social media on their academic performance. The researcher distributed 100 printed questionnaires to every undergraduate of class by requesting the tutors. The collected data were downloaded to Excel and then analyzed using both MS Excel and IBM SPSS version 25. Descriptive statistics were used to analyze the demographic information of the students concerning their social media usage.

Undergraduate Demographic Profile

The study aimed to cover the students of nine batches of the department of LIS students who are studying for the 2023-2024 academic year at Yadanabon University. Fourth-year students will graduate soon in this academic year and the rest of the students will continue studying respectively. A total of 90 students responded to the survey. Overall, the majority are either in the 2nd, 4th, or 1st-year honors academic categories. Most participants lived on campus and access the internet primarily from home. Smartphones are the most common device used, and the majority use their phone number for online accounts (Table 1).

Table 1. Demographic Profile of LIS Undergraduate Students

No	Demographic	Respondents	Frequency(N)	Percentage (%)
1	Gender	Male	21	23.3%
		Female	69	76.7%
2	Age	18-21	36	40%
		22-25	52	57.8%
		Over 25	2	2.2%
3	Undergraduate	1 st year	15	16.7%
		2 nd year	18	20%
		3 rd year	13	14.4%
		4 th year	20	22.2%
		1 st year honors	11	12.2%
		2 nd year honors	3	3.3%
		3 rd year honors	10	11.1%
4	Residence	On Campus	68	75.6%
		Off Campus	14	15.6%
		Commuter	8	8.9%
5	Access the Place	At Home	60	66.7%
		At University	9	10%
		University Library	6	6.7%
		Mobile Data	10	11.1%
		Public Wi-Fi	5	5.6%
6	Guidance	Yes	48	53.3%
		No	42	46.7%
7	Device	Smart Phone	88	97%
		Tablet	2	2.2%
Total			90	100%

Using the Different Types of Social Media by Undergraduate Students

According to the results in Table 2, Facebook and TikTok were the dominant social media platforms across all academic years. 4th-year students showed the highest usage across many platforms, especially Facebook, TikTok, and YouTube. Honors students generally have lower usage rates compared to regular students but still showed moderate usage on platforms like

Facebook, TikTok, Telegram, and YouTube. WeChat and LinkedIn were the least popular platforms among all students.

Table 2. Using the different types of social media by Undergraduate students

Using the Different Types of Social Media by Undergraduate Students									
Undergraduate									
No	Type of Social media	1st year	2nd year	3rd year	4th year	1st year honors	2nd year honors	3 rd year honors	Total
1	Facebook	13.3%	12.2%	12.2%	20%	11.1%	2.2%	10%	81.1%
2	Tiktok	7.8%	16.7%	8.9%	18.9%	12.2%	1.1%	8.9%	74.5%
3	Telegram	5.6%	8.9%	5.6%	16.7%	6.7%	0%	8.9%	52.4%
4	Youtube	3.3%	7.8%	3.3%	15.6%	7.8%	1.1%	10%	48.9%
5	Messenger	3.3%	5.6%	2.2%	12.2%	7.8%	3.3%	5.6%	40%
6	Instagram	2.2%	4.4%	4.4%	8.9%	6.7%	0%	4.4%	31%
7	Snapchat	0%	1.1%	1.1%	1.1%	2.2%	0%	4.4%	9.9%
8	Twitter	1.1%	3.3%	1.1%	1.1%	1.1%	0%	1.1%	8.8%
9	WhatsApp	0%	0%	0%	1%	3%	0%	2 %	6 %
10	Others	0%	0%	0%	1.1%	1.10%	1.1%	0%	3.3%
11	WeChat	0%	0%	0%	0%	0%	0%	1.1%	1.1%
12	LinkedIn	0%	0%	0 %	1.1%	0 %	0%	0%	1.1%

Reason for Social Media Usage by Undergraduate Students

As a general observation, entertainment was the primary reason students used social media, with the highest usage across all academic years. Furthermore, connecting with friends and family was also a major reason, particularly for 4th-year and 2nd-year students. New information and updates and academic purposes were less prominent, though 4th-year students led in both categories. Professional networking was the least common use for social media among students, with only a small percentage (6.7%) using it for this purpose, and the highest usage seen among 2nd-year students see (Table-3).

Table 3. Reason for Social Media Usage by Undergraduate Students

Reason for Social Media Usage by Undergraduate Students								
Undergraduate								
Reason for Social Media Usage	1st year	2nd year	3rd year	4th year	1st year honors	2 nd year honors	3 rd year honors	Total
Entertainment	5.6%	10%	8.9%	17.8%	8.9%	2.2%	7.8%	61.1%

Reason for Social Media Usage by Undergraduate Students								
Undergraduate								
Connecting with friends and family	7.8%	12.2%	5.6%	13.3%	8.9%	1.1%	7.8%	56.7%
New and Information	3.3%	4.4%	8.9%	12.2%	2.2%	3.3%	4.4%	38.9%
Academic	6.7%	3.3%	5.6%	5.6%	2.2%	1.1%	6.7%	31.1%
Professional Networking	0%	3.3%	0%	2.2%	0%	0%	1.1%	6.7%

Using Social Media for Academic Purposes

As an overall observation, the majority of students (37.8%) reported always using social media for academic purposes, while 30.0% used it frequently. Occasional use accounted for 22.2%. Rare and never use were quite low, at 5.6% and 4.4% respectively. The 4th-year students had the highest overall use for academic purposes, with a significant percentage using it always and frequently. Second Year Honors students showed the lowest total usage for academic purposes (Table 4).

Table 4. Using Social Media for Academic Purposes

Using on Social Media for Academic Purpose						
Undergraduate	Never	Rarely	Occasionally	Frequently	Always	Total
1st year	0%	1.1%	7.8%	1.1%	6.7%	16.7%
2nd year	2.2%	2.2%	3.3%	4.4%	7.8%	20 %
3rd year	0%	1.1%	2.2%	6.7%	4.4%	14.4%
4th year	1.1%	1.1%	5.6%	6.7%	7.8%	22.2%
1st year honors	0%	0%	1.1%	5.6%	5.6%	12.2%
2nd year honors	0%	0%	2.2%	1.1%	0%	3.3%
3rd year honors	1.1%	0%	0%	4.4%	5.6%	11.1%
Total	4.4%	5.6%	22.2%	30%	37.8%	100%

Sharing on Social Media for Academic Purposes

According to (Table-5), sometimes sharing academic content was the most common behavior among all students (37.8%), followed closely by often sharing (36.7%). Always sharing is relatively low at 14.4%. Never sharing accounted for 7.8%, and rarely sharing for 3.3%. The 4th-year students had the highest overall activity in sharing academic content, particularly with a high proportion of often and always sharing. The 2nd year honors students reported the lowest engagement in sharing academic content.

Table 5. Sharing on Social media for Academic Purposes

Sharing on Social Media for Academic Purposes by Undergraduate						
Undergraduate	Never	Rarely	Sometimes	Often	Always	Total
1st year	1.1%	1.1%	10%	4.4%	0%	16.7%
2nd year	1.1%	2.2%	6.7%	7.8%	2.2%	20%
3rd year	2.2%	0%	4.4%	4.4%	3.3%	14.4%
4th year	2.2%	0%	5.6%	7.8%	6.7%	22.2%
1 st year honors	0%	0%	8.9%	2.2%	1.1%	12.2%
2 nd year honors	0%	0%	0%	3.3%	0%	3.3%
3 rd year honors	1.1%	0%	2.2%	6.7%	1.1%	11.1%
Total	7.8%	3.3%	37.8%	36.7%	14.4%	100%

Spent Time on Social Media for Academic Purposes

According to Table-5, the most common duration of social media use across all students was 3-4 hours (27.8%), followed by 1-2 hours (25.6%). A significant portion of students also reported using social media for more than 6 hours (21.1%) and 5-6 hours (18.9%). Less than 1 hour of social media use was the least common (6.7%). The 4th-year students had the highest total percentage of usage, with a diverse distribution across all categories. The 2nd year honor students reported the lowest overall use, with no students spending more than 6 hours on social media.

Table 6. Spent Time on Social media for Academic Purposes

Academic Year* Duration of Social media						
Year	Less than 1 hour	1-2 hours	3-4 hours	5-6 hours	More than 6 hours	Total
1st Year	4.40%	4.40%	2.20%	3.30%	2.20%	16.70%
2nd year	1.10%	7.80%	11.10%	0.00%	0.00%	20.00%
3rd year	0.00%	0.00%	3.30%	4.40%	6.70%	14.40%
4th year	0.00%	4.40%	7.80%	6.70%	3.30%	22.20%
1 st Year Honors	0.00%	6.70%	3.30%	1.10%	1.10%	12.20%
2 nd Year Honors	0.00%	1.10%	0.00%	2.20%	0.00%	3.30%
3 rd Year Honors	1.10%	1.10%	0.00%	1.10%	7.80%	11.10%
Total	6.70%	25.60%	27.80%	18.90%	21.10%	100.00%

Receiving the Information on Social Media for Academic Purposes

Table 7 shows that LIS undergraduate students predominantly use posts and videos to receive information from social media, with less focus on stories, messages, and live interactions. Videos (57.7%) and posts (56.7%) were the most popular methods for receiving information, followed by stories (21%) and messages (16.6%). Live content (9.9%) and other formats (5.5%) were the least commonly used.

Table 7. Receiving the Information on Social Media for Academic Purposes

Receiving the Information from Social Media						
Year	Post	Video	Stories	Message	Live	Other
1st year	6.7%	12.2%	2.2%	2.2%	0%	0%
2nd year	15.6%	10%	3.3%	1.1%	2.2%	0%
3rd year	8.9%	8.9%	2.2%	1.1%	3.3%	1.1%
4th year	13.3%	13.3%	5.6%	5.6%	0%	2.2%
1 st year honors	7.8%	7.8%	3.3%	2.2%	2.2%	1.1%
2nd year honors	1.1%	1.1%	0%	1.1%	0%	0%
3rd year honors	3.3%	4.4%	4.4%	3.3%	2.2%	1.1%
Total	56.7%	57.7%	21%	16.6%	9.9%	5.5%

Browsing the Type of Vlogs on Social Media

According to Table 8, food, beauty, and travel-related vlogs were the most popular among undergraduates, reflecting broader lifestyle interests. However, the lower engagement with academic, political, and educational content highlights a focus on entertainment and personal interests over professional or educational growth through social media. Among students, 4th-year students were the most diverse in their vlog consumption, engaging across a wide range of categories, from lifestyle to political and academic content. First-year students leaned more toward food (5.6%) and cooking vlogs (4.4%), while their engagement with professional, academic, or educational content was limited. Honors students showed varied interests: first year honors students were more focused on beauty, entertainment, and food vlogs, while second year honors students browsed the least across most vlog types, indicating a narrower range of interests.

Table 8. Browsing the type of Vlogs on Social Media by Undergraduate Students

Browsing the Type of Vlogs on Social Media								
	1 st year	2 nd year	3 rd year	4 th year	1 st year honors	2 nd year honors	3 rd year honors	Total
Food	5.6%	11.1%	7.8%	11.1%	8.9%	1.1%	7.8%	53.4%
Travelling	2.2%	10%	5.6%	12.2%	5.6%	0%	7.8%	43.4%
Beauty	2.2%	7.8%	4.4%	12.2%	7.8%	1.1%	7.8%	43.3%

Browsing the Type of Vlogs on Social Media								
	1st year	2nd year	3rd year	4th year	1 st year honors	2nd year honors	3rd year honors	Total
Entertainment	2.2%	6.7%	4.4%	13.3%	6.7%	2.2%	6.7%	42.2%
Cooking	4.4%	7.8%	4.4%	10%	5.6%	0%	5.6%	37.8%
Health	1.1%	5.6%	2.2%	11%	3.3%	0%	6.7%	30%
Shoppings	4.4%	4.4%	4.4%	5.6%	5.6%	0%	2.2%	26.6%
LifeStyle	1.1%	3.3%	2.2%	6.7%	1.1%	0%	8.9%	23.3%
Motivation	1.1%	4.4%	1.1%	8.9%	1.1%	0%	5.6%	22.2%
Pet	0%	2.2%	2.2%	7.8%	2.2%	1.1%	5.6%	21.1%
Relationship	3.3%	3.3%	2.2%	4.4%	2.2%	0%	1.1%	16.5%
Natural	1.1%	2.2%	1.1%	7.8%	2.2%	0%	1.1%	15.5%
Political	1.1%	2.2%	4.4%	4.4%	3.3%	0%	0%	15.4%
Academic	2.2%	3.3%	1.1%	4.4%	3.3%	0%	0%	14.3%
Other	0%	3.3%	2.2%	2.2%	0%	0%	2.2%	9.9%
News	1.1%	0%	1.1%	5.6%	0%	1.1%	0%	8.9%
Technology	0%	3.3%	1.1%	2.2%	0%	0%	2.2%	8.8%
Religious	2.2%	0 %	2.2%	2.2%	0%	0%	1.1%	7.7%
Agriculture	0%	0%	0%	3.3%	1.1%	0%	1.1%	5.5%
Artists	0%	0%	0%	3.3%	0%	1.1%	0%	4.4%
Sex	0%	0%	0%	1.1%	0%	1.1%	1.1%	3.3%

Making Accounts for Social Media Platform Usage

Table 9 shows the percentage of undergraduate students who created social media accounts using phone numbers or Gmail. The majority of students preferred phone numbers for creating accounts, with 68.90% using phone numbers and 31.10% using Gmail. The data showed that 14.4% of first-year students used a phone number and 2.20% used Gmail, while 15.6% of second-year students used a phone number and 4.40% used Gmail. The highest percentage of account creation was 20.00% for second-year students, followed closely by 4th-year students at 22.20%. The lowest engagement was observed for second-year honours students, suggesting that they may have different usage patterns or preferences compared to their peers.

Table 9. Making the Accounts for Social Media Platform Usage

Making the Accounts for Social Media Platform Usage			
Year	Phone Number	Gmail	Total
1st year	14.4%	2.2%	16.7%
2nd year	15.6%	4.4%	20%
3rd year	8.9%	5.6%	14.4%
4th year	14.4%	7.8%	22.2%
1st year honors	6.7%	5.6%	12.2%
2nd year honors	2.2%	1.1%	3.3%
3rd year honors	6.7%	4.4%	11.1%
Total	68.9%	31.1%	100%

Challenges in Using Social Media

Table 10 shows that 68.9% of students encountered problems while using social media, with slow internet being the most common issue. High internet costs were also experienced by 4th, 2nd, and 3rd year students. VPN needs were needed by 54.6% of students. Distraction was the most common issue, with 4th-year students being most affected. Lack of privacy was also a concern for 2.2% of students. Negative impacts were reported by 4.4% of students. Overall, slow Internet and the need for a VPN are the top challenges for students across all years. High Internet costs are also a significant issue, particularly for 4th and 2nd-year students. Distraction and lack of privacy appear to be less of a concern overall, but a few isolated instances do exist.

Table 10. Challenges in Using the Social Media

Challenges on Using the Social Media							
Year	Slow Internet	Needs VPN	Cost Internet	Distraction	Lack Privacy	Negative Impact	Others
1st year	8.9%	10.1%	2.2%	0%	0%	0%	0.0%
2nd year	14.4%	7.8%	6.7%	1.1%	0%	1.1%	0.0%
3rd year	8.9%	7.8%	1.1%	1.1%	0%	0%	1.1%
4th year	16.7%	10%	7.8%	2.2%	1.1%	0%	0.0%
1 st year honors	11.1%	5.6%	5.6%	1.1%	0%	2.2%	1.1%
2 nd year honors	1.1%	2.2%	1.1%	0.0%	0%	0%	0%
3rd year honors	7.8%	11.1%	4.4%	1.1%	1.1%	1.1%	0%
Total	68.9%	54.6%	28.9%	6.6%	2.2%	4.4%	2.2%

Impact on Social Media Usage by LIS Undergraduate Students

As a final analysis, the ANOVA analysis was tested to determine the significant difference in social media usage for academic purposes by undergraduate students. Table 11 revealed a statistically significant difference in the impact of social media usage across different year groups of undergraduate students. The between-group variation (sum of squares 148.555) reflected differences in the means of the groups, while the within-group variation (650.345) represents individual differences within the groups. The F-value (3.160) indicated that the variation between groups is greater than within groups. Since the p-value (0.008) was less than 0.05, it confirmed a significant difference in social media impact depending on the student's year of study see Table 11.

Table 11. Impact on Social Media Usage by LIS Undergraduate Students

ANOVA Table							
			Sum of Squares	df	Mean Square	F	Sig.
Impact * Year	Between Groups	(Combined)	148.555	6	24.759	3.160	0.008
	Within Groups		650.345	83	7.835		
	Total		798.900	89			

Findings and Discussion

The results indicated that a significant majority of students frequently use social media platforms, particularly Facebook (81%) and TikTok (74.5%). Nevertheless, all undergraduate students browsed on Google for their academic requirements by one of the survey questions (no.30), because the result showed only (14.3%) was used in Table (8). However, while these platforms are widely used, the primary motivations lean more toward entertainment and lifestyle rather than academic engagement. Therefore, this study is in line with (Moghavvemi, Sulaiman, Aziz, and Wai, 2017; Nwafor and Nnaemeka, 2023). Many respondents indicated that they use social media "always," yet they share academic content "sometimes," revealing a disconnect between usage and productive academic application. The analysis of social media usage revealed that varied duration spent time among undergraduate students. Fourth-year students are the most active, predominantly spending for 3-4 hours. In contrast, second-year honors students exhibit the least activity, likely due to academic pressures. Overall, consistent daily use is noted across all groups. In terms of information acquisition, students predominantly accessed information through posts (56.7%) and videos (57.7%), suggesting that engaging and visual content is effective in disseminating information among LIS undergraduates. However, challenges such as slow internet speeds and high costs were reported by 68.9% of respondents, hindering effective social media use for academic purposes. Statistical analysis through ANOVA revealed a significant difference in the impact of social media usage across different year groups ($p = 0.008$), indicating that social media's influence on academic performance varies with students' progression in their studies. These findings underscore the need for educational strategies that leverage visual and engaging formats on social media to enhance academic engagement. Furthermore, addressing infrastructure challenges is crucial for improving students' access to online resources. Overall, while social media offers a valuable tool for information sharing, its potential for academic purposes remains underutilized among LIS undergraduates. Future research should explore specific strategies that students employ to integrate social media into their academic lives, providing insights on how to effectively harness social media for educational benefits.

Conclusion

The analysis reveals that undergraduate students use social media both for academic and non-academic purposes, with senior students demonstrating a higher tendency to share academic content. Time spent on social media increases with academic progression, which may reflect the growing importance of these platforms in both academic and personal contexts. Despite various challenges such as slow internet and the need for VPNs, students are highly engaged in social media, especially for watching videos, following influencers, and referencing content for academic purposes. There is also a clear preference for creating social media accounts using phone numbers over Gmail, with slight variations across academic years. These insights provide valuable information for understanding social media usage patterns among undergraduate students and can inform future strategies for leveraging these platforms in educational contexts. The ANOVA analysis shows that there are significant differences in social media impact across the different year groups, suggesting that academic year level influences the extent to which social media affects students. This analysis highlights the need for better internet infrastructure and possibly more tailored support for students based on their academic year, given the varying levels of social media usage and challenges faced.

According to the analysis results, the research questions could be answered the followings such as RQ1. YouTube, Facebook, and Telegram are among the most widely used platforms for knowledge acquisition by LIS undergraduate students.

RQ2. Facebook and TikTok are the most frequently used social media platforms across all age groups by undergraduate students.

RQ3. Entertainment and casual browsing (such as watching vlogs and following celebrities), which is evident in the high percentages for watching, following celebrities, and using references.

RQ4. The undergraduate students of social media usage do have a statistically significant impact on academic performance and knowledge improvement ($F=3.160$, $p = 0.008$).

RQ5. Based on the findings, the following suggestions can be made to enhance effective social media usage for academic improvement. Promote Academic Vlogs and Content, Introduce Social Media Training Programs, Facilitate Access to Reliable Academic Sources, Guide Responsible Usage and then Encourage Critical Thinking and Ethical Sharing.

As a conclusion, with the right guidance and training, students can harness the benefits of social media to boost their learning outcomes. The primary purpose of social media usage among LIS undergraduate students is predominantly oriented toward entertainment and lifestyle rather than academic objectives. While students engage with social media platforms for information searching, the frequency and emphasis on academic content, such as academic vlogs and discussions, are noticeably less prominent. This trend suggests that although students recognize the potential of social media as a tool for knowledge acquisition, their engagement is primarily driven by non-academic interests. To enhance academic engagement, it is essential to promote awareness of the value of using social media as an academic resource, highlighting how it can complement their studies and improve their academic performance. By providing targeted instruction and resources, educators can guide students in leveraging social media more effectively for academic purposes.

Recommendations

Students ought to utilize academically relevant applications, such as the DDC quiz, to enhance learning and minimize distractions. Library specialists ought to collaboratively develop smartphone applications centered on classification systems such as the Dewey Decimal Classification (DDC). These applications can assist students in understanding library resources and information literacy.

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THE STUDY ON THE BUDDHA LIFE STORIES OF BAGAN PERIOD: THE DESCENT FROM *TĀVATĪMSA* *

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Abstract

The main aim of this paper is to study the Descent from *Tāvatiṃsa* on the Buddha life stories depicted in the paintings of ancient temples from Bagan which has now been recognized as a world heritage site in Myanmar. Buddhism has flourished in Myanmar before Bagan period and reached at its highest point in Bagan period. The people of Bagan period, both elite class and commoners, had built religious monuments. Their major aim was that they wanted the Buddhism to last longer until 5000 years. They used to decorate the inner walls and ceilings of temples with mural paintings. Mural paintings that adorned the inner walls of temples during the Bagan period, spanning from 11th to the 13th century CE. This period is often referred to as the ‘Golden Age’ of Myanmar art. The earliest wall painting of the Descent from *Tāvatiṃsa* can be observed in Nagayon Temple in early period. In middle and late Bagan period, the Descent from *Tāvatiṃsa* was also popular and they were beautifully drawn on the walls of the temples. One of the major themes of their paintings was the eight great scenes of the Buddha's life including the Descent from *Tāvatiṃsa* which was one of the most popular themes in Buddhist art of Myanmar. Therefore, the study of Bagan Temples will be provided the remaining of Bagan mural paintings works in “Where and what type of decorative art in Bagan Temples,” which can be seen Temple No. 2157/1451, Monument No. 1152, Monument No. 92 and Monument No. 339/212 (B). The methodology for this research paper is mainly based upon the previously published texts and private field survey and art remains of mural paintings which has been failure in previous attempts are organized with the recent finding.

Keywords: *Tāvatiṃsa*, eight great scenes, religious monuments, mural painting

Introduction

Many temples of Bagan are illustrated with paintings on the interiors as a work of merit. It is one of the most effective ways of spreading Buddhism. In fact, the former one sees in enormous numbers and according to the inventory list, there are totally 3122 structural remains. According to the survey, there are 128 temples but decorative art of the descent from *Tāvatiṃsa* where mostly seen 35 temples and they belonged to the temples with single story temples. People of Bagan Period used to depict the Great Eight Scene as follow: 1. Mt. Meru, 2. Preaching *Abhidhamma*, 3. Preaching *Abhidhamma* and Descending from *Tāvatiṃsa* along the three Stairways, 4. Descending from *Tāvatiṃsa* along the three Stairways, 5. Descending from *Tāvatiṃsa* without Three Stairways and 6. Ascending to *Tāvatiṃsa*, Preaching *Abhidhamma* and Descending from *Tāvatiṃsa*.

Among them four temples which was Descending from *Tāvatiṃsa* without three Stairways will be observed. The eight great scenes from the life of Buddha Godama were one of the popular themes of mural painting in Bagan Period. One of the eight great scenes is the Descent from *Tāvatiṃsa*. The story goes as follow: When the Buddha was alive, Godama wanted to gratitude to mother of his previous life. Then, his mother of previous life became a god, *Thantuthita*, on the *Tāvatiṃsa*, one of the celestial abodes. Godama went to *Tāvatiṃsa* and preached the god *Thantuthita* the *Abhidhamma*, one of the three *pitakas*. He had resided on the

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mandhukammalā throne (emerald throne) under *kathic* tree (*Erythrina arborescens*) for three months. The Buddha preached the *Abhidhamma* not only to *Thantuthita* but also to other gods and Brahmās such as *AñKura*, *Ainda*, etc. The Buddha had preached the *Abhidhamma* days and nights for three months. When the Buddha went around for the alms food, Godama left the image, *Nimmika*, to continue to preach the *Abhidhamma*. The Buddha went around for the alms food with brown stone alms bowl, which was donated by four kings of God. The Buddha used to go to the North Island, and partake the alms food at Anotat Lake. After that, Godama went to Sandalwood Forest to clean himself, and went back to *Tāvātimsa*. And then, He continued to preach the *Abhidhamma*. During Buddha went around for alms food, the image *Nimmika* preached the *Abhidhamma* elaborately.

Buddha's life story is the most important role in Buddhism. It has been found in descriptive form in mural paintings. In ancient archaeological landscape of Myanmar, the great scene of the descent from *Tāvātimsa* is mainly exposed in mural paintings. Among them, Descending from *Tāvātimsa* without three Stairways is presented. According to present survey, including usual style of the descent from *Tāvātimsa* scene of mural paintings, have been found in the total numbers of four temples. It was known that in Bagan Period, the scene of the Buddha's descent from *Tāvātimsa* Celestial Realm without three stairways was depicted in eight temples. Among those eight temples, the four temples are presented in this research paper.

Research Questions

How is the scene of the Descent from *Tāvātimsa* without three stairways depicted in the mural paintings of Bagan temples, and what are its distinctive stylistic features?

What religious and symbolic meanings are conveyed through the representation of the Descent from *Tāvātimsa* in the Buddhist art?

How do the selected temples reflect variations in artistic style of the Descent from *Tāvātimsa* scene?

Research Methodology

This research employs a descriptive methodology, primarily based on both primary and secondary sources. The study draws upon previously published scholarly works, inscriptions, and historical records related to Bagan art. In addition, field surveys were conducted to examine the remaining mural paintings in selected temples, allowing for direct observation of stylistic features, composition, and elements. Photographic documentation and comparative visual analysis are used to identify similarities and differences among the selected sites. Furthermore, this study integrates recent findings with earlier research in order to reassess and organize previously overlooked or insufficiently studied mural remains. Through this combined approach, the research aims to provide a clearer understanding of the depiction and significance of the Descent from *Tāvātimsa* in Bagan mural art.

Temple No. 2157/1451 (East of Taungbi Village)

Temple No. 2157/1451 lies on the left side of the Naung U-Bagan Road, near Kheminga temple, in east of Taungbi village (94° 52' 09.6" E & 21° 10' 26.5" N). It is a small temple with Sikhara on the roof and the vestibule faces east. There are beautiful wall paintings in the temple. It was built in 12th century CE. Floral patterns, twenty-eight Buddhas, figures of monks, kenari and kainara, eight scenes of Buddha life and late paintings were painted on the walls. The big Buddha image, 12' 8" height with Bhūmisparśa mudrā, seated on the lotus throne of 5' 3". At the backdrop of the Buddha are eight scenes of Buddha. The scene of the Descent from *Tāvātimsa* is drawn above the left side of the seated Buddha.

In the scene, the Buddha is descending from *Tāvātimsa* in Mahā Karuṇā mudrā. The Buddha is wearing robes which cover both shoulders. In this temple, the scene of the Descent from *Tāvātimsa* was illustrated without the three stairways. The Buddha is wearing flat turban. Brahmā is standing behind the Buddha and shading the Buddha with an umbrella. Brahmā was depicted with three heads. Style of umbrella is similar to the stone umbrellas on pagoda platforms. A god is standing behind Brahmā. Sakka is standing before the Buddha. He is carrying alms bowl in his arms and turning his head back to the Buddha. He is wearing crown. Colour of the robes of the Buddha is red, hair is black. Halo behind the head of the Buddha was painted in white and yellow. However, colour of the painting is faint and figures in the painting cannot be seen clearly.

Buddha Prinivana Scenes		
The Taming of Nālāgiri	The Enlightenment	The Descent from Tāvātimsa
The first sermon		The Great Miracle
The Honey Rice		The Nativity

Source: Thein Lwin (Myan Sar Myay)



Figure 1. Temple No. 2157/1451 (East of Taungbi Village)

Source: Photo by Researcher



Figure 2. Descending from *Tāvātimsa* without Three Stairways

Source: Photo by Than Zaw (Geology)

Monument No. 92 (Razathu Temple)

Monument No. 92 (Razathu Temple) is situated in Shin Pin Sa Kyo Pagoda compound (20° 52' 20.8" N & 94° 43' 46.8" E). It is a small single storey temple surmounted with a square tower. There is only one entrance which is facing to the north. Lotus rosacea, circle patterns with lotus designs, Buddha's footprint, five hundred fifty Jatakas and the Great Eight Scenes from the life of the Buddha were painted on the ceiling and inner walls of the temple. According to Sa Kyo Phaya Hla inscription which was inscribed in Innwa period, King Narapati Sithu donated land to Shin Pin Sa Kyo Pagoda in 554 ME (1192 CE). The Great Eight Scenes from the life of the Buddha were painted on the walls of west niche of Razathu Temple. Painting of the scene of the Descent from *Tāvātimsa* is 7 inches wide and 12 inches high.

The Buddha is standing on a lotus in Mahā Karuṇā mudrā in the scene of the Descent from *Tāvātimsa*. The Buddha is wearing robes which cover only the left shoulder. There is no stairway in the painting. Colour of the robes is red, body is yellow and hair is black. A red halo is behind the head of the Buddha. Brahmā is standing behind the Buddha and shading the Buddha with an umbrella. Brahmā is wearing white long sleeve upper garment and white long nether garment. There is a white halo behind the head of Brahmā. Sakka is standing before the Buddha. He is wearing white long sleeve upper garment and white long nether garment. Both Brahmā and Sakka are wearing head gears. Sakka is carrying an alms bowl on his shoulder and turning his head back to the Buddha. Venerable Sāriputtarā is sitting on his knees at the feet of the Buddha and paying respect to the Buddha. He is wearing robes which cover both shoulders. Colour of the robes is red, body is yellow and shaven hair is black.

In Temple No. 2157/145 and Monument No. 92, which are 12th century temples, the Buddha was chubby and in Myanmar style and had physical features like round face and short neck. In mural paintings of Temple No. 2157/1451 and Monument No. 92, such colours as white, black, yellow and red were applied.

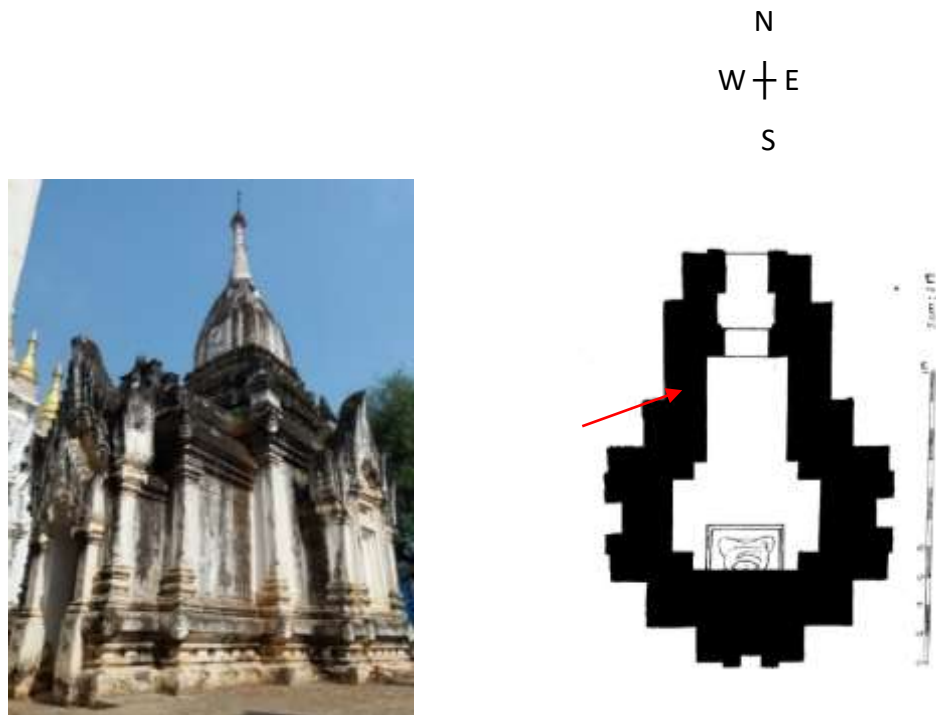


Figure. 3 Monument No. 92 (Razathu Temple)

Source: Photo by Researcher



Figure. 4 Descending from *Tāvātimsa* without Three Stairways

Source: Photo by Than Zaw (Geology)

Monument No. 1152

Monument No. 1152 is located on the east of Kyauk Myat Maw Pagoda, on the west of Monument No. 1150 and on the northwest of Soe Min Gyi Monastery (21° 08' 40.9" N & 94° 51' 17.5" E). It is a small single storey temple surmounted with a square tower. The main entrance is facing to the east. It was built in 13th century CE. Ceilings and inner walls of the temple were decorated with wall paintings. Lotus rosacea and circle patterns with small Buddha figures were painted on the ceilings and friezes of pointed obovals were adorned at the top of the walls. Dummy corner pilasters can be observed in the corners of the temple. Major themes of the wall paintings are the Great Eight Scenes from the life of the Buddha. The scene of the Descent from *Tāvātimsa* is on the north of the niche of the west wall. The painting is 11 inches wide and 2 feet high.

In the scene, the Buddha is descending from *Tāvātimsa*. The Buddha is wearing robes which cover only the left shoulder. There is no stairway in the scene. The Buddha is standing in Mahā Karuṇā mudrā on a lotus and wearing flat turban on the forehead. Colour of the robes is red, body is yellow and hair is black. The halo behind the head of the Buddha was painted in white, red, grey and black. A *pa-de-tha* tree is above the halo, and grey and black were used to paint the *pa-de-tha* tree. Brahmā is behind the Buddha and he is shading the Buddha with an umbrella. The umbrella was painted in white, red and grey. Brahmā was depicted with three heads. He is wearing white long sleeve upper garment and white long nether garment. There is a white and red halo behind the head of Brahmā. Sakka is before the Buddha and he is carrying alms bowl. He is turning his head to the Buddha. He is wearing white short sleeve upper garment and red short nether garment. He is also wearing head gear and earplugs. There is a white halo behind the head of Sakka. Venerable Sāriputtarā is sitting on his knee at the lotus on which the Buddha is standing. He is raising his hands in respect manner. He is wearing robes which cover both shoulders. The halo behind the head of Venerable Sāriputtarā was painted in white and red.

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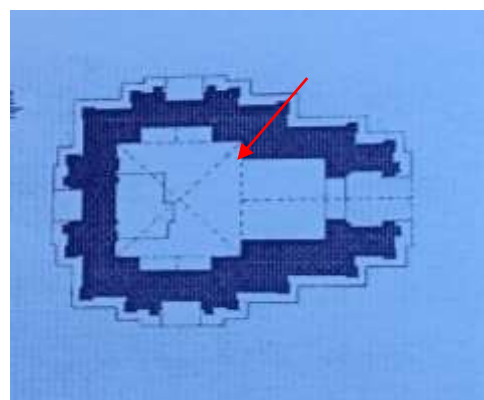


Figure 5. Monument No. 1152

Source: Photo by Researcher



Figure 6. Descending from *Tāvātimsa* without Three Stairways

Source: Photo by Than Zaw (Geology)

Monument No. 339/212 (B)

Monument No. 339/212 (B) lies on the east of Wattanato Monument Group, on the northwest of Sulekone and on the east of Monument No. 2320 (21° 10' 33.7" N & 94° 53' 17.3" E). It is a medium size single storey temple surmounted with a square tower. Vestibule is on the east side of the temple. It was built in 13th century CE. Lotus rosacea, circle patterns with lotus designs, dummy corner pilasters and the scenes from the life of the Buddha can be seen on the ceilings and inner walls of the temple. The Great Eight Scenes from the life of the Buddha were painted on the south wall of east vestibule. Length of the painting is 6' 9" and the width is 3' 8". The painting is seriously damage but the scenes of Descent from *Tāvātimsa* and Preaching *Abhidhama* can only be seen now. The scene of Descent from *Tāvātimsa* is 10" wide and 1 inch 4 feet high.

In the scene, the Buddha is standing on a lotus in *Mahā Karuṇā mudrā*. The Buddha is wearing robes which cover only the left shoulder. There is no stairway in the painting. The Buddha is wearing a flat turban on the forehead. Colour of the robes is red, body is white and hair is black. The halo behind the Buddha was painted in white, yellow and black. *Brahmā* is standing behind the Buddha and shading the Buddha with an umbrella. He was depicted with three heads. There is a yellow and black halo behind the head of *Brahmā*. *Sakka* is standing before the Buddha and cradling an alms bowl in his arms. He is turning his head back to the Buddha. He is also wearing head gear and earplugs. The halo behind the head of *Sakka* was

painted in black. There is a *pa-de-tha* tree above the halo of the Buddha. Top left and right corners of the painting were ornamented with creeper designs.

In Monument No. 1152 and Monument No. 339/212 (B) being the 13th temples, compared to physical characteristic, the Buddha's head seemed to be a little big and his forehead, temple and cheeks were broad and nose pointed. Like nose of Buddha images in the 11th century AD, the nose was not big nor pointed. Mural paintings in Monument No. 1152 and Monument No. 339/212 had mixture of blue and green and bright and pale ochre, and bright and pale cream were commonly used.



Figure 7. Monument No. 339/212 (B)

Source: Photo by Researcher



Figure 8. Descending from *Tāvātimsa* without Three Stairways

Source: Photo by Than Zaw (Geology)

Findings and Discussion

In Bagan, the wall paintings of the Scenes of the Descent from *Tāvatiṃsa* belonged to 12th-13th century CE. In the scene of the Descent from *Tāvatiṃsa*, the buddha was wearing robes which cover both shoulders and the Buddha was wearing robes which cover only the left shoulder.

The Brahmā was standing on the left side of the Buddha and he was shading the Buddha with an umbrella. The umbrellas in the scenes were similar to the stone umbrella and *Pathain* umbrella, Myanmar traditional umbrella. The umbrellas in the scenes of 12th century CE were like stone umbrellas. Later the style of umbrella was changed in the scenes of 13th century CE similar to *Pathain* umbrella. Outlines of the paintings of the 12th century CE were painted in black and filling colours were brown and creamy white. In 13th century CE, yellow, white was used for the paintings to be brighter. The art of wall paintings had been started in the Early Bagan period, and decorating the inner walls of the temples with wall paintings had been popular throughout Bagan period. That practice was more popular in later part of Bagan period.

Conclusion

People of Bagan period used to depict the Scene of the Descent from *Tāvatiṃsa* without Three Stairways in 12th century CE and 13th century CE was series of paintings. In the Scenes of the Descent from *Tāvatiṃsa* without Three Stairways, the Buddha was wearing robes which cover both shoulders and the Buddha was wearing robes which cover only the left shoulder. In the scene, the Buddha was standing in Mahā Karuṇā mudrā. Brahmā was standing on the left of the Buddha and shading the Buddha with an umbrella. Brahmā was depicted with only one head but sometimes he was depicted with three heads. The umbrellas in the scenes are similar to the stone umbrella and *Pathain* umbrella, Myanmar traditional umbrella. The umbrellas in the scenes of 12th century CE was like stone umbrellas. Later the style of umbrella was changed in the scenes of 13th century CE are similar to *Pathain* umbrella. Sakka was standing on the right of the Buddha. He was carrying alms bowl in his arms and turning his head back to the Buddha. In the painting of monument no. 92 (Razathu temple), Venerable Sāriputtarā was sitting on his knees at the feet of the Buddha and paying respect to the Buddha. He was wearing robes which cover both shoulders. The Scene of the Descent from *Tāvatiṃsa* has been popular since Bagan period. And also, it was written for the purpose of the informing about the evolving art works in the Bagan period.

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NON-FORMAL EDUCATION OF STUDENTS AT MARY CHAPMAN SCHOOL FOR THE DEAF*

Thiri Thaw¹

Abstract

The deaf students possess the same intellectual level like other normal students but some deaf students cannot study formal education like normal students. Such kind of students need to teach non-formal education to adapt in society. Mary Chapman School for the Deaf provides the deaf students not only formal education but also non-formal education. Mary Chapman School for the Deaf was established in Myanmar since 1920. This paper titled Non-Formal Education of Students at Mary Chapman School for the Deaf. This research was conducted by using qualitative research methods. Key informant interview (KII), individual in-depth interview (IDI), informal conversations and participant observation became the key tools for data collection. The aim of this research is to describe the non-formal education of students at Mary Chapman School for the Deaf. The results of this study aim to prove that non-formal education is also the way for the deaf students to adapt, sustain successful careers and achieve prosperity within their communities.

Keywords: non-formal, education, deaf, students, adapt, sustain

Introduction

Non-formal education is an educational system outside the established formal education system. Non-formal education plays a crucial role in promoting sustainable development for persons with disabilities, as it equips them with essential skills and job opportunities that can help reduce poverty. Non-formal education for deaf students is important as one of the priority areas. Non-formal education encompasses vocational learning opportunities that offer individuals flexible and accessible pathways to acquire the practical skills needed for participation in the labour market. Developing countries frequently require external support to advance vocational education as well as other components of their educational systems. One of these developing countries, Kosovo, continues to experience high levels of unemployment, a circumstance that further restricts the employment opportunities available to individuals with disabilities. As a result, strengthening vocational education for people with disabilities has become an especially important area of focus. Hearing-impaired students have benefited from educational opportunities supported by specialized services offered throughout the vocational education process (Girgin *et al.*, 2015). In Myanmar, Mary Chapman School for the Deaf aims to provide non-formal education for deaf students to develop the skills to sustain themselves and foster the ability to rely on their own income as they grow older. The deaf students need to study sign language at first before they study non-formal education. Sign Language is the vision-based communication tool and deaf people use sign language to communicate with others. The teachers teach the non-formal education with sign language to students at Mary Chapman School for the Deaf. Mary Chapman School for the Deaf teach sign language as a special curriculum for all deaf students in not only formal education but also non-formal education. Non-formal education for deaf students can be highly effective for promoting sustainability. The deaf students were taught non-formal education to increase their chances of higher employment at Mary Chapman School for the Deaf since 1953. Firstly, sewing was the first subject to be taught. Beauty courses were given to eight female students in 2015 and the beauty salon named "*Mudita*" (မုဒိတာ) was opened within Mary Chapman School for the Deaf boundaries for the livelihood of deaf students. The chefs from hotels cooperate with Mary Chapman School for the Deaf and occasionally hold chef

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training classes for deaf students. Mary Chapman School for the Deaf has vocational courses in accordance with changing era and environment. In non-formal education, there are different courses for deaf students' interesting subjects.

This research was conducted to explore the non-formal education given to students with hearing impairments at Mary Chapman School for the Deaf in Yangon. Mary Chapman School for the Deaf is the deaf school which provides the deaf students with not only formal education but also non-formal education. It was intended to explore that the non-formal education for the deaf students could lead effective social adaptation in society. The ways of teaching and learning in non-formal education for the deaf students at Mary Chapman School for the Deaf and how that specific way has led the students to properly adapt within wider society are studied from socio-cultural perspective. The title of this research is "Non-formal Education of Students at Mary Chapman School for the Deaf". The aim of this research is to describe the non-formal education of students at Mary Chapman School for the Deaf. Specific objectives of this study are to explore the ways of non-formal education at Mary Chapman School for the Deaf and to examine the knowledge of how the deaf students are able to adapt and sustain successful careers in society.

Literature Review

Non-formal education is any organized, systematic educational activity carried on outside the framework of the formal education system to provide selected types of learning to particular subgroups in the population including adults as well as children (Mbilu, 2019). Though it doesn't result in a formal degree or diploma, non-formal education is highly enriching and builds an individual's skills and capacities (Eaton, 2010). Non-formal education includes on-the-job learning, agricultural or industrial extension services, entrepreneurship development programs, and commercial or artistic programs. They are organized and offered by a wide range of providers including private firms and agencies, trade unions as well as state and non-state formal schools and colleges. Such non-formal education programs are mainly for skills development with the intention to help governments address socio-economic challenges such as youth unemployment (Mbilu, 2019). People with disabilities participate in non-formal education programmes and learn literacy, numeracy and other skills which contribute to better living conditions. Non-formal education programmes include people with disabilities and consider their needs during programme planning. These programmes are usually focused on literacy, adult learning and vocational training (Khasnabis *et al.*, 2010).

Vocational education provides students with the skills responding to the demands of adult life, prepares for the independent social functioning and makes them the contributing members of the communities. It is also important for hearing-impaired people to find a job, have confidence in their work environment and establish professional communication with their colleagues. In developing countries, individuals with disabilities typically live in extreme poverty and dependency. One of the reasons for this is limited access to basic services such as education and vocational training (Malle *et al.*, 2015).

The United Nation's Sustainable Development Goal 4 (SDG 4) is about ensuring inclusive and equitable quality education and promoting life-long learning opportunities for all students. Goal 4 intends to "eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations" (Burchi and Rippin, 2015).

Sociocultural adaptation is defined as the process of adapting an individual to the environment and purposefully adapting of its separate elements so as to meet their own needs and desires. This is realized through the knowledge and skills acquired in the course of socialization

in the continuum of social interaction and communication (Georgieva, 2020). Deaf viewed through the lens of the sociocultural approach can be defined as a group of persons who share a common means of communication (signs) which provide the basis for group cohesion and identity. It is “a group of persons who share a common language and a common culture”. The attitude of people who work from a sociocultural approach believe that the deaf community should be accepted and respected as a separate cultural group having its own values and language, sign language (Peel, 2004). The sociocultural adaptation of children with hearing impairments has its own distinctive features and problems. Hearing pathology leads to a significant restriction of life activity, to social maladaptation, which causes difficulties in communication, training and the further mastering of professional habits (Searle and Ward, 1990).

Vygotsky's theory of sociocultural cognitive development highlighted the central role of social interaction in the cognition development area. Vygotsky's theory asserts that a child's cognitive development and learning ability can be guided and mediated by their social interactions (Vygotsky, 1978). In the Social Learning Theory of Julian Rotter, Rotter's interactionist position holds that human behavior is based largely on the interaction of people with their meaningful environments (Rotter, 1954).

Research Methodology

In conducting this research, qualitative research methods are used through descriptive approach. Key informant interview (KII), individual in-depth interview (IDI), informal conversations and participant observation became the key tools for data collection. Key informant interview (KII) was conducted to gather insights from experts with specialized knowledge about non-formal education at Mary Chapman School for the Deaf. Teachers, full-time volunteers and parents were selected as key informants for the study. Individual in-depth interviews (IDI) were conducted to explore the personal experiences, perspectives, and challenges encountered by deaf students within non-formal education programs. Informal conversations offered further understanding of the context through unstructured discussions with participants. Participant observation enabled the researcher to examine and participate in learning environments and daily practices, providing a deeper understanding of how deaf students engage with and benefit from non-formal education programs. Secondary data was collected from various journal, thesis, articles and books. Qualitative data was analyzed manually according to the use of data collection tools such as phone recorders, camera and video camera. A total of 35 interviewees were included in this research. Research participants are teachers, students, full-time volunteers and parents. The interview sessions took 1hour to 2 hours, depending on the research participants' willingness to share their experiences.

Findings

Non-formal Education

In Mary Chapman School for the Deaf, deaf students are given vocational education and classes to improve skills and job opportunities for livelihood. Vocational classes such as poultry farming, chefs training, sewing class, massage, and beauty classes are included in non-formal education. Vocational education was started in 1953. There are not only basic education classes but also vocational education classes in Mary Chapman School for the Deaf, and certificates are given to those who finished two years of vocational training since 2022-2023. In the 2022-2023 academic year, vocational classes, such as sewing class, shiatsu massage class and beauty class,

last for two years. Deaf students are given all the vocational education in the first year and have to choose the class they are interested in most, which they can be taught in detail in the second year. A teacher who has 12 years of experience in teaching vocational education said:

“It is not easy for deaf students to pass the examination each year. They need to attend Kindergarten for three years and finish primary school at eighteen years of age. Therefore, they are grown up after finishing primary level. Students with normal hearing are still young when attending middle schools. Most deaf students quit learning after finishing basic primary education. Therefore, we have to give them vocational education”.

In Mary Chapman School for the Deaf, some deaf students are more interested in getting an occupation than continuing basic education after finishing primary education. During the times of COVID outbreak, as the schools were closed, deaf students had to go back to the countryside from hostels and became distant to education. When the school reopened classes, some students did not want to continue basic education and joined vocational classes. One of the students in vocational class said:

“As I was 19 years old when the school was reopened after COVID outbreak, I didn't want to continue my education. I just wanted to learn vocational education and work by opening my own shop at home”.

Chef Training Class

Chef training class was established on 25 February, 2012. It started with six deaf students from Mary Chapman School for the Deaf. Chef training classes are opened in collaboration with chefs from hotels to support the training of deaf students at Mary Chapman School for the Deaf. Those classes even produce deaf chefs who can work in famous hotels in Yangon after finishing chef training classes at school. Because of those chef training classes; one deaf alumnus, Ko Ye Lwin Oo was able to compete in the Master Chef Myanmar competition. It can be seen in the media that he was successful and even got into the top ten list. Mary Chapman School for the Deaf could successfully nurture a deaf student who has stood at the fourth position at Master Chef Myanmar cooking competition. Another deaf alumnus had been working at Novotel Hotel and had got gold medal in pizza making competition held by the collaboration of multiple hotels (see Photo 1). This alumnus's uncle, who works as a teacher at Mary Chapman School for the Deaf, said that:

“My nephew had attended up to Grade 10. He took chef training class in 2012 and is now working at Novotel Hotel. In pizza making competition, my nephew was the only deaf chef and got gold medal after competing with chefs with normal hearing”.



Photo 1: Deaf alumnus who had got gold medal in pizza making competition

Source: Mary Chapman School for the Deaf 100th Anniversary Magazine (2021)

The experts from hotels trained the deaf students with the knowledge to be a good chef. Deaf students face language barriers in chef training classes because experts from hotels are hearing. To address this issue, teachers from Mary Chapman School serve as intermediaries to instruct the deaf students. So that the students could learn and get chances such as job opportunities in hotels. On April 8, 2022, it is an interview in Myanmar Celebrity News on TV with the deaf male alumnus and a female alumnus of Mary Chapman School for the Deaf, stated that they could even have founded a restaurant named “Shwe Phu ရွှေဖူး”. Chef training classes enable deaf students to pursue successful careers in the food industry. Chef training for deaf students promotes sustainability by fostering economic independence, enhancing job opportunities and supporting inclusivity. From 2013 to 2023, the Mary Chapman School for the Deaf has been able to train over a hundred deaf chefs.

Sewing Class

The sewing class was included in vocational education since it was started. Teacher Naw Sar Phaw, school alumnus, took responsibility for the sewing class since 1995 till now. Deaf students are taught sewing in detail starting from basics. The students who started to join sewing classes didn't even know what sewing was. Therefore, students are taught what sewing is and the sewing materials. The main idea taught is not to put hands into sewing machines and it will be painful if they get needle pricks. The students are taught sewing *longyi* (လုံချည်) *Htamein* (ထဘီ), blouses, bags, handkerchiefs and embroidery like in other sewing classes (see Photo 2). They need more time to learn sewing as they cannot hear and they are not taught by speaking like in other classes in which normal people attend. A nalumnus Naw Sa Phaw explained her experiences:

I have been working as a teacher for tailoring at the shop in Mary Chapman School for the Deaf for 28 years. I teach the deaf students sewing and embroidery. At the beginning, the students sew the cloth up side down as they haven't got knowledge for the related tools and things so that one lesson is taught up to three to four times and let them practice frequently. I took time to teach them and now they even can earn for their living and they can help at the school as assistants. People who know the shop here in this school, come and make order for their clothes and we can earn more. My neighbours also ask me .”make their clothes at my shop



Photo 2: Beautiful Creations of the deaf students

Source: Photo taken by the author (2023)

Sewing classes are important for deaf individuals in sustainable development. Sewing skills provide a foundation for adaptation. According to the interviews, some deaf alumni have achieved significant success including the establishment of their own tailoring shops in their hometowns. Most deaf students face challenges in securing employment at other tailoring shops. To overcome this challenges, Mary Chapman school for the Deaf open a tailoring shop and sewing classes in campus. This aims to provide deaf students with employment opportunities to support their livelihoods. Deaf alumnus can work as full-time volunteer in the tailoring shop and receive a full-time volunteer salary from the school. Deaf students can also earn income based on their sewing skill. Sewing classes can offer practical benefits that align with broader goals of economic independence, successful careers and prosperity for deaf students.

Shiatsu Massage Class

Shiatsu, the Japanese traditional massage, is taught at the school. In 2004, 10 teachers of Shiatsu group from SHARE (Human Life Project), Italy, and one interpreter Shiatsu, came to Mary Chapman School for the Deaf and asked interested people to get treatment. Therefore, teachers and some deaf students had got the treatment. Then principal and teachers discussed in a meeting about starting Shiatsu class as one of the vocational classes to support the livelihood of deaf students. From the year 2004, teachers and students learned Shiatsu massage.

In 2008, the Shiatsu Center named Balance was opened at Mary Chapman School for the Deaf (see Photo 3). Balance Shiatsu Massage Center was opened and school alumni who studied massage at school were appointed as full-time volunteers there. Those full-time volunteers are also teaching massage to younger students who want to learn. The lessons learned in Shiatsu massage class are Yoga, body balancing exercises, breathing exercises, anatomy to identify pressure points in massage, and massaging techniques. The deaf students are also taught some other important basis such as greeting customers, preparing the massage area, cleaning pillow sheets and bed sheets after customers going back.



Photo 3: Balance Shiatsu Massage Center at Mary Chapman School for the Deaf

Source: Photo taken by the author (2023)

Shiatsu means treatment using fingers. When Shiatsu massage is given, it helps to regain energy and release tension in the body by giving pressure to the tensed area with hands, fingers, and elbows. Massage reduces the tension of muscles of the body and improve blood circulation. It is a treatment good for patients with chronic illnesses and people who want to reduce stress. In addition, it also reduces back pain, fatigue and gives better sleep. Many people are getting Shiatsu massage as it is good for health. As the customers love the massage and come to take massage sessions at home, deaf students get income for their livelihood. In addition, it is like doing finger exercises while giving massage because they have to use fingers in Shiatsu massage. Shiatsu massage improves health and supports the sustainable development of deaf students. A full-time volunteer, alumnus of school for the deaf, working at massage center, said that:

“I attended up to Grade 9. After finishing it, I didn’t want to continue my education and became interested in massage class, one of the vocational classes at school as I am a boy, and attended this class. As Shiatsu massage is good for health, many customers of older age come to get massage. Middle age customers sometimes come because they get back pain and migraine from their tiring jobs. If this massage is learned, we will get income for livelihood by giving massage to people with stiffness in our quarters. From Shiatsu massage, I get ten thousand per hour for one person in daily. That amount is enough for me to earn a living”.

Beauty Class

In Mary Chapman School for the Deaf, beauty class was started in 2015, during the time of principal Daw Nyunt Nyunt Thein, by teaching eight deaf students and one teacher. In the same year, the beauty salon named *Mudita* (မုဒိတာ) was opened with the help of donor Daw Mya Kaythi (see Photo 4). When donor Daw Mya Kaythi came to get massage at Shiatsu Center, she noticed that the full times volunteers at massage center and sewing shop had talent and hobby in cosmetics applications. Therefore, she hired makeup artists to teach eight deaf students about beauty with sponsorship. As the makeup artists are not hearing-impaired, there is difficulty in communication with deaf students during class. Therefore, the teachers from Mary Chapman School for the Deaf interpreted the teachings. Then those eight deaf students who had learned from the artists taught back younger students interested in that. Some students continue to work at the salon after finishing beauty class till now. However, some students stop working

due to health, social and economic reasons. The objective of opening beauty salon at Mary Chapman School for the Deaf is to give job opportunities to deaf girls when growing up and to encourage ability to stand on their own feet by using their skills. *Mudita* (မုဒိတာ) beauty salon is also work place and training class for deaf students. A teacher is responsible for teaching and controlling deaf students at *Mudita* (မုဒိတာ) salon. As there is a difficulty in communication between customers and deaf students, there is always a teacher at beauty salon, massage center, and sewing shop. A responsible teacher who has 15 years' experience in teaching, now working at *Mudita* (မုဒိတာ) beauty salon said that:

“If the deaf students had learned the beauty, they can work the same as others. The school allows students to work salon at school or outside if they want to after finishing class. It is because we intend to give the future when they can live independently”.



Photo 4: *Mudita*(မုဒိတာ) Beauty Salon

Source: Photo taken by the author (2023)

In beauty salon, the subjects such as hair washing, facial cleansing, manicure, and pedicure are taught as in other beauty salons. In addition to those deaf students are encouraged to communicate with customers using signs and body language in order to improve their communication skills with customers. The customers coming to the salon also use body language for the deaf students to understand. If there is a problem at salon, responsible teacher takes control. When deaf students work at the salon in Mary Chapman School for the Deaf, they get experience in communication with customers of normal hearings. The subjects taught in beauty class can lead to employment opportunities such as makeup artists or hairdressers. These opportunities provide long-term career options and support sustainable development for deaf individuals. A full-time volunteer, alumnus of school, working at salon in Mary Chapman School for the Deaf said that:

“I attended grade 8 in other school. As I thought vocational education is more suitable for me than basic education, I started to join beauty class at Mudita salon. I took beauty class and now work as a full-time volunteer at Mudita (မုဒိတာ) salon in school for my living. Now I teach younger sisters about beauty lessons (see Photo 5)”.



Photo 5: A full-time volunteer working at beauty salon in Mary Chapman School for the Deaf teach young sisters

Source: Photo taken by the author (2023)

The Challenges of Deaf Students in Non-Formal Education

When the deaf students are learning, they need to know the related terms for the subjects like cooking, sewing, massage and beauty otherwise they may face difficulties for learning. Deaf students often made mistakes as they could not understand the related terms. Therefore when the deaf students are to be introduced the vocational education, they are being taught the related things, the usages and the dangers at the beginning of the course. Henceforth, they understood the usage of the things, they are to be taught the related vocational course. The deaf students also browse the video on webs and watch which are related to skill for cooking, sewing, massage and beauty by reading the captions so that they can catch up the skill more detail. As the result of such effort, some deaf students are qualified enough to work.

It is not sure for the deaf alumni to get jobs as they have weakness in communication. Therefore, Mary Chapman School for the Deaf teach communication skills to assist students in effectively interacting with others. When the deaf students are in a working time, they might have barriers in communication, but they tried their best by writing and using body language, to communicate with the customers, and sooner or later, they can communicate with the customers who come to the shops. There can be seen some of the deaf students who tried their best to study the techniques in cooking, and then they can even work in hotels. There are also some deaf students whose parents are rich so that the students are provided by their parents to establish own sewing shops, beauty salon, or restaurant. By trying their best to be adaptable with the customers, as they have got communication challenges in nature, some deaf students are able to earn by using their vocational skills. However, the potential of rejection from the outside professional shops for the deaf students is still undeniable. Therefore, Mary Chapman School for the Deaf promotes public awareness of deaf through social media platforms. As a success, people become understood about the deaf and are willing to give job opportunities for the deaf. Moreover, Mary Chapman School for the Deaf is not only providing the vocational education but also intentionally creating chances for them to be full time volunteers in the shops for tailoring, massage and beauty salons at Mary Chapman School for the Deaf. After attending the vocational classes, the deaf students are assigned as full-time volunteers so that the problems of unemployment is solved.

For deaf students to support their own living, non-formal education is taught at Mary Chapman School for the Deaf. Non-formal education is important for the sustainable development of deaf individuals as it enhances their employability and supports their economic independence. Non-formal education is a powerful tool for empowering deaf students, enabling them to adapt to their environments and sustain their personal and professional growth.

Discussion

According to Mbilu (2019), non-formal education programs are mainly for skills development with the intention to help governments address socio-economic challenges such as youth unemployment. This research also found that Mary Chapman School provides non-formal education for skills development and employment of deaf students. Therefore, the same findings are found that non-formal education provides job opportunities for deaf students so that they can adapt in society.

According to Khasnabis *et al.* (2010), people with disabilities participate in non-formal education programme contributing to better living conditions. The present study found that non-formal education is essential for supporting the livelihood of disabled children. Scholars Khasnabis *et al.* stated that non-formal education is essential for people with disabilities. Therefore, similar findings are found in this study that non-formal education is given to deaf students in the current study area to support and improve their living.

According to Malle *et al.* (2015), in developing countries, individuals with disabilities typically live in extreme poverty and dependency. One of the reasons for this is limited access to essential services such as education and vocational training. In my study area, it is learned that there are challenges in providing vocational training to disability. Despite these challenges, many disability schools in Myanmar offer non-formal education aimed at helping disability adapt to society, achieve self-sufficiency through their own income and sustain their livelihood over the long term.

According to Burchi and Rippin (2015), the United Nation's Sustainable Development Goal 4 ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations. In my study area, Myanmar has adopted Goal 4 to provide quality education for all students, including disabilities. As a result, all schools implement Myanmar's Sustainable Development Goal 4, ensuring that all students receive equal opportunities not only in formal education but also in vocational training.

According to Peel (2004), deafness viewed through the lens of the sociocultural approach can be defined as "a group of persons who share a common means of communication (signs) which provide the basis for group cohesion and identity." In my study, deaf students also utilize sign language in non-formal education. It is found that sign language is the communication tool for deaf students and provide the basis for group cohesion and identity. Therefore, sign language is deeply tied to deaf culture, serving as a vital component of identity and community for many deaf individuals from a socio-cultural approach.

According to Vygotsky (1978), Vygotsky's theory asserts that a child's cognitive development and learning ability can be guided and mediated by their social interactions. In my study area, deaf students cognitive and learning ability develop by interacting with peers and teachers in non-formal education. Therefore, social interaction can improve the child's cognitive development and learning ability.

According to Rotter (1954), human behavior is based largely on the interaction of people with their meaningful environments. In my study area, deaf students learn to communicate and interact with others through non-formal education, leading to positive changes in their behavior. This illustrates that human behavior depends significantly on the interaction between individuals and their environments.

Conclusion

Some deaf students at Mary Chapman School for the Deaf change their education from formal education to non-formal education, such as vocational education, if they cannot catch up with formal education. Deaf students can make their own income and support their livelihoods according to the vocational education. Deaf students can adaptively live in society and community because of the non-formal education at Mary Chapman School for the Deaf.

Non-formal education for the deaf students was started in 1953 at Mary Chapman School for the Deaf and deaf students were given a non-formal education up to the present date. Targeting not only to educate students with vocational skills but also ways to upgrade social and mental skills, Mary Chapman School for the Deaf trains the students to be able to adapt properly like the other normal people in the wider society. It was found that deaf students are even able to earn a living in society and community if they have been trained with non-formal education.

Teachers play a crucial role in non-formal education for deaf students. Teachers use clear body language, sign language and visual demonstrations to effectively convey concepts in non-formal education. Deaf students interact with teachers and peers to acquire knowledge and learn through non-formal education. Non-formal education can serve as a platform for cultural exchange, where deaf students explore and share their unique experiences, cultural identity and traditions, enriching the learning environment for all participants. If deaf students do not catch up with formal education, they need to teach non-formal education to adapt and achieve financial independence for their daily lives. Non-formal education is important for the quality of life of deaf students. Non-formal education is important for progressing disability to a sustainable future and non-formal education is the best choice for disability. Non-formal education not only provides essential skills but also supports broader goals of sustainability and self-reliance.

From a socio-cultural perspective, it has been observed that deaf students can learn cultural and behaviors through social interactions with others, which facilitates their adaptation to society. Although biological factors such as hearing loss are inherent, non-formal education at Mary Chapman School for the Deaf enables these students to exhibit significant changes and improvements in their behavior. Consequently, it can be argued that human behavior is more profoundly shaped by cultural influences than by biological factors. A socio-cultural approach emphasizes the importance of integrating individuals with hearing impairments into their communities. Anthropologically, enculturation is viewed as a social process where individuals learn and adopt the cultural norms, values, behaviors and social skills of their community. In non-formal education, deaf students learn and engage with peers and teachers who share their experiences, allowing them to become enculturated into community. Non-formal education can promote social acceptance by fostering interactions between individuals with and without hearing impairments. A socio-cultural approach to non-formal education for deaf students emphasizes the importance of cultural adaptation, social integration and community involvement.

Non-formal education for deaf students may face challenges such as limited resources, societal attitudes towards deaf and the need for specialized staff. Mary Chapman School for the Deaf and other similar schools should ensure the provision of specialized supports, including physical facilities, accessible infrastructures, curriculum and teachers, give awareness to the public about the rights of person with disability to reduce stigma and form network establishment and collaboration with other institutions that have expertise in non-formal education for disability. This study proved that non-formal education can provide sustainable opportunities for disabilities and achieve prosperity within their communities. Non-formal education for disabilities can enhance overall quality of life and provide pathways to greater adaptation and participation in society.

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VULNERABLE LIVELIHOOD AND RUBY MINING: A CASE STUDY OF RUBY MINING AREA IN MOGOK TOWNSHIP, MANDALAY REGION

Khin Phyo Wai¹

Abstract

Livelihoods encompass how different people make a living depending on where they live. Livelihood system which is sustainable or vulnerable can be determined based on the degree of resilience and sensitivity. Ruby mining in Bawlonegyi village is facing with challenges in livelihood. This study aims to investigate the vulnerability of livelihoods in ruby mining community. The specific objectives are to illustrate the consequences of ruby mining that generated vulnerable livelihood condition and to analyze households' livelihood strategies that are coping local people. In this research, qualitative research method especially ethnographic research approach was mainly applied. In collecting ethnographic data, research methods such as observation, participant observation, key informant interview (KII) and in-depth interview (IDI) were used. Research subjects are the village abbot, village heads, village elders, local people who conducted various economic activities and other knowledgeable persons who can explain about necessary data. This research was conducted from 2019 to 2022. Although the locals could operate small-scale ruby mining freely prior to 1962 in earthen pit, in later times they could no longer mine freely. In 1991, small-scale mining permits were granted and after 2006, the large-scale mining was granted a permit due to the policy changes. Because of these conditions, locals faced with difficulties in their traditional livelihoods. Thus, local coped with various livelihood strategies such as diversification of economic activities, migration, agriculture and also investment in education for their future generations.

Keywords: small-scale ruby mining, large-scale ruby mining, vulnerable livelihood, livelihood strategy, migration, agriculture, education

Introduction

Livelihood study is a unique starting point for an integrated analysis of complex and highly dynamic rural contexts. Livelihoods encompass how different people make a living depending on where they live (Scoones, 2009). Livelihood system which is sustainable or vulnerable can be determined based on the degree of resilience and sensitivity. The most robust livelihood system is one displaying high resilience and low sensitivity while the most vulnerable displays low resilience and high sensitivity (Ellis, 1998). According to Carney (1998) stated that a livelihood is sustainable when it can cope with and recover from stresses and shocks and maintain or enhance its capabilities and assets both now and in the future, while not undermining the natural resource base. Whereas vulnerable livelihood is related to insecurity, sensitivity of well-being in the face of a changing environment, and households' resilience and ability to respond to risks and negative changes (economic, environmental, social or political, including shocks, trends and seasonal cycles) and to opportunities (Rakodi, 1999).

Households aim at livelihood which has high resilience and low sensitivity to shocks and stresses. Therefore, Carter (1997) claimed that risk management and coping are complementary way for survival, the first act as an ex-ante income management and the second as ex-post consumption management in the wake of crisis. Households manage their livelihoods with variety of management options such as investment in securing more of an asset, substitution of

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one asset for another, disposal and sacrifice. Moreover, Ellis (1998) consider diversification as one of the livelihood strategies of rural households in developing countries. Livelihood diversity contributes to the sustainability of rural livelihood because it improves long-run resilience and flexibility in the face of diverse trends or sudden shocks.

Mining sector contributes significantly to national and local economic development through employment, generation of foreign exchange, income and infrastructure development especially in developed countries. However, many of the world's poorer nations have not improved (World Bank, 1992). Several studies show that a greater percentage of the population are living below the poverty line in mineral-dependent countries specifically in developing countries. Moreover, mining activities often left ghost towns or depressed local economies as mineral production shifts from one place to another (Holden and Jacobson, 2012). Myanmar is also a developing country and its mining operations have been carried out with the aim to achieve development. In 1995, the government prescribed "Myanmar Gemstone Law" and created the opportunities for private capital investment. Thus, locals are facing the challenges in their traditional livelihoods as the result of large-scale mining. In this research, the vulnerability of livelihoods in ruby mining community would be examined based on a case of ruby mining village called Bawlongyi Village which is situated in Mogok Township, Mandalay Region. The objectives of the research are to illustrate the consequences of ruby mining that generated vulnerable livelihood condition and to analyze households' livelihood strategies that are coping local people. In this research, research methods and village's ruby mining conditions are explained firstly. After then, the role of religion and locals' attitudes to ruby mining are illustrated under the title "Religion as a mechanism for successful ruby mining". And then, the researcher analyzed the patterns of vulnerable livelihood conditions and the impact of large-scale mining on local miners. Furthermore, coping strategies of local are demonstrated under three sub-titles and finally, it will offer some discussion and conclusion dealing with research findings.

Materials and Methods

The aim of this research is to investigate the vulnerability of livelihoods in ruby mining community called Bawlongyi Village, Mogok Township, Mandalay Region. Although locals are facing vulnerability in many sectors such as culture, environment and economy, this study would like to focus on the economic vulnerability. Total household of research area is 344 households and its population has 1144 persons above 18 and 603 persons under 18. Among them, researcher chose 35 persons as the informants who are above the age of 18. As adulthood in Myanmar standardizes who is above the age of 18 years, researcher divided the informant by the ages of 18. Research subjects are the village abbot, village heads, village elders, local people who conducted various economic activities and other knowledgeable persons who can explain about necessary data. In this research, qualitative research method especially ethnographic research approach was mainly applied. Ethnography is an invaluable tool for in-depth understanding of livelihood conditions and it provides the historical depth and contextual insight necessary to comprehend the multiple factors involved in livelihood decisions. In collecting ethnographic data, research methods such as observation, participant observation, key informant interview (KII) and in-depth interview (IDI) were used. Researcher conducted observation in every field study. Through observation, the locals' type of dwellings, the conditions of picking mine tailings, and small-scale mining operations were observed. Most of the locals' dwellings were found as

two-story teak houses including furniture such as TVs, motorcycles, hand phones, water tanks, and washrooms and thus it was initially assumed that the locals were financially well-off. However, through subsequent participant observation and interviewing, researcher empirically found out the hardship of local's livelihood. Locals are struggling for their survival.

The total number of seven informants were selected for key informant interview in order to get the overview of socio-economic conditions and also 29 informants were selected for in-depth interview. The aim of using in-depth interview is to reveal the specific information related to each sector. Research questions were semi-structured and then developed more detail questions based on the responses to these initial questions. Some of the semi-structured questions are- what is their traditional livelihood? What are the impacts of large-scale mining on local miners? And how do locals cope their livelihood difficulties? In addition to fieldwork, online system such as phone call, viber and messenger was utilized throughout the duration of this research.

The collected data was analyzed by using the coding and memoing process of Emerson, et al. (2011). The process conducted by seven steps as follow: first, the researcher read the fieldnotes as a data set, second, the researcher performed open coding, writing code memos in third step, and then selecting themes based on the code memos. As the fifth step, researcher served focused coding and integrative memos conducted in step six. Finally, researcher tried to create concepts and theory that reflected the fieldnotes. This research highlighted vulnerable livelihood condition of small-scale mining, the impacts of large-scale mining to be more vulnerable for local miners and then alternative livelihood strategies of local people. This research was conducted from 2019 to 2022.

Ruby Mining in Bawlonegyi Village

Mogok Township is the place where the majority of the world-class pigeon blood rubies are found. It is famous as Ruby Land not only in Myanmar but also in the World (Newman, 2018). There are over 40 gem deposits and 500 mining operations (gem blocks) in Mogok Township (Ring, 2018). There are 17 gem deposits out of them where high-quality ruby can be found. Bawlonegyi Village is one of those 17 gem deposits. Ruby mining business of Bawlonegyi village is older than the age of that village. This is because when the history of the village is studied, it was not in existence as a village until 1880. That area was very convenient as it has not only gems but also water. Thus, the villagers from nearby villages came and built temporary huts to mine. And then, more other miners gradually settled down and the population growth led to the establish of Bawlonegyi village in 1890. Thus, ruby mining operations especially small-scale mining has been carried out by local residents over a century in that area. And it has been changed into various forms depending on the trend of state and changing policies.

Before 1962, locals have been carried out freely independent (small-scale) ruby mining without any control in the vacant land. For local, vacant land can be considered as gem blocks because ruby mining was operated in that land. In the past local small-scale mining grouped in four to five people and mined in areas where they felt could be successful. Local used traditional self-made tools such as mattock, hoe and bamboo to mine through human labor. Only hands were applied, they had toiled steadily and strenuously. Mining disturbed underground water vein and

water leaks. Thus, local stopped ruby mining in the rainy season. They resumed mining when water dried up in the cold and hot seasons. Although small-scale mining was a seasonal job, locals did not have to worry much for rainy season. In regular, one day of work could cover the cost for food a whole week long. Therefore, people were not very serious about ruby mining as little work provided a more than decent income. During this period, there were no formal regulations and operated by their traditional rules of game.

Between 1962 and 1990, ruby mining was led by the government. During that period, the locals were not allowed to mine, thus locals faced with challenges in their livelihoods. Illegal mining became common as people had been heavily relying on mining for so long. It was done in the forest where such mining could not be seen by government official at night. In 1991, the government permitted the locals to undertake small-scale mining on their own land. Therefore, locals who lived in lowland areas move their home to the highland near the foothill. This is because of their local knowledge that ruby could be found in ravines, streams and lowlands. During this period, they accelerated mining by adding machine such as water pump into traditional self-made tools. In this way, local expanded the number of operated gem blocks by hiring miners and also could run the whole year. In 1995, the government prescribed Myanmar Gemstone Law (no. 8/95) and granted permission for large-scale mining not only local but also foreign mining companies. But locals cannot afford to apply it. Moreover, the blocks near ravines and streams are assigned as fields. As a result, they failed to manage in ravines and streams. Thus, locals suffered a lack of opportunities for gem blocks. Although small-scale operations were available for application, the number of people who applied decreased because of the rise in investment costs and decline in ruby yields. As gems are the non-renewable resources, the gems from the soil and also vacant lands were gradually becoming rare around 2000s. Some of the local migrated to other areas where have many chances and low investment for mining. According to a 32-year-old local man states that;

" I ended up in ruby mining because the land we owned began yielding fewer ruby. I've been working in amber mining at Tanaing of Kachin State for nearly 7 years now. But the capital needed is also very high, it was impossible to do with the money I had. That is why I went to Tanaing to mine amber that doesn't need much capital."

But a foreign company named "Htay Paing" began large-scale mining near the village at the new mining site called quarrying (stone pit, tunneling inside the stone layer) in 2006. This operation utilizes heavy machinery and a great amount of manpower. As the company's permit expired in 2019, they have halted operations. At present, a few locals still continue small-scale mining by re-mining in the previously mined areas (see Fig-1). Whatever the small-scale mining conditions have been changed, the role of religion and locals' attitudes on ruby mining have not changed. It is explained in the following.



Figure 1. Re-mining in the previous mined area

Source. Photo by Researcher

Religion as a Mechanism for Successful Ruby Mining

Local people believe in Buddhism and Animism. They believe religion brings about good luck, peace and free from danger for their life. Ruby mining has been considered as karma business. It is believed that anyone who is fortunate can get rubies. To be fortunate locals have generously done religious activities such as offering alms-food and flowers, prayer and kowtow to the Buddha. Before they go into the mining operations, local always perform paying homage to Buddha at their home as their daily routines. Locals also recognize religion as a mechanism for mental care. When rubies are not mined and felt depression, they practice meditation and listen to sermons preached by Venerable Mogok Sayadaw¹. Locals reduce their stresses in these ways. Meditation retreats are found to be asylum for local people who ruby mining as their main source of livelihood. They pray to the ancestral spirits called *Yay-thain-nat* and *Boe-daw-sin-nat* (see Fig-2 & Fig-3) with the wish to run their business smoothly and free from danger in the working place. It is seen that such devotion leads to freedom from any danger and life loss in working place. Regarding this, a 55-year-old local woman said that,

“As getting big and good quality ruby depends on karma, we are mainly doing religious activities. We offer the buddha with food, flowers and holy water every day. We pray to Boe-daw-sin-nat and Yay-thain-nat in order to escape from danger at work.”

Villagers have actively performed religious activities. No matter how difficult in economy, they try to celebrate religious festivals such as Kathaina and ordination of monk. Each and every village has held the festival and Dhamma discourse pompously. Even a house is poor, they spend 6,000 to 15,000 MMK² for offering flowers at the shrine in a week in 2020 (See Fig- 4). According to an old man aged 75 also said,

“Those from our village stand first in religious devotion. In every house, flowers offered to the Buddha will not wilt, whether household members are penniless.”

¹ A famous Buddhist monk in Myanmar

² The currency code for Kyats

Sometimes, Dhamma discourses are competitive. When everybody is depressed for getting no rubies, they try to pacify themselves by paying heed to monks' sermons."

Ruby mining is done between two extremes of wealth and poverty. As ruby is uncertainly dug at underground, they work with conviction of 'boss or dog'. The meaning is he would become a boss if anyone get a ruby from testing pit, but he would be poor if he fails. Local people believe that those who are fortunate get fortune gem while those who are industrious can get effort gem. In order to be fortunate, locals use the words *kyauk-gyi-ya* (*kyauk-gyi* means big gem, *ya* means get) when they greet each other. Locals use this word not only for greeting but also for wishing to prosper by getting rubies. Concerning it, an abbot aged 54 said,

"Those who dig ruby in Mogok Township work it in the hope of do or die. The gem lying underground is vaguely dug. Although one gem block gets ruby and become wealthy, another one near it cannot get any. Anyone who is fortunate can get ruby. No guarantee in life. But, they work in the hope of lucky strike."

Local people accepted that gem is found through excavation of human resources. In the early years of 2006, local people dug ruby in earthen pits through small-scale mining. In doing so, when blocks were almost exhausted, they were worried about it. In 2006, ruby yielded when local started testing ruby mining in stone pits. Thus, ruby was mined in stone pits. When these were out of run, they aimed at mining in forests and mountains not only in Mogok Township but also in Moemeik Township. Dealing the aim, a man aged 57 said,

"In Mogok, so long as the earthen pits are dug and they are concerned about the exhaustion of pits. When stone pits are tested, rubies are found. So, they change ruby mining in stone pits. Gem is found through search from human resource. If no ruby is found from this village, anyone can dig in the forest. When there is no gem in Mogok, we would go to Moemeik and dig there."

This indicates locals were worried dealing with gem blocks in the past, but now they develop resilience and have no longer worried about it. Religion served as a mechanism for successful ruby mining among the people who practice it as their livelihood. Locals deeply believe that region brings about faith for good luck, peace of mind and free from danger for their daily life. They think that the religion contributes an instrumental tool for ruby mining.



Figure 2. Yay-thain-nat (ancestral spirit)
Source. Photo by Researcher



Figure 3. Boe-daw-sin-nat (ancestral spirit)
Source. Photo by Researcher



Figure 4. Shrine of a household
Source. Photo by Researcher

Ruby Mining as a Vulnerable Livelihood Conditions

Ruby mining which is the main livelihood of local was well-off and also the economic conditions was good before 2000. But along with the hardship of small-scale mining after 2000, locals faced with difficulties and uncertainty in their livelihoods. There are six main factors that are generating vulnerable livelihood condition such as non-renewable resources, the scarcity of vacant lands, no cultivation of crops in their farms, the domination of large-scale mining and unwillingness to work as wages laborers in large-scale mining, and no habit of investment and saving.

There are two reasons for the scarcity of vacant land for ruby mining. Firstly, as local people have worked only small-scale mining for their main livelihood over a century, gem blocks are scarce enough. Second is the designation of “Tea Land from Ruby Land” in 2005 by the government. Thus, locals had to choose vacant land on a first come first served basis and grow tea. But locals lack of interest in tea growing and it led to halting after merely a year. Thus, local faced with the scarcity of vacant land for ruby mining. While traditional mining has been done in streams and ravines previously, it can no longer be done in those places. The owner of the lands near those areas forbids for mining there. Growing tea project was not successful but it encouraged local economy to be more vulnerable. According to the local man who aged 56 years old said,

“Tea plantation project served as a factor for economic difficulty including our village entire Mogok Township. As we have never done agriculture, we do not know well how to cultivate. No one wants to do it. Thus, we decided to dig ruby again. At that time, we have no more vacant lands to mine. Every land has its ownership. When we mined at streams and ravines, the owner beside of those places forbids. That is why, all of locals are facing difficulty with their own lands.”

The consequence of tea plantation project resulted in the scarcity of vacant lands and it led to economic insecurity.

Plots of land where tea leaves were grown were assigned as their own. In 2012, the department of agriculture managed those lands to be Form-7¹. Although Form-7 was put down, there were weak points in field check on the cultivated conditions of agriculture. Local also did not cultivate in their own lands. On the other hand, ruby mining could not be done. If locals wanted to operate ruby mining, they needed to reapply Form-14² and they could do when they got permission. But locals could not afford. Therefore, some locals wanted to sell their lands to entrepreneurs while other aim to mine by their own if they have enough capital. In addition, there were also some locals who wanted to operate ruby mining in corporation with company if given permission by upcoming law. Concerning this a 65-year-old man stated that;

“I have 5 acres of farm land. As I don’t want to do agriculture and cultivate any crops, the land is just fallow. I have no plan to cultivate in future. If I have a right to mine, I will do by myself. Or if I don’t have capital, I will sell the land or I will mine together with company.”

It can be concluded that locals are facing with economic difficulties as they are solely depending on ruby mining and they did not use their farm lands for agriculture.

In 2006, there were many job opportunities emerged because of the allowance of large-scale mining in stone pit. But most of the locals did not want to work in that company and only a few worked. The reason is that the company lacks of transparency in gem appraisals and bias.

Most of the men moved to other places in order to operate mining. The women and other family members conducted picking mine tailings in the discarded stones by mining company. It was the main economic activity during large-scale mining operations. Despite this job was the most fruitful during this period, it was no longer fruitful when the mining halted. Regarding this, a 51-year-old local man said that;

“When I worked at company, I earned about 300,000 MMK for a period of gem appraisal (3 months). At that day manager called me and said that you cannot work as a foreman anymore and you can do as a follower (miner). The next day, manager appointed a person who is partnered with him as a foreman. That is why I dropped out that job.”

Ruby mining is a daily activity but it does not get daily income. In the early period of 2000, it was very easy to earn because rubies were produced in abundance. At that time, one of the locals’ assumptions is that mining would guarantee a sustainable income. Most of the locals sell the ruby immediately after they have mined. This was due to the belief if the miners sold the gem immediately, the gem brokers would compete and give the higher price with each other. They are deeply accepted the notion that money can always get from ruby mining. Therefore, local use amply most of their earning and they did not have the idea to invest in other economic activities and saving for their future survival. Although some invested in other economic activities such as grocery store, food business and transportation job. But these activities can no longer consider as sustainable livelihood because of largely depended upon the large-scale mining business. In addition, a few have saving habit but they did not save ruby. They bought gold as saving. But they sold and used it when they did not get any ruby. Therefore, locals explained their situations as “they get, they consume, they used, they run out”. As a result, locals

¹ Land Use Certificate (LUC)

² Application for farmland to be used for other purposes

are facing with livelihood difficulty when ruby mining is not convenient. A 65-year-old local man mentioned that;

“Since our business is a karma business, although we invest a lot of capital, we only get ruby if we are lucky. Thus, we have to work with the hope despite we are poor today, we can become rich tomorrow. In the past, rubies are abundant and we traditionally accepted the notion that “we always get money through ruby mining”. There was no investment or saving for survival. Thus, we get, we consume, we use and run out, we have been living like that. When traditional ruby mining was not working well, we all are struggling for our survival.”

Therefore, ruby mining which is the livelihood of local people are facing with scarcity of blocks and gems. Locals assumed that they can no longer depend on ruby mining as their income sources. As a consequence, locals are coping these conditions by using alternative livelihood strategies such as migration, agriculture and investment in education.

Livelihood Strategies

There are three strategies that are applying to escape from vulnerable livelihood. Firstly, locals practice migration as a mechanism to cope the current vulnerable livelihood conditions. Secondly, local residents are engaging agricultural activities not only to solve the current vulnerable livelihood conditions but also to create the sustainable livelihood for the next generations. Lastly, local residents changed the perception on education and deeply accepted education is another source of the sustainable livelihood options for their future generation.

Migration as an Alternative Livelihood Strategy

When studied the history of migration in Bawlonegyi village, there were in-migration, out-migration and sometimes both in and out-migration simultaneously was occurred. Before 1962, small-scale ruby mining could be carried freely. Thus, there are many in-migrant workers in the village. But, between 1962 and 1994, local migrated to other places because of the hardship of ruby mining in their village. Again, after 1994 and 2006, in-migration in the village was found because of the permission of small-scale mining and large-sale mining. Although in-migration had been taken place in the village, out-migration was also found there. Locals could no longer rely on ruby mining as their main livelihood. That is why, there were the scarcity of ruby and vacant lands and the domination of large-scale mining in their village. Therefore, some of the local especially men migrated to other places for their livelihood. Most of them went to other areas that produced gemstones such as Hpakant, Tanaing and Moemeik in order to earn capital. They operated mining as their own business. There were also a few people who migrated to abroad and worked as wages labor. During this period only young men migrated and they were the age between 18 and 35 years.

After the cessation of large-scale mining operation in 2019 many of the local moved to other regions not only local but also abroad. Most of them went to the border areas of Myanmar and China such as Shweli, Mangshi and Kyalgaung. In addition, some are migrated to Malaysia, Thailand and Dubai. In choosing places, they have relatives and friends who have been living in those places. They go and work in group. Most of who are the age between 18 and 40 years old,

both male and female, not only married but also unmarried. According to the saying of local “there are about 60% of local between 18 and 40 years old are working abroad currently”. Grandparents take the responsibility of caring grandchild because of the migration of offspring. Regarding this, a 56-year-old local resident woman states that;

“Almost all people who can work go to China after 2019. We have only left the people who cannot work; elder, unhealthy person and children. If there are three people who can work at a home, two people are going to other places to work. Grandparents are taking care of their grandchildren as their offspring are going out to China for earning. It’s not easy, whenever I think about the long term, I am worry for our conditions.”

They work in the service activities such as waiter, washerwoman, tailor, coolie and so on. Their average earning was between 5 lakhs to 10 lakhs (MMK) per month in 2020. Local assumed that they can get regular incomes by working as wages labor. Migrant people sent back some amounts of remittances for the household consumption at the end of the month. The rest of the income save for their children education. The people who are living in their village have no job in mining. As other work unavailable, the older women continued picking mine tailings with the belief if they are lucky they can become rich (see Fig-5). They can only earn about 500 MMK per night from 6 pm to 9 pm in 2020. Because of such conditions, locals thought they cannot survive through ruby mining in their village. According to a 61-year-old man said that;

“I have no hope to do business by living there. Because the blocks are scare and only left the blocks that are difficult to mine. In future, we will go and work as wages labor for our survival.”

Thus, locals always engage in migration at the time of hardship in traditional economy. It can be concluded remittance is the source of income and household consumption are depended on it. Thus, migrant remittances help not only with *consumption*, but can act a form of insurance for households which are facing income difficulties and livelihood insecurity. Alternatively, it can also consider as a survival strategy of local people. In addition, locals invest some of the remittance for their children education. Therefore, migration can also be considered as a part of sustainable livelihood development for future generations.



Figure 5: Women are picking mine tailings at night

Source: Photo by Researcher

Agricultural Activities as a Sustainable Livelihoods

Taungya cultivation and ruby mining are traditional economic activities of local people living in Bawlonegyi village. Its cultivation aims at subsistence purpose for their family and their main occupation is ruby mining. But, they no longer managed it because of ample rubies, instant profits and weariness of *Taungya* cultivation. After 1940s, most of the locals had been done only ruby mine. A few hobby farmers continued cultivation for subsistence purpose. They cultivate seasonal crops within their homes and the lands where they can get water. The seasonal crops such as beans, mustard, chayote, rice and wheat are growing (see Fig-6).

In 2005, the government designated Mogok Township, including Bawlonegyi Village as "Tea Land from Ruby Land". They were encouraged to grow tea plants by the administrators. Each household grew up to two to three acres of tea. It is difficult and tiring as farming was done by hand using knives, pickaxes, and hoes, and as there was a lack of farming expertise. As the locals had been mining ruby for generations, they were not accustomed to agricultural work. The locals lacked of interest in tea growing. On the other hand, the staffs of government did not carry out field checks. Therefore, it led to halting of tea growing after merely a year. Eventually there was no replanting or maintenance of the tea plants. Thus, the growing tea project was not successful. Regarding this, a 51-year-old local man states that,

"In 2005, there was a project that aimed to change Mogok township from the Ruby Land to the Tea Land and the government mandated every household to grow tea plants. The entire village had to grab nearby land and grow it. But we only grew it for about a year. Later on, no one continued tea cultivation as they were tired of it, so they abandoned the tea fields and mined again."

The locals consider the project as a one that did not aim to provide an additional economic activity for them. It was not fixed in the interest of the locals. They were not interested in any agricultural activity including tea cultivation. They also thought as a mere perfunctory order of the government. The reason was that the order to cultivate tea was given without any systematic field checks. The result of this project was the reduction of vacant land where local ruby mine. Plots of land in which tea plants are grown are assigned to be their own. But, without growing any crop in the plots, they use as firewood orchards. After electricity has been lined in 2014, firewood had not been cut remain fallow. In 2012, the department of agriculture managed those lands to be Form-7. But, as most local people were unwilling to manage agriculture any longer, they remain fallow lands.

In 2006, as a large-scale ruby mining was permitted within the village grounds, the locals experienced difficulties in their small-scale ruby mining. Thus, a few people started to work in agricultural activity that profit as much as they invested. Regarding this change, a 60-year-old local man who works in agriculture states,

"A long time ago, I mined ruby. Now, it has become scarce and the company has entered. A lot of capital needs to get a gem block. Even if I invested, only really lucky people could find ruby. So I stopped ruby mining and started working in agriculture in 2008, where I could earn back as much as I invested."

In 2010, an agricultural expert from Department of Agriculture, Livestock and Irrigation, Mogok Township held a seminar in Bawlonegyi village. In this seminar, he was stated that, *"the*

natural resources especially gems both above and below the ground may be depleted one day. Thus, the villagers should work in agricultural activity as sustainable livelihood."

After this seminar, a few locals gradually became more interested in agriculture and began to think as *"it could provide sustainable livelihood and stable source of income in long term. By growing perennial crops, they could benefit and provide sustainable livelihood not only for them but also for their next generation"*. Thus, the former cultivators expanded their agricultural activities for commercial purpose. Although there were approximately 50 people who worked in agriculture before 2006, the number of households engaged in agriculture increased to 59 households. However, most of the villagers did not still interest in agriculture. According to a 65-year-old local man states that,

"In 2010, an agricultural expert from the township office came and said not to rely on underground resources and to work in agriculture during a seminar. In my opinion, growing perennial crops would help our posterity and in the long term it could provide a stable livelihood. I don't want to go another place to work like other people. I like farming peacefully with my family on my own land. Even if I don't become rich from farming, it guarantees my family's livelihood."

As arable lands lie on ridges, it is difficult to get water. Thus, they grow only perennial crops that do not require much water. The farmers are trying to provide water to the farms and are planning to implement an irrigation system. They hope that agriculture can provide regular income by growing both perennial and seasonal crops.

By looking at the agricultural activity, it can be analyzed that they did not interest in agriculture since the former time. The administrators wanted to change their economy from ruby mining to agriculture. This is because of the livelihood insecurity of ruby mining. Thus, they mandated to grow tea plant every household. But they did not design systematic plans such as educating locals about the benefit of tea plantations, discussing livelihood insecurity of ruby mining and listening the voice of the local people. Therefore, it did not succeed. Again, they held a seminar in Bawlonggyi village and educated the consequences of ruby mining and agriculture. After this seminar, the locals became more interested in agriculture and began to cultivate perennial crops and trying to get water to grow seasonal crops. But there are still locals that do not interest in agriculture.



Figure 6. Wheat cultivation field

Source Photo by Researcher

Recognizing Education as a Pathway to Sustainable Livelihoods

Most of the local people have traditionally accepted education was not an important part of their lives and they can survive through ruby mining. This is because of the abundant of ruby and providing an income easily. In addition, they did not have much knowledge and narrow insights. Thus, they did not want to focus on their education. The majority of the children worked in their family mining operations. There were a few parents encouraged their children's education. But the children were not interested in education. Even who have graduated from university continued to operate ruby mining at their home. They believe that attending university is like fulfilling their parents' dream. Attending university is not a first priority and the work (ruby mining) is the first. No one thought and hoped they can face the difficulties in their ruby mining operations. Concerning the fact, an old man aged 84 said,

“As we had least knowledge and narrow insights, we did not know to learn and have education when I was young. The elder person supported that when you passed fourth standard, you would dig mine, the same goes to anyone who passed tenth standard. As we are young, we were deceived. We would like to mine as mining provides money easily.”

It can be analyzed that the lack of knowledge, narrow insights, plenty of ruby and heavily depended on ruby mining were the agents for the weakness of education.

Despite local people not only parents but also children changed the perception on the education as they are gradually facing the difficulties with the mining operations. They recognized educational job is the most reliable survival option for their future generations. In addition, local residents empirically understood the working situation between educated and non-educated person when large-scale mining came to exist in 2006. Thus, they realized that if they made a living with education, they could work in jobs that were less tiring. Both parents and children started focusing on education. Concerning the changes in perception on the education, a 58-year-old woman mentioned that;

“As I was not educated, I am contented with choosing Ge-sar thrown away by others. I am facing so many challenges with my livelihood. I sent my children to school so that they do not face hardship like me. Later, parents who are rich or poor let their children to attend school after they are thrift. Because they understand that education provides guarantee in life.”

Although the locals are facing with financial difficulties after 2019, the encouragement for education did not decrease. There are 10 to 15 students who passed matriculation examination annually after 2010. The number of graduated persons increased up to 40 between 2001 and 2020. And then graduated persons make a living with professional jobs such as banking, teacher at private school, and so on. In comparison to previous times, the education sector changed greatly. This finding can be analyzed that local residents deeply accepted education is a bridge to develop sustainable livelihood for their future generation.

Discussion

Mining areas face with constant poverty even in rich countries like Canada (Ross, 2001). Several studies show that a greater percentage of the population are living below the poverty line in mineral-dependent countries (Githiria and Onifade, 2020). Thus, mining and vulnerability are interrelated with one another. Moreover, the attitude of people encouraged to be more vulnerable livelihood conditions. In the finding of this study, the attitude and habit of local is selling ruby immediately. This was due to the belief if the miners sold the gem immediately, the gem brokers would compete and give the higher price with each other. They are deeply accepted the notion that money can always get from ruby mining. Thus, all of the earning spent for household consumption. They did not have the idea to invest in other economic activities and to save money for their future survival. Although some invested in other economic activities such as grocery store, food business and transportation job, these activities can no longer consider as sustainable livelihood because it is largely depended upon the ruby mining business. Thus, these activities declined when the mining company stopped in 2019. Some of the household has bought gold as saving. But the gold is sold again for household consumptions when they did not find any ruby. In this way, households' livelihoods are vulnerable to or in the process of a vicious spiral of impoverishment.

Vulnerable livelihood is related to insecurity, sensitivity of well-being in the face of a changing environment, and households' resilience and ability to respond to risks and negative changes and to opportunities (Rakodi, 1999). The people of Bawlongeyi village have conducted ruby mining as their traditional livelihood. Natural resources-based livelihood activity is itself a vulnerable and also accelerate by other factors such as political factors. Regarding the sustainable livelihood framework, ruby mining caused villagers to be vulnerable because ruby is a non-renewable resource and also the earning is irregular. This study found out that the important of government in the management of mining sectors. It needs to managed carefully in systematic ways. For instance, the government designated Mogok Township, including Bawlongeyi Village as "Tea Land from Ruby Land" in 2005 and encouraged the local to grow tea plants. The government aimed to develop sustainable livelihood for local residents who are heavily depended on ruby mining. It was not succeeded as locals lack of knowledge, narrow insights, lack of familiarity with agriculture along with the lack of educating by government. In 2012, Form-7 was given to the lands where tea was grown without field check. Despite, most of the locals did not cultivate any crops and cannot operate ruby mining. Such conditions led to the uncertainty in their traditional livelihoods.

Households aim at livelihood which has high resilience and low sensitivity to shocks and stresses. Individuals and households adjust to unpredictable circumstances, rather than 'strategies' planned in advance (Lockwood, 1997). Every household practiced risk management and coped in order to develop robust livelihood. Rakodi (1999) identified a variety of coping strategies such as substitution of one asset for another, investment in securing more of an asset, disposal and sacrifice. Local residents of Bawlongeyi village were facing with challenges in their traditional economic activity such as large expenses, scarcity of gems and gem blocks. Thus, a few locals tended to substitute it with agriculture. They were not interested in agriculture in former time, but now a few locals became more interested in agriculture and began to think as it could provide sustainable livelihood and stable source of income in long term. Therefore, they

cultivate perennial crops and trying to get water to grow seasonal crops and also expanded the cultivation from subsistence purpose to commercial purpose.

The second coping strategy of local residents is the investment in securing more of an asset. According to Ellis (1998) education is a key factor contributing to the greater ability of diversity for household. In the study area, most of the local people have traditionally accepted education was not an important part of their life and they can survive through ruby mining. But when they are gradually facing with difficulties in their mining operations, the perception on education had changed. Locals recognized educational job is the most reliable survival option for their future generations. Therefore, both parents and children started focusing on education. By investment in education, future generations could be engaged various economic activities and developed sustainable livelihood. It can be analyzed that locals tended to develop the sustainable livelihood which is based on human capital from the vulnerable livelihood which is depended on natural resources (capital).

The last coping strategy is migration. In the paper called “Remittances and sustainability of family livelihoods in Zimbabwe”, scholars contribute that remittance has positive impact on family livelihood. They spent more on investment rather than consumption (Mishi and Mudziwapasi, 2006). In this study, locals are coping their vulnerable livelihoods with migration. Local engaged in migration as the hardship of ruby mining and practiced both national and internal migration. The aim of migration is to collect money for their households’ consumption. Migrant workers send enough amount of money for household consumption every month. Thus, it reduces vulnerable conditions and served as a survival strategy. In addition, locals invest some of the remittance for their children education. Therefore, migration can also be considered as an aspect of sustainable livelihood development for future generations.

Livelihood diversity contributes to the sustainability of rural livelihood because it improves long-run resilience and flexibility in the face of diverse trends or sudden shocks (Ellis, 1999). Trend encouraged local people to diversify various economic activities such as grocery store, food business and transportation job and picking mine tailing. But these cannot contribute to sustainable livelihood because of their diversification that is dependent on the temporary nature of ruby mining. Although diversified economic activities went well during the time when the company still mined, it was no longer fruitful when the large-scale mining halted. It is contrast with the statement of scholar, diversification of local can only contribute short-run resilience for local livelihood. The contribution of this finding is livelihood diversity relied on the vulnerable nature could not develop the sustainable livelihood.

Conclusion

This research examined the vulnerability of livelihoods in ruby mining community based on a case of ruby mining village called Bawlongyi Village which is situated in Mogok Township, Mandalay Region. The traditional livelihood of this village is small-scale ruby mining and it has been carried out for over a century. They have been relying on natural resources as their main occupation for sustainable livelihood for so long. When studying the vulnerability of livelihoods in ruby mining community, it is found that the trends such as political and technological trends play an important role.

In political trend, before 1962, small-scale ruby mining was permitted to work freely and between 1962 and 1990, as they have no longer received permission and they had to work in illegal mines. Consequently, locals faced with challenges in their livelihoods. Thus, ruby mining was done in the forest where such mining could not be seen by government official at night. In 1991, small-scale ruby mining was permitted again to operate on their own lands. In addition, Myanmar Gemstone Law (no. 8/95) was prescribed and granted permission for large-scale mining in 1995. Large-scale mining permit was granted in 2006 but it was halted in 2019. Because of such political trends, local residents had been facing livelihood insecurity. In addition, technological trend is also influenced on vulnerability. Traditionally, as local miners used traditional self-made tools in small-scale mining, there was limited in extraction. And also locals stopped ruby mining in rainy season. Because of technological advancement, locals accelerated gem extraction by using water pump into traditional self-made tools. As a result, small-scale mining has changed from seasonal to year-round job. In addition, the consequence of applying heavy machinery and using a great amount of manpower in large-scale mining, there was no limited gem extraction. Thus, local are suffering the scarcity of gem blocks and gems.

In 2005, the government designated Mogok Township including Bawlongyi village as “Tea Land from Ruby Land” with aim to change livelihood from ruby mining to agriculture and were encouraged every household to grow tea plants. Even though such a plan was established, it was failed as there was no educating and not interesting in agriculture. But as a result, there was the scarcity of vacant lands for ruby mining. In addition, Form-7 was given to the lands where tea was grown in 2012. Although it was given Form-7, most of the locals did not cultivate any crops and also the official did not conduct the field check whether it is actually cultivated or not. There are a few households that grow for consumption, while most of the locals keep as fallow land. They can dig in those plots by re-application Form-14, but they cannot afford capital. Because of such conditions, locals faced with difficulties in their traditional business.

Although there were job opportunities in large-scale mining, local worked temporarily as the company lacks of transparency in gem appraisals and bias. Men migrated to other places within the country to operate mining and other went to abroad as wages labor. Then other family members worked in picking mine tailing, grocery store and food business and transportation job. During this period, while traditional economic activity faced with difficulties, locals’ economy was still well-off because of the diversification of various economic activities. But locals were rarely used to save and invest, they spent their incomes only for household consumption.

Large-scale mining was closed in 2019 and local did not have any income generating activities. Local faced with difficulties and 60% of working age between 18 to 40 years old both men and women migrated to abroad to do as wages labor. The sent back the remittance for household consumption at the end of the month. The people who wanted to live with their family in native village and hobby farmer operated agriculture for commercial purpose as an alternative livelihood strategy. In addition, because of the vulnerable nature of ruby mining, locals invest money for their children education with the believe that education provides guarantee in life. Although locals are coping the vulnerable livelihood with the above-mentioned strategies, they cannot effectively solve it. The government also needs to cooperate with local in order to develop sustainable livelihood strategies. For instance, the respective departments should invest time, systematically share knowledge, and work concretely towards implementing agricultural activities and livestock activities that are compatible with the region.

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HAND-PAINTING AS A CULTURAL TOURISM PRODUCT: A CASE STUDY IN BAGAN, MANDALAY REGION, MYANMAR

Hnin Ei Moe¹

Abstract

The title of this paper is hand-painting as a cultural tourism product: a case study in Bagan, Mandalay region, Myanmar. The main purpose of this paper is to explore the role of hand-painting art within the tourism sector in Bagan. The specific objectives are to analyse the impact of tourism on hand-painting artists and to describe tourists' perceptions and preferences regarding hand-painting. Qualitative research method is used in this research. The findings reveal that hand-painting has evolved from a creative pursuit into a thriving business, generating income and creating employment opportunities for local artists. This activity allows visitors to connect deeply with Myanmar's heritage, serving as a unique and memorable souvenir. Tourists, particularly domestic travelers, often choose designs inspired by temple murals, and the service is offered in temporary stalls adorned with traditional elements like Patheingyi umbrellas and puppets to attract customers. Despite its commercialization, hand-painting maintains its cultural significance by merging traditional art with modern tourist experiences. As tourism grows in Bagan, the demand for hand-painting is expected to rise, further solidifying its role as a distinctive cultural tourism product that enhances visitors' cultural immersion and appreciation of Myanmar's artistic heritage.

Keywords: hand-painting, tourism, tourists, souvenir, Bagan

Introduction

Tourism is one of the activities pursued by humans for pleasure. It is not only a global set of activities crossing many cultures, but also a factor in shaping local identity and culture. Tourism is considered a smokeless industry, contributing significantly to the income of many countries. It is one of the most important sources of economic revenue and employment. Therefore, every country in the world strives to promote tourism through its natural landscapes, historical buildings, and unique cultural traditions.

To develop tourism, tourist attractions are crucial. Tourist attractions refer to places of interest that tourists visit, typically for their inherent or exhibited natural or cultural value, historical significance, scenic beauty, or offerings of leisure, adventure, and amusement. Moreover, cultural attractions play an essential role in tourism at all levels, from global highlights of world culture to attractions that support local identities (Richards, 1996).

Tourism and culture are interrelated. Culture may be modified in two ways: through diffusion, which involves borrowing traits or patterns from another culture, or through the invention or discovery of new cultural elements within the society. In the globalized world, tourism brings not only new demands but also new opportunities—new destinations to travel to, new cultures to explore, and new tourism products and experiences to consume, along with a whole new set of dynamics surrounding the phenomenon as it unfolds (Schouten, 1996).

In this research, hand-painting art, one of the new tourism products, is considered from an anthropological point of view. The main study site for this research is Bagan in the Mandalay Region. Bagan is an ancient city and a UNESCO World Heritage Site. It served as the capital of the Bagan Kingdom from the 9th to 13th centuries and is located in the middle of the "Dry Zone" of Myanmar. Bagan is the most attractive destination in Myanmar's tourism sector and can also

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be regarded as one of the best places for numerous ancient cultural sites among Southeast Asian countries.

For local people, Bagan is mostly interested and frequently visited for the reasons of having ancient pagodas and being an ancient kingdom once where range of dynasties were rooted to create Today Myanmar. As Myanmar people say that “If you are a Myanmar, you must have been to Bagan”, most Myanmar people try to visit there. For foreign tourists also, Bagan is a must-visit destination in their travel plans within Myanmar. The lists of Department of Hotel and Tourism, (Bagan branch), show the number of tourists visited to Bagan as 308441 in 2017, 250917 in 2018, 478118 in 2019, 97179 in 2020, 641 in 2021, 287222 in 2022, and 489484 in 2023. Therefore, Bagan has become the top tourism destination for both domestic and foreign tourists. Consequently, business related to tourism has been paving as main earning route for locals.

Aim and Objectives

The aim of this research is to explore the role of hand-painting art within the tourism sector in Bagan. The objectives of this research are to analyze the impact of tourism on hand-painting artists and to describe tourists' perceptions and preferences regarding hand-painting.

Literature Review

Tourism brings new life to destinations by attracting visitors who engage with customs, traditions, old skills, and crafts, thereby encouraging pride in the heritage and culture of a destination as it is re-evaluated (Cooper et al., 2008). Tourism also promotes the preservation of an area's cultural heritage, which includes archaeological and historical sites, traditional arts, crafts, dance, music, theater, rituals, ceremonies, and clothing (Inskeep, 1991). Additionally, tourism can serve as a force for preserving and revitalizing host communities' cultural identities and traditional practices, while also acting as a source of income to conserve heritage sites (Easterling, 2004).

Tourism development can enhance a country's economy through numerous positive economic impacts. According to Easterling (2004), these positive economic impacts include the improvement of the standard of living, the creation of employment, and significant infrastructure expenditure. Economic impacts also contribute to increased local incomes, more employment opportunities, and stimulated investment (Sharpley, 2014). The development of tourism can influence people's habits, everyday routines, social life, and beliefs and values. The social and cultural impacts include the enhancement of local prestige, identity, and pride, shifts in traditional values, and the commercialization of culture (Andersson & Lundberg, 2013).

A tourist is defined as someone who travels to places outside of where he or she normally lives for the purpose of pleasure. Business tourists may visit these places for conferences, workshops, or further education. Private tourists may travel for adventure, recreation, education, pilgrimage, or other purposes (WTO, 1995). The United Nations Environment Programme (UNEP) stated that as tourists seek to collect souvenirs, arts, crafts, and cultural manifestations, craftsmen have responded to the growing demand by altering the designs of their products to better align with new customers' tastes. While the interest shown by tourists contributes to the sense of self-worth of the artists and helps preserve cultural traditions, cultural erosion may occur due to the commodification of cultural goods.

Research Methodology

This study adopted a qualitative research approach to examine hand-painting as a cultural tourism product in Bagan. The research was conducted in Bagan, Mandalay Region, a UNESCO World Heritage Site and one of Myanmar's major cultural tourism destinations. Data were collected through participant observation, individual interviews, and key informant interviews (KII). Participant observation was conducted at hand-painting stalls located near prominent pagodas and tourist sites in order to observe the interaction between artists and tourists and the practices involved in hand-painting activities. A total of 30 respondents participated in this study, including hand-painting artists and tourists who experienced the service. The respondents were selected through purposive sampling because they were directly involved in hand-painting activities. Fieldwork was carried out from April 2023 to May 2024. The collected data were analyzed using descriptive qualitative analysis in accordance with the research objectives, focusing on the impact of tourism on hand-painting artists and tourists' perceptions and preferences regarding hand-painting in Bagan.

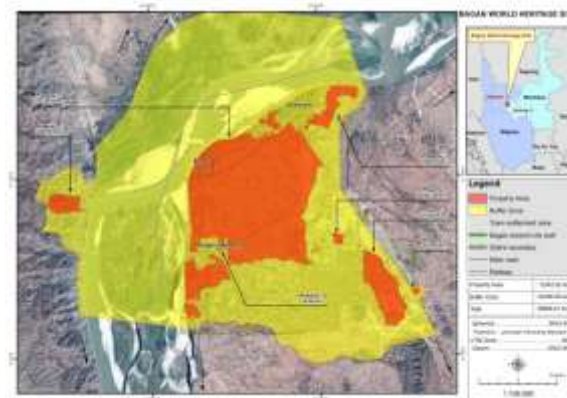


Figure 1. Bagan World Heritage Site

Source: Department of Archaeology and National Museum (Bagan branch)

Finding

Hand-paintings mean drawing painting on the skin by using colourful water-colour paints. The customers can choose the art they like. It is not like tattoo which cannot be disappeared. It is a temporary drawing which may disappear when exposing with water. It is durable for at least water without washing carefully with water. Hand painting stalls are opened under the shady trees near the famous pagodas in Bagan. Not only the local visitors but also the foreign tourists try the hand painting. However, being a product of creativity and freedom, hand painting artists are actors that create motifs which are not limited to certain type or characteristics. Local visitors and foreign tourists ask the artist to draw the mural arts found on the wall of ancient pagodas and floral arts on the forearm, on the back of the hand, on the fingers, on the arm and on the side of the neck. According to a hand-painting artist,

“While selling the lacquer-wears to the foreigners, floral arts designs are drawn for their children. When other visitors see it, they come and request to draw for them too. Then, people posted it on facebook. Then a lot of people get

to know about that and it become a business which gives the service of drawing the hand painting with some fee. It has been running for 6 years”.

According to him, the business of drawing hand painting started by drawing hand painting for the foreigners. Then it was well-known through Facebook.



Figure 2. Hand-painting designs

Source: Photo taken by the author

Both local visitors and foreign visitors try hand painting, so more business opportunities are created. Some run the hand painting individually or some do it together with friends. While doing it together with the friends, the collected money is divided equally. The stalls compete with each other to get more beautiful work. Besides, Myanmar traditional small puppets are hanged on the trees to attract more visitors. There are about 50-100 puppets which are hanged in each hand painting stall. Moreover, each stalls is decorated with fancy bullock cart, Pathain umbrellas and Swan Oak (large bowl with stand and cover for offering of food to monks). The general course for running a hand-painting stall is about 15 lakhs. According to a 25year-old female hand-painting artist,

“I started opening my stall with 10 puppets and 5 Pathein umbrellas. I live on a small amount of money and invest all the money both the capital and the interest into this stall. The tourists only take photos and draw hand-painting only when the stall is beautiful. The decoration on the brunches costs about 15 lakhs”.

According to the above utterance, it can be found out that hand-painting stalls use decoration and do some maintenance to attract the tourists.



Figure 3. Decorated Hand-painting stall

Source: Photo taken by the author

During the travel season and government holidays, the number of visitors increases, so do the customers who draw hand-painting. As hand-painting has become trendy, sand painters and wall-painting artists have also started to engage in this as a profession. In the vacation season and the pagoda festival season, hand-painting art services have to be provided non-stop. When that time, all family members have to do the painting without taking a rest. Hand-painting is better only with a passion for art and an interest in the work. The fee is charged depending to the design and the time duration to draw that design. While drawing hand-painting, painting the pictures of Kyan-Sit-Thar, the queen, prince and princess takes about 20-30 minutes and painting normal floral art will only take about 10 minutes. Since the beginning of 2023, instead of using colorful water-colors for painting, artists have started using paint bottles (henna) produced in India. The paint bottles (henna) come in only two colours: red and black. The paintings created with henna are also found to last longer than those made with water-colour paints. Depending on the design and the time taken, the fee is from 2000 kyats to 7000 kyats at most. During travel season and government holidays, the income of a hand-painting artist is about 100,000 kyats. When there are only a few visitors, their income is 20,000 kyats a day. A 38-year-old hand-painting artist shared how the incomes are allocated. He said,

“We, 5 friends, opened the stall together and draw hand-painting. If we get 100,000 kyats for drawing 5 customers, we allocated 20,000 for each. Then we recollect 1000 kyt or 2000 kyats for the materials. The materials are easy to get damaged. Pathein umbrella and puppet only last for over one year. If they get wet or exposure to sunlight, they can get old easily. We have to take care of these things since we can earn a living depending on these things. Sometimes, we need to save money to buy more materials”.

A 36-year-old hand-painting artist who changed his profession stated.

When creating a sand painting, it takes three days to complete a single normal painting. Since it involves intricate detailing, it requires focused attention and careful execution. The price of painting depends on its size. When creating hand-paintings, there is no need for detailed drawing, and the income is higher compared to creating sand paintings. In addition, since the work involves direct interaction with visitors, it also provides opportunities to gain new knowledge. In the field of social relationships, the number of acquaintances also increases.

According to their utterance, hand-painting has become popular among the tourists, and the artists have high income for their living. Through their work, artists generate additional income, which supports their livelihoods while preserving traditional art forms. This not only enhances their financial stability but also contributes to the sustainability of local cultural heritage. Moreover, the rapport can be built between the visitors and the artists since they have direct interaction.



Figure 4. Hand-painting artist

Source: Photo taken by the author

Hand-painting not only provides income for the artists but has also become a symbol for visitors coming to Bagan. Tourists visiting Bagan often draw beautiful hand-painting designs on their hands and take commemorative photos, which has become a modern trend in Bagan. Domestic travelers tend to engage in hand-painting more than international tourists. Tourists predominantly paint hand designs inspired by ancient temple murals and floral patterns from the Bagan era. A 27-year-old woman explained.

"Hand painting can only be done when I visit Bagan. As Myanmar people say that if you're a Myanmar, you must have been to Bagan. It's an absolute joy to have the privilege of drawing the traditional kanote designs from the Bagan era on my hand. When I take a photo of my painted hand and post it on social media, everyone who sees it knows that I'm in Bagan."

Additionally, according to the statement of a 33-year-old man,

"In other cultures, hand-painting is typically done only by girls during weddings, "henna night" ritual or religious festivals. However, the hand-painting done in Bagan is not a traditional custom but is portrayed as an art form and a memorable experience. Both men and women can participate in it. While experiencing the painting, one is reminded of the high cultural standards of the Bagan era. It allows people to experience the blend of traditional culture and beautiful art. It gives a sense of fully immersing oneself in the beauty of Bagan."

According to the above statements, the hand-painting designs that have emerged in Bagan, based on ancient wall murals, not only appear to revive traditional art on the hand but also provide a sense of peace to visiting tourists. Additionally, since hand-painting can be done by anyone regardless of gender, it has become a popular and renowned artistic souvenir for Bagan tours.

Tourists' appreciation for hand-painting arises from the ability to personally experience Myanmar's cultural art and take it home as a keepsake. For tourists who visit with a strong curiosity and desire to explore, hand-painting has become a valuable artistic souvenir from their trip to Bagan. Additionally, hand-painting is an art form that introduces the beauty of Myanmar's traditional culture to the world. Travelers also regard the opportunity to personally engage with

traditional art as an invaluable keepsake. It has been found that experiencing hand-painting in conjunction with a tour of Bagan greatly enhances travellers' satisfaction.



Figure 5: Hand-painting artist and tourists

Source: Photo taken by the author

Discussion

Tourism plays a vital role in breathing new life into the customs, traditions, and cultural practices of a destination, as noted by Cooper et al. (2008). By attracting visitors, tourism helps to re-evaluate and rejuvenate heritage, fostering pride among local communities. This is evident in Bagan, where the traditional art of hand-painting has gained popularity among both local and foreign tourists, leading to resurgence in the appreciation of ancient designs inspired by temple murals and traditional floral patterns. Such practices not only generate income for the artists but also act as symbols of cultural identity for visitors, making them feel more connected to Myanmar's rich heritage.

According to Inskeep (1991), tourism can significantly contribute to the preservation of an area's cultural heritage. In Bagan, this is particularly true as hand-painting stalls, adorned with traditional decorations like Patheingyi umbrellas and puppets, attract tourists and encourage them to engage with the local art. The commercialization of hand-painting, as seen in Bagan, provides artists with a steady source of income, allowing them to preserve and maintain their craft. The United Nations Environment Programme (UNEP) similarly highlights how the demand for cultural souvenirs such as hand-paintings fosters a sense of pride among artists while preserving the tradition. However, there is also the risk of cultural commodification, where the art may shift to meet tourist preferences, potentially eroding its original cultural significance.

Easterling (2004) emphasizes that tourism can be a driving force for economic growth by generating employment, increasing local income, and encouraging infrastructure investment. In Bagan, hand-painting stalls provide job opportunities for local artists and serve as small businesses, where profits are shared among artists. The business has now become a profitable venture due to the increasing interest from tourists, with incomes rising during peak travel seasons and festival times.

Sharpley (2014) expands on tourism's economic benefits, noting that tourism development can improve the standard of living and stimulate local investment. Hand-painting, which started with simple floral designs for tourists' children, has now grown into a well-known business, with tourists paying fees ranging from 2000 to 7000 kyats per design, depending on the design and the time taken. The shift from watercolors to more durable materials such as henna reflects the evolving nature of this art to meet tourist expectations while maintaining its artistic integrity.

Culturally, tourism in Bagan has led to the blending of ancient traditions with modern practices. Andersson and Lundberg (2013) highlight how tourism can enhance local prestige and foster pride in cultural identity. In Bagan, hand-painting, which was traditionally limited to women in wedding or religious ceremonies in other cultures, has been embraced as an inclusive art form that can be enjoyed by everyone. The experience of hand-painting in Bagan allows visitors to immerse themselves in the high cultural standards of the Bagan era, bridging the past with the present. Moreover, hand-painting provides visitors with a tangible connection to Myanmar's cultural heritage. Hand-painting in Bagan is more than just a temporary art form; it is a way to engage deeply with the country's traditional culture, making the experience both meaningful and memorable. For tourists, having their hands painted with floral patterns from the Bagan era, which they can take home as a keepsake of their cultural immersion. By offering visitors the chance to participate in traditional art, tourism creates a deeper connection between the destination and its cultural roots, while also generating income for local artists. The rise of hand-painting as a tourist attraction in Bagan underscores the broader influence of tourism in reviving and maintaining cultural practices, making it an essential element in both cultural conservation and economic development.

Conclusion

In conclusion, tourism plays a significant role in shaping and promoting local culture and identity while providing substantial economic benefits. As a "smokeless industry," tourism offers opportunities for employment, investment, and income generation, benefiting both local communities and national economies. In destinations like Bagan, where cultural heritage and tourism intersect, new forms of tourism products, such as hand-painting art, have emerged.

The popularity of hand-painting among tourists has led to the creation of a thriving industry, offering artists an additional source of income and fostering direct interactions between tourists and local artisans. The fusion of traditional Bagan-era mural art with modern hand-painting techniques has captivated both domestic and international visitors, enhancing their travel experience and providing them with memorable souvenirs. Hand-painting has not only contributed to the preservation of cultural art forms but has also become a symbol of the tourist experience in Bagan, allowing visitors to engage with Myanmar's cultural heritage in a personal and meaningful way.

As tourism continues to grow in Bagan, the hand-painting industry will likely expand, further integrating art with tourism and solidifying its place as a unique cultural offering. Through this synergy between tourism and culture, hand-painting serves as a testament to how creative expressions can contribute to the cultural and economic vitality of a destination, enriching both the lives of tourists and the livelihoods of local communities. By promoting sustainability, this integration not only safeguards Bagan's artistic heritage but also ensures its lasting benefits for future generations, striking a balance between preserving culture and fostering economic growth.

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DIVISION OF LABOR IN WEAVING AT LEIK SAN KHUN VILLAGE, AMARAPURA TOWNSHIP, MANDALAY REGION

Kay Thwe Myint Mon¹

Abstract

This research illustrates the weaving of Leik San Khun Village, Amarapura Township, Mandalay Region. In Leik San Khun village, the weaving industry was done by hand loom before 1994 - 1995. Since 1994 - 1995, power looms have been introduced. The research aims to describe the division of labor in the weaving industry of Leik San Khun Village. The specific object is to reveal how the process of weaving has been done in Leik San Khun Village. The qualitative research method was used to collect the data. Research tools were key informant interviews, in-depth interviews, individual interview and, participant observation. Among the 719 houses in Leik San Khun village, 277 houses, 39%, depend on the weaving business. There are 1,159 weaving machines whereas three houses have hand looms. There are ten stages in weaving process in Leik San Khun village. Although there are no differentiated tasks for males and females, some tasks are suitable for males whereas some are suitable for females. Women do the tasks which do not need to use strength such as *Chichachin* (ချည်ချခြင်း), *Rahatpyanchin* (ရဟတ်ပြန်ခြင်း), *Hnatkawchin* (နှုတ်ကော်ခြင်း), *Yinthwarpautchin* (ယဉ်သွားပေါက်ခြင်း), *Yatphaukyaukchin* (ရက်ဖောက်ယောက်ခြင်း), and weaving. Men do tasks that have to use physical strength such as treading the thread, dyeing the thread, *Seephawchin* (စည်းဖော်ခြင်း), *Charpotechin* (ချားပုတ်ခြင်း) and *Charlatechin* (ချားလိပ်ခြင်း), and other tasks that have to use brain such as drawing the design on a graph. Most of the local people can do two or three steps of weaving skillfully. It is learned that the weaving business has been carried out for generations and that the third generation is currently doing the weaving.

Keywords: weaving, hand loom, power loom, thread, dyeing

Introduction

Weaving is an ancient technique that has been used for textiles all over the world for centuries. Weaving is a mixture of science and art. Weavers use a variety of materials, including thread, yarn, and fabric, to create intricate patterns in cloth. Despite all the technological advances, weaving is still not a positively controlled process. That is, it is hardly possible to control the individual fiber which is the smallest meaningful building block in a woven structure. This fact makes weaving an interesting technology. Weaving “the act of making cloth by repeatedly crossing a single thread through two sets of long threads on a loom” (Cambridge Dictionary). Weaving is the craft of lacing fibers together to make fabric or cloth. Weaving often involves using a loom to hold the thread or yarn, although it can also be done by hand. (vocabulary.com/dictionary/weaving)

Weaving is the method of textile production in which interlacing of warp and filling yarns perpendicular to each other. There are many different ways for different types of fabrics structure of interacting wrap and filling yarns. The improvement of looms continued further and the modern textile industry emerged after the end of World War II with invention of synthetic fibers. However, the basic principle of weaving has remained the same for centuries (Adanur, 2001).

According to the Devi (2013) as cited in Dias et al. (2020), the hand loom industry is one of the largest unorganized economic activities in India, employing close to 4.3 million workers

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and contributing towards the sustenance of India's rural and semi-rural population. Myanmar knew the art of weaving since the days of Pyu city-states (အေဒီ၄ရာစု-၅ရာစု) (Myint Aung: 1960, 61). The Chinese account of the Old Tang Chronicle mentions that the clothes of Pyu (အေဒီ၄ရာစု-၅ရာစု) were made up of cotton. Pyus wore these cloths wrapped around the waist. The bronze figures of dancers and musicians excavated at Sriksetra (အေဒီ ၄ ရာစု-၉ ရာစု) are draped in serves and short nether garment (Fraser-Lu: 1994, 252). The word *phyin*-coarse (ဖျင်ကြမ်း) cloth and *pa-so*-male (ယောကျ်ားဝတ်ပုဆိုး) nether garment also emerged in Bagan period (သက္ကရာဇ် ၄၀၆ ခု-၆၇၄ ခုနှစ်) (Mya Ketu: 1960, 64). The Saw Hla Win Pagoda inscription reveals that the donor of the pagoda offered four pieces of *phyins kha-si*-nether (ဖျင်ခါးစီး) garment and a horse form Buddha image maker and two pieces of *pu-chi-phyins*-coarse (ပိုးချည်ဖျင်) cotton *kha-si* (ခါးစီး) and a horse for mason (Saw Hla Win Inscription). However, some researchers attributed that the weavers of Bagan Period (သက္ကရာဇ် ၄၀၆ ခု-၆၇၄ ခုနှစ်) we're not acquainted with the technique of dyeing (Mya Ketu: 1960, 65). In addition, the tropical forests of Myanmar provided numerous species for natural dyes. Some of these dyes, like sappan, were exported to India (Fraser-Lu: 1994, 254).

The hand loom is a traditional handiwork business and the power loom is a business which transformed the hand loom because of the technological development. The decline situation of the hand loom is that the price of raw materials increases every year and the cost of the hand loom cloth has increased more than that of the power loom cloth (Narasaiah and Krishna, 1999). The power loom industry has grown up from traditional hand loom sector with inherent technical knowledge passed on from forefathers and is being continued in many of the clusters (Sultana and Nisa, 2016). The research aim is to describe the division of labor in the weaving industry of Leik San Khun Village. The specific object is to reveal how the weaving has been done in Leik San Khun Village. Research questions are; what are the weaving processes in Leik San Khun village? How is the division of labor practiced in the weaving process? How do they maintain the weaving industry?

Research Method

The qualitative research method was used in this research. The secondary data was collected through surfing the internet and reading books. Research tools were key informant interviews, in-depth interviews, individual interview and participant observation. In the study field, writing notes and photographing were conducted. The research area is Leik San Khun village, Amarapura Township, Mandalay region. The data needed for this research were collected by interviewing 25 people. The informants were the chief of the village, the owner of loom, the weaver, the one who dye, the person who does *Chichachin*, the person who *Hnatkawchin*, the person who does *Yatphaukyaukchin*, the person who makes the patterns, the person who does *Rahatpyanchin*, the person who does *Charpotechin*, the person who does *Hnatkawchin*, the person who does *Yinthwarpaukchin*, the person who does *Charlatechin*, the person who does *Hnatsatchin* were interviewed. It took about a year to do the research from 2022 to 2023. As the key informant interviews, the elderly people who are above 75 years in the village were interviewed to know the history of the village. Then, the person who knows thoroughly about the village was also interviewed. In the in-depth interview, three men and three women who have been in the weaving business were interviewed. Moreover, three skillful weavers, three workers

who dye, and five people who can talk about step-by-step procedures in weaving were interviewed. Moreover, two teenagers, three middle-aged men, and three women were interviewed. An in-depth interview was used to ask about the difficulties and wages of the weavers. As the participant observation, the researcher helped to do the tasks such as helping in *chichachin*, carrying the thread after *chichachin*, cleaning the machine to do *chichachin*, and taking the water and helping to put the fire in doing dyeing. In this research paper, the processes of weaving are described. After that gender in weaving is explored. The discussion focuses on the division of labor and points out that there are specialized skilled workers, but the tasks depend on each other according to the nature of the weaving steps.

Process of weaving

In Leik San Khun village, men's wear, women's wear, and shoal are made and the looms are also separately called *Yaukkyar Tan*² and *Mainma Tan*³ (မိန်းမတန်း). At the *Yaukkyar Tan* (ယောက်ျားတန်း), *See* garment⁴ (local term breakdance *longyi*), *Kayin* garment, *Innma* garment⁵ (local term *Kyu* garment), *Gangaw*⁶, and *Palekat*⁷ are made. For the women, *Seelongyi*, *Kayin Longyi*, *Shan Longyi*, and *Chin* traditional shoals are made. In carrying out the processes, it was found that men and women work separately.

There are ten stages in weaving process in Leik San Khun village. It includes (1) Treading the thread (ချည်စာနယ်ခြင်း), (2) Dyeing the thread (ချည်ဆေးဆိုးခြင်း), (3) *Chichachin* (ချည်ချခြင်း) (transferring yarn from a swift to a bobbin), (4) *Rahatpyanchin* (ရဟတ်ပြန်းခြင်း) (spinning), (5) *Seephawchin* (စည်းဖော်ခြင်း) (making the pattern), (6) *Charpotechin* (ချားပုတ်ခြင်း) (rotating the swift), (7) *Charlatechin* (ချားလိပ်ခြင်း) (rolling up the swift), (8) *Hnatkawchin* (နတ်ကော်ခြင်း) (drawing wrap thread through the heddle), (9) *Yinthwarpautchin* (yap thwar) (ယဉ်သွားပေါက် ခြင်း) (using the reed), (10) *Yatphaukyaukchin* (ရက်ဖောက်ယောက်ခြင်း) (winding the thread into the bobbin).

Treading the thread (ချည်စာနယ်ခြင်း)

Treading the thread means making the thread bought from the market ready for dyeing the colors and making the colors last long. There are two stages to starch the thread. The first stage is to put the raw threads in the middle-size glazed earthen basin. Dilute half of the water and a little detergent essence into the earthen basin. Then, soak the threads and tread with the feet for half an hour until the threads are soft. When the threads become soft, they must be washed again to make soap clear. In the second stage, the treaded threads are hit against the stone plate six times at the tips, six times at the base, and six times in the middle. The threads have to be hit 24 times in total. Then, the threads are put on the shelf to filter the water. Treading and filtering water are made so that the colors last on the threads. Next, colors are dyed. That work is a

² *Yaukkyar Tan* means the place weaving for men's' ware

³ *Mainma Tan* means the place weaving for women's' ware

⁴ *Kayin* garment

⁵ *Innma* garment

⁶ *Gangaw*

⁷ *Palekat*

business that men work in (Figure-1). A 42-year-old man explained about treading the threads. He explained,

“Treading the threads means making the threads soft with water, pressing them, and hitting them on the stone plate in order that the colors stay last on the thread”.



Figure 1. Treading the thread and hitting the threads on the stone plate to dye the thread

Source: From Leik San Khun Village

Dyeing the thread (ချည်ဆေးဆိုးခြင်း)

When dyeing the thread, the wanted colors are dyed on the thread. Depending on the desired color, the proportion of the ingredients is varied. When dyeing, a package of 10-pound thread is dyed. Commonly used colors are white, black, grey, red and red brown. 163g of hydro⁸ and 163g of colorants⁹ (local term) have to put in the bell-mouthed pan with the boiled water. After that, the dye is mixed with four twenty-liter bottles and applied it to the threads (Figure-2).

Two plies of threads are placed on the two iron hooks and put in the pan with the dye. Then, the threads are turned right and left with the iron hooks (with a height of 18 inches and a width of 10 inches). After that, they are left in the pan for 15 minutes. Then, it is turned to the other side with the hook for the dye spread. The dyes made by using hellfire are known as *one-two say* (ဝမ်းတူးဆေး/readymade) (since two steps are needed). Types of the dyes used after mixing are locally known as *dat say* (ဒေသအခေါ်-မိတ်ဆေး/since it is made). Treading the threads and dyeing are carried out by three men. In the dyeing process, the number of people will differ depending on the number of the package of dye. Women cannot do those tasks since it is needed to put their feet in the water while pressing the threads, hit the threads with the rode on the stone plate, suffer the heat of the stoke while dyeing, and breathe the strong smell of the dye. There are about 22 houses in the village which do dyeing. The number of people who dye the threads is about fifty and sixty and all are men. A 54-year-old man explained about treading the threads and dyeing. He said,

“In this Lay Bo (လေးပိုင်), there are three households that do dyeing. In our house, three people do it in turn. It cannot be allocated to a particular one. We have to do it as a convenience. Mostly, men do tread and dyeing. Men of different ages up

⁸ One pound of hydro = 2,200 kyats

⁹ One pound of colorant = 1,700 kyats

to sixty do those tasks. In terms of the whole village, 50-60 numbers of the population do the dyeing. Those who do the dyeing also go to other villages to do the dyeing. It is necessary to use the effort to dye. To make the dye, it is needed to mix hydro caustic with warm water. Hydro Caustic has a strong smell and it can be harmful to the liver and lung. However, there is no serious case. While carrying out those tasks, it is needed to put the effort to hit the wet threads with the rode, so women cannot do that. After that, water is filtered from the threads. For this reason, only the men do the dyeing”.



Figure 2 Turning the threads left and right by using hook
Source: From Leik San Khun Village

Chichachin (ချည်ချခြင်း)

Chichachin (ချည်ချခြင်း) means taking the dyed threads to the bobbin (the reel with the handle). After dyeing the threads with necessary colors, *chichachin* (ချည်ချခြင်း) has to be carried out in order to do *charpotechin* (ချားပုတ်ခြင်း) (rotating the swift by hand) and *rahatpyanchin* (ရဟတ်ပြန်ခြင်း). While taking the threads to the bobbins, it is needed to take one bundle of threads (five ropes of threads) has to be put on the small reel¹⁰ (six bamboo hands are installed on each side of the axis which is 12 inches long, and the threads are put on those hands). Then, each bundle of threads is taken to the reel. One bundle of five threads is enough to take in one reel (Figure-3). This process is known as *chichachin* (ချည်ချခြင်း). *Chichachin* (ချည်ချခြင်း) can be carried out by only women do it since it can be easily done without using effort. Men do not do *chichachin* (ချည်ချခြင်း). Therefore, a nine-year-old child can reach to the shelf and he can do *chichachin*. According to a 30-year-old woman,

“There is no specific age limit to carry out chichachin. The machine has a height of six feet. Whoever reaches the shelf can do the task. Some adults cannot do the task if they are short. Some tall children who are about nine or ten years old can do that. In hand loom, there are stools for each of the bobbin. Then, the person has to sit on the chair and does chichachin, so height does not matter. However, in power loom, the person needs to stand to carry out the task. The height is important. People do chichachin up to the age of around fifty. Nice vision is necessary to do chichachin and it is needed to stand for a long time. Although

¹⁰ A rotating tool (reel) used to take the threads

there is stiffness in the back for standing long hours, people have to do it to earn a living. People who are over 50 do not have good eyesight, and they may suffer from stiffness for standing long hours”.

The woman explained that there is no age limit to do *chichachin*.



Figure 3. Doing *chichachin* with machine

Source: From Leik San Khun Village

***Rahatpyanchin* (ရဟတ်ပြန်ခြင်း)**

To make the *Seehtal* (tie-dye cloths), yarns are prepared for dyeing and designing the patterns (*seepwint*). This stage, *rahatpyanchin*, has to do only for *seepwint* fabric. *Rahatpyanchin* means the process of making the threads from the roller become skein. Only one person has to do the spinning and mostly the women do it (Figure-4). A 48-year-old woman talked about spinning at home. She said that,

“Both men and women can do spinning since they do it at home. There is a shelf for spinning, any free family member does it. There is no gender limitation for doing the weaving. Everybody does it as a convenience. Mostly people of different ages ranging from 15 years to over 50 and 60 do weaving. Women mainly do that task since it is comfortable.”

According to the interview, it is found out that there is no limitation of gender in weaving; however, most of the women do it, and most middle age women do it.



Figure 4 Doing *rahatpyanchin*

Source: From Leik San Khun Village

Seephawchin (စည်းဖော်ခြင်း) (Making the pattern)

Seephawchin means tying the skein of threads got from *rahatpyanchin* with the rubber bands. It is needed to follow the five steps to form the patterns. Only one person can do forming the pattern and mostly men do it (Figure-5). According to a 45-year-old man,

“It has been done by men since a long time ago. Women do not learn how to do it since it is men’s jobs. Mostly, men do tie. It is difficult for women to learn it. While tying, it is needed to tie the skeins of threads with the rubber bands firmly. Women cannot do that. Hands are harmful for doing it. After that, based color is applied. It is not convenient for women to dye. Therefore, women don’t do this task. While doing the tying, if the husband cannot do well, his wife helps him. While forming the pattern, they can do it as draft as instructed”.

It is found out that men mostly do the tying and they are more skillful than women to draw design and dyeing.



Figure 5 seephawchin

Source: From Leik San Khun Village

Charpotechin (ချားပုတ်ခြင်း)

Charpotechin means rotating the swift after tying the skeins of threads. It is the process of rotating the threads from the rotors to the large swift¹¹ which has 88 inches. It is used to make the width of the fabric wider and the warp threads become spread. There are three stages of *charpotechin* for *seehtal*. It is found out that there is no gender limitation to do *charpotechin*. However, only a man carries out the task. Both men and women can do it if there is the shelf at their houses (Figure-6). According to a 48-year-old man,

“Both men and women can do charpotechin if they have charpote shelf in their houses. However, men mostly do it. Only a few women do it. Only the strong people can rotate the swift. Women can rotate for once and twice. The more the rotation, the heavier the swift is. Therefore, women cannot do it. For this reason, more men do the tasks”.

It is known that men mostly rotate the swift and also the time duration and the income is learned.

¹¹ The swift used for weaving



Figure 6 Doing *charpotechin* for *seepwint*

Source: From Leik San Khun Village

***Charlatechin* (ချာလိပ်ခြင်း)**

The knots obtained from the large swift are put in the loom and rolled with the iron roller which is about 44 inches long for the warp. This process is known as *Charlatechin*. The original size of the breadth of the roller is 58 inches for women wear and necessary adjustment can be made for men wear. The roller has to be covered with paper (with the width of 8 inches and length of 44 inches), for there is no mixing of the threads and there is no moist since the iron is cold. Then, the roller has to be put on the rolling shelf (Figure-7). While doing *charlatechin*, two men have to do by staying on the left and right of the roller. So, effort is needed to put, only men do *charlatechin* while women do not do it. According to a 55-year-old man,

“It is needed to put physical effort to do charlatechin. Only people under 60 do it. The elderly people cannot do it since the task needs physical strength. There are 10-15 people who do charlatechin in the village. They are only men. Women cannot do it. At the beginning, the roller is light. The more threads are rolled, the heavier the roller is. Therefore, physical strength is needed. It lasts for 4 hours to do charlatechin for one loom. The wage is (8,000) kyats.”

He explained everything about *charlatechin*.



Figure 7. Doing *charlatechin*

Source: From Leik San Khun Village

***Hnatkawchin* (နှုတ်ကော်ခြင်း)**

Hnatkawchin means putting the string of the thread in the hole of the heddle for weaving. The tasks, *hnatkawchin* and *yinthwarpautchin* may vary depending on the design, women wear and men wear. Normally, two women do *hnatkawchin*. Then, *yinthwarpautchin* has to be carried out as the second stage. Normally, a man does *hnatsatchin*. There are more men who do *hnatsatchin* than women. In the whole village, there are seven men and three women who do the task (Figure-8). A 29-year-old man told about *hnatsatchin*. He said,

“Both men and women can do hnatsatchin. However, there are more men who do the task. In the village, there are seven men and three women, ten in total, do hnatsatchin. They are around forty. People of fifty have the poor eyesight, so they cannot do it. A lot of concentration is needed to carry out the task”.

It is found out that there are more men than women who do *hnatsatchin*, there is age limitation to carry out the task and wages may vary in doing this.



Figure 8 Two Women doing heddle

Source: From Leik San Khun Village

***Yinthwarpautchin* (ယဉ်သွားပေါက်ခြင်း)**

Yinthwarpautchin means the process in which each thread gained from *hnatkawchin* are put in the reed. It has to be done from the right where *hnatkawchin* has finished. If not, the heddle cannot be open and the roller will be reversed and weaving cannot be carried out. Therefore, it is important to start the task from the right. Only a person can carry out *yinthwarpautchin*. According to the study, it is found out that the person does *yinthwarpautchin* with *hnatkawchin* (Figure-9). Only women do *hnatkawchin* and *yinthwarpautchin*. Women do it since they have to the tasks in one place by sitting on a chair comfortably by giving concentration. Men have low interest for the task and they have to do other things such as dyeing, *charpotechin* (ချားပုတ်ခြင်း), *charlatechin* (ချားလိပ်ခြင်း) and *hnatkawchin* (နှုတ်ကော်ခြင်း). A 38-year-old woman talks about *hnatkawchin* (နှုတ်ကော်ခြင်း) and *yinthwarpautchin* (ယဉ်သွားပေါက်ခြင်း). She said that,

“Two people have to do hnatkawchin whereas only one person can do yinthwarpautchin. Then, the two tasks are accompanied together. If not, weaving cannot be made. The time duration will be about 3 hours. The wages of about (12,000) mmk to (20,000) mmk is earned depending on the design. Men cannot do it. They have choice. They can do different tasks such as dyeing the threads, rolling the threads and joining the threads. People up to over 50 do hnatkawchin

and yinthwarpautchin. Older people do not have good eyesight. The tasks need concentration”.

She explained about different in wages depending on the design. After that, the roller has to be put on the loom and waving can be started.



Figure 9. Doing yinthwarpautchin
Source: From Leik San Khun Village

Yatphaukyaukchin (Loonsan) (ရက်ဖောက်ယောက်ခြင်း)

Yatphaukyaukchin means putting the bobbin ¹²to the shuttle ¹³to make the weft thread to form the fabric. This is an important stage to form a cotton fabric. A fabric can be resulted by weaving the warp and the weft. In power loom, *Yatphaukyaukchin* is done by machine (Figure-10). Only women do that work. According to a 26-year-old woman,

“I have been doing this business since I was fifteen and it is a traditional task. If I do other jobs, I need to pack the lunchbox, time consumption for transportation and also the cost for clothes. Therefore, I don’t want to do other job. This is the reason why I do this job. In winding the threads onto the bobbin, I get (3,000) kyat for winding a package of thread containing 40 plies. I finish two packages and earn (6,000) mmk. Since I can work at home, there is no extra cost. It is convenient for me to do in my own village”.

She talked about her income for doing *yatphaukyaukchin*. After finishing the above stages (treading the thread) (ချည်စာနယ်ခြင်း), dyeing the thread (ချည်ဆေးဆိုးခြင်း), *chichachin* (ချည်ချခြင်း) (transferring yarn from a swift to a bobbin, *rahatpyanchin* (ရဟတ်ပြန်ခြင်း), *seephawchin* (စည်းဖော်ခြင်း) (making the pattern), *charpotechin* (ချားပုတ်ခြင်း), *charlatechin* (ချားလိပ်ခြင်း), *hnatkawchin* (နှုတ်ကော်ခြင်း), *yinthwarpautchin* (ယဉ်သွားပေါက်ခြင်း) and *yatphaukyaukchin* (ရက်ဖောက်ယောက်ခြင်း), weaving can be started.

¹² Small tool which is installed in the shuttle to put the weft

¹³ The place where the bobbin is put



Figure 10. putting the threads in the reed with the machine
Source: From Leik San Khun Village

Weaving by gender or age group

It is found out that most of the women do weaving business. A person can do two weaving machines at least. Weaving has to be done comfortably under the shelter and it is a suitable business for women. There is no age limitation. However, people ranging from the age of 15 to 55 do it. When the threads snap, it is needed to find the piece of thread and join it. It can be difficult for people with poor eyesight. Moreover, the person needs to stand to weave. Therefore, people who are over fifty-five do not do weaving. There are only a few men in weaving industry since they have to stay at work for a long time and they do not feel free. Men do the tasks that they can do in their village such as dyeing (ဆေးဆိုးခြင်း), *seephawchin* (စည်းဖော်ခြင်း) (making the pattern), *charpotechin* (ချားပုတ်ခြင်း), *charlatechin* (ချားလိပ်ခြင်း), *hnatsatchin* (နှုတ်ဆက်ခြင်း) etc. For some men who does not do those tasks earn their living by working in Mandalay such as tying the iron, bending the iron, carpenter, staff as the petrol station. A 32-year-old woman said;

“In the past, both men and women did weave. However, nowadays, men want to work outside since they feel that they are stuck at home by doing weaving. They work as carpenter and mechanics. While weaving, if both husband and wife do it, wages is paid only when men wear with 48 inches or women wear with 44 inches, with the length of 120 feet has finished. Therefore, people who want to get money at once do other jobs. Men work outside and women take over the weaving. It is not convenient for women to work outside. Weaving can be learned at home. If the man knows how to weave, he can teach his wife and then, the wife can take over the work. After that, men work outside. Most of the weavers are women. (400) kyats are earned for one-man wear, (450) kyats for one man wear with the fringe, and (300) kyats for one-woman wear.”

Another 17year-old female weaver also said that;

“I get married with my husband in this village. My native is Pha Ye Kyun (ဖရဲကျွန်း). It has been just 15 days that I have learnt weaving from my sister. I have operated power loom in this house for six months. I don't want to do other work since there is age limitation. An industrial work must be at least 18. There is no age limitation in this job. My husband is a construction worker. If I worked together with him, it is tiring under the sun. However, I can do weaving in the shelter conveniently. I finish the fabric with 44 inches in width and 90 inches in length. I get (300) kyat per longyi”.

The above sayings pointed out that the women are interested in weaving and weaving at home is recognized as the work for women.

Discussion

This research focuses how the weaving has been done in Leik San Khun Village and how the weaving has been the division of labor in Leik San Khun village. According to the Devi (2012) as cited in Dias et al. (2020), in NERI (North East Region of India), weaving skills are passed on from mother to daughter and are considered an important criterion for a woman's marriage. Therefore, it is understood that weaving is the woman-oriented job in India. However, in Leik San Khun village, weaving is not regarded as a crucial skill for women. Males can include and lead the business. In addition, weaving can be handed down from the husband.

According to the Sengupta (1960) as cited in Hensman (1988), within traditional family-based handicrafts, women have consistently been allotted a subordinate role. They were not allowed to belong to the ancient craft guilds, although they assisted their husbands in their home workshops. In Leik San Khun village, men can take the leading role in weaving business whereas women play subordinate role. However, they can own the business. According to the Subramanian (1977) as cited in Hensman (1988), said that 'When jobs are labelled as "women's jobs", it is so easy to declare that they are less arduous than men's or that women are less efficient than men'. In weaving industry of Leik San Khun village, males usually do difficult tasks quickly within a short time, while women do through tasks which need patience. According to the Baud (1983) as cited in Hensman (1988), even today, among handloom weavers in South India, the eldest male decides on the division of labour and allots the preparatory work to women and children; women do the actual weaving only if there are no male family members to perform this function. In weaving businesses in the south part of India, elderly men identify the duties for the women and the children. However, in weaving business in Leik San Khun village, the tasks are not identified as men's tasks or women's tasks. They took reference to what the seniors did and if the tasks were done by males, males do that while women carry out the tasks the senior women did.

One important aspect of the process of production is the allocation of tasks to be performed-that is, deciding which types of people will perform which categories of work. Even though many societies have considerably more complex divisions of labor, all societies make distinctions on the basis of gender and age. During the processes of weaving business, division of labor stands as the task to distinguish between the tasks for males and the tasks for women. There are many parts in the divisions of labor in weaving business in Leik San Khun village and it is mostly based on the gender and age. According to Ralph Beals et. al (1977), this division of labor between men and women was complementary and created a mutual dependency between men and women. In Leik San Khun village the tasks for males and the tasks for females are also inter dependent on each other in weaving business. French sociologist Emile Durkheim (1933) pointed out that in highly specialized societies in which people engage in complementary roles, social solidarity arises from their mutual dependence on one another. Durkheim calls the social solidarity resulting from this labor specialization and mutual interdependence organic solidarity. Although there are tasks appropriate for men and for women in weaving business in Leik San Khun village, they are dependent on each other. According to organic solidarity, there are specialized skilled workers, but the tasks depend on each other according to the nature of business.

Conclusion

The village of Leik San Khun has 715 houses, 277 of which are 39% of the houses, and the industries related to weaving, such as treading the thread (ချည်စာနယ်ခြင်း), dying the thread (ချည်ဆေးဆိုးခြင်း), *seephawchin* (စည်းဖော်ခြင်း) (making the pattern), *charpotechin* (ချားပုတ်ခြင်း),

charlatechin (ချားလိပ်ခြင်း), most of the men are engaged in the business of weaving. *Chichachin* (ချည်ချခြင်း), *rahatpyanchin* (ရဟတ်ပြန်ခြင်း), *hnatkawchin* (နှုတ်ကော်ခြင်း), *yinthwarpautchin* (ယဉ်သွားပေါက်ခြင်း) and *yatphaukyaukchin* (ရက်ဖောက်ယောက်ခြင်း), most of the women are engaged in the business of weaving. At the village, men ware and women ware are made and *seehtals* (စည်းထည်) are also made. As for the handloom, they mostly weave women's clothing. Before 1994, hand looms were used in Leik San Khun village. Starting from 1994, machine looms are substituted. It is assumed that weaving machines can produce the *seehtals* (စည်းထည်) to meet the demand and they play a vital role to support the economy of the residents. Instead of hand weaving, the labor force has decreased as machine weaving works have been replaced. However, no matter how much the machine is used instead, the process steps to make a woven fabric such as treading the thread (ချည်စာနယ်ခြင်း), dying the thread (ချည်ဆေးဆိုးခြင်း), *seephawchin* (စည်းဖော်ခြင်း) (making the pattern), *charpotechin* (ချားပုတ်ခြင်း), *charlatechin* (ချားလိပ်ခြင်း) was found that men are still working in business. Similarly, *chichachin* (ချည်ချခြင်း), *rahatpyanchin* (ရဟတ် ပြန်ခြင်း), *hnatkawchin* (နှုတ်ကော်ခြင်း), *yinthwarpautchin* (ယဉ်သွားပေါက်ခြင်း) and *yatphaukyaukchin* (ရက်ဖောက်ယောက်ခြင်း) that women were still working at every stage. Most of the local people can do two or three steps of weaving skillfully. Leik San Khun village has been working on weaving as a traditional business for three generations. It was found that the village of Leik San Khun started to work on weaving as a traditional business, but as women, they continue to work on the traditional business and as men, they only work on other businesses. Therefore, it was found that only women work in the weaving industry in Leik San Khun village and there are few male workers. Division of labor by gender and skill can be seen in the weaving industry in Leik San Khun Village.

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THE ANALYSIS STUDY OF CHANGING THE CURRICULUM OF FIRST YEAR BACHELOR DEGREE IN RUSSIAN FROM THE 2023-2024 ACADEMIC YEAR, ITS EXPLORE TEACHING AND PRESENT INNOVATIONS*

Aye Min Htut¹

Abstract

This study looks into how students' learning progresses in the five moral values. It examines the ways in which it provides assistance. The true advancement lies in the individual's wealth of knowledge; therefore, human resource development is essential. The book, which produces for learners, creates sympathy and wisdom. It provides knowledge for education but also instills patriotism, love for the country, and the value of preserving cultural heritage. Talented people really need help to develop intelligence in children. They should aim to achieve a peaceful, natural environment as well as a peaceful, polite, and happy social environment. If education and rationality are high, evil deeds will be reduced. To improve one's intelligence and rationality, one has to start with oneself. It is crucial to strengthen the education system that prioritizes individual literacy.

Keywords: development of five moral values, patriotism, people with ability, peace and happiness

Introduction

In the castle, where information is freely available, we need to be taught to accept the information that we want to know or obtain by teaching to achieve critical thinking, communication, collaboration, culture, creativity, and connectivity. Verify that the information is admissible; analysis must be done; must be able to curate until it is proven authentic.²

In Myanmar, educational experts say intellectual power includes: (a) the intelligence of verbal and language skills, (b) reasoning ability and mathematical intelligence, (c) vision, emotional, and visual intelligence, (d) musical and artistic intelligence, (e) social intelligence, (f) self-perspective intelligence, and (g) body movement intelligence.

One cannot be considered good without engaging in reading, environmental studies, sports, social relations, and charity work. Providing your brain with joy, extra moments for relaxation and enjoyment. Engaging in play improves the brain's intelligence and curiosity by enhancing air circulation, blood flow, and oxygen delivery to the brain. Education prepares individuals to have intelligence, a virtuous character, and good health. Being educated and trained involves grasping distinctions between good and bad, right and wrong, and having the ability to differentiate between justice and injustice. Education involves the presence of family at a minimum, along with fostering social relationships and enjoying time with friends.

Aim and Objectives

The objective of education is to pass on ideas from an individual to another person or a collective. - What type of information is appropriate to impart through teaching? By acquiring knowledge, students develop their intellect and critical thinking skills, enabling a strong sense of

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² Article by Dr. Mg Thinn, p.16, *The Mirror Daily*, 23 October 2023.

patriotism to thrive. Improving current skills in each person and working as a team to reach optimal growth. Developing smart and ethical individuals into leaders; teaching them how to navigate challenges they may face in life. Many people will recognize the value of embracing goodness, practicing charity, and possessing a wealth of knowledge in virtues like kindness, wickedness, and pride.

Research questions

1. What type of information ought to be imparted during lessons?
2. What type of motivation is necessary in various situations?
3. What is the way in which it functions?
4. What is the best way to train to reach optimal growth and improve one's capabilities?

Review of Related Literature

According to the Buddha, a good friend is valuable because they help a person improve. He also taught that there is no illumination superior to wisdom. Knowledge involves understanding the specifics and being thorough.

Education involves formal, non-formal, and informal learning when studying school subjects. Being able to obtain and accomplish continuous learning throughout one's life is essential. The foundation of the nation's power lies in education, and its upcoming generations must be filled with vitality and expertise for shaping the future of the country. Enhancing quality is crucial by implementing advanced curriculum, adjusting student-focused teaching approaches, promoting active learning, and providing balanced assessment tests.¹

What impact will modern teaching methods have on the future success of students in the 21st century classroom?) *Richard R-Green*)

Education has a significant impact in alleviating poverty and inequality, enhancing household incomes, boosting individual and family health, and fortifying society.²

A quality preschool curriculum should always be connected to the surrounding environment. The curriculum extends beyond mere knowledge, involving the application of skills in your surroundings. It is intended for the advancement of personal well-being and the progress of communities. It relies on critical thinking, teamwork, and communication – the skill of effectively communicating with one another. The individual must have literacy and high intelligence; emotional maturity based on morals; physical strength; respect for religion. Being healthy, strong, intelligent, having good morals, behavior, manners, and wealth and prosperity are also essential. Certainly, we require reliable friends who can provide assistance and support during both good and bad times.³

The outcome-based education system is currently being implemented in degree programs. Learning objectives are designed to achieve course outcomes through evaluations of both

¹ Editorial, p.2, *The Mirror Daily*, 27 June 2024.

² (https://www.britishcouncil.org/sites/default/files/myanmar_national_education_strategic_plan_2016-21.pdf)

³ Article by Dr. Mg Thinn, p.16, *The Mirror Daily*, 23 October 2023.

teaching and learning methods. It is established through organized levels to assess and evaluate literacy abilities. Education must include both instruction and evaluation of knowledge.⁴

I want to switch the textbook for one that is more captivating, vibrant, with well-defined guidelines, and ample exercises to reinforce those guidelines. This is absolutely perfect. (*Inna Kemaeva*)

When people construct their personal lives, they need a solid base in physical, intellectual, moral, social, emotional, and aesthetic aspects. Failure to maintain good health will result in weakness in both body and mind. You must put in effort to maintain good health; strive to acquire knowledge and wisdom; and make a concerted effort to build wealth. It is necessary to ensure that it is constructed and maintained in a safe and ethical manner. Someone who requires numerous friends can connect on both a mental and physical level.

The United Nations Sustainable Development Goals: Ending poverty, spreading quality education, and protecting ecosystems.⁵

Syllabus consists of top-notch academics and fosters students' love for their country. To maintain patriotism's vigor, to pay homage to and safeguard Burmese culture and customs.¹

Three methods of imparting education exist: formal education, non-formal education, and informal education. Tests in formal education assess the standard of education and levels of intelligence.

According to a kindergarten textbook, the daily routine includes waking up early, brushing teeth, washing face, making bed, eating, clearing throat, getting dressed, going to school, coming home, assisting parents, playing, bathing, having dinner, doing homework, brushing teeth, and going to bed. (Master Dr. Aung Khin Sint emphasized in 1983) that this routine is essential for oral health throughout life.

Key areas (16) of the national strategic plan for youth policy (2020-2024) were approved in 2020: (1) Education, (2) Health, (3) Drugs, and other harmful dangers, (4) Sports and recreation, (5) Employment opportunities, (6) Economy, (7) Politics, (8) Literature, art, and culture, (9) Research, (10) Science, and technology, (11) Civics and good citizenship, (12) Resource, and environmental protection, (13) Peace and life security, (14) Gender equality, (15) Human rights, and (16) Effective implementation by personal participation of young people in international relations.

Materials and Methods

The physical power, the power of the mind, the power of extraordinary deeds, the power of good friendship, and the power of abundance. There are five abilities, strengths, or treasures to focus on in education: physical, intellectual, moral, social, fraternal, and economic.

Physical strength consists of well-being achieved through personal hygiene along with physical and mental fitness. Mental strength refers to the capacity for acquiring skills in various areas such as techniques, knowledge, arts, sciences, and languages. Moral strength includes being truthful, just, persistent, and familiar with democracy through studying and remembering civics

⁴ Editorial, p.4, Daily Eleven, 21 October 2023.

⁵ (<https://www.undp.org/sustainable-development-goals>)

¹ Article, p.9, *The Mirror Daily*, 20 October 2023.

and literature. Building strong brotherly bonds is an effective way to foster mutual respect, trust, connections, and camaraderie. Economic strength includes physical and mental well-being and happiness, along with continuous education and a passion for arts, crafts, painting, music, and economics. Using these, the first-year undergraduate Russian language curriculum support books are presented by combining and grouping the materials. This research will be conducted through qualitative and descriptive methods.

Data Analysis and Discussion

Our approach to study the Russian aims is how we focus:

Book -1 (ref: 1., 2.)

1.1. Physical well-being and strength.

- 1.1(1) Это спортсменка. Её зовут Алина Загитова. (Chernyshov: 2019: 20)
- She is an athlete. Her name is Alina Zagitova.
- 1.1(2) Алексей любит спорт. (Chernyshov: 2019: 23)
- Alexey loves sports.
- 1.1(3) Кристиан любит изучать русский и играть в футбол. (Chernyshov: 2019: 23)
- Christian loves to learn Russian and play football.
- 1.1(4) Марина любит плавать. (Chernyshov: 2019: 23)
- Marina loves to swim.
- 1.1(5) Анна любит языки и смотреть футбол. (Chernyshov: 2019: 23)
- Anna loves languages and to watch football.
- 1.1(6) Я не курю. Я спортсмен. (Chernyshov: 2019: 27)
- I do not smoke. I am a sportsman.
- 1.1(7) Я много гуляю. У меня есть собака. (Chernyshov: 2019: 27)
- I walk a lot. I have a dog.
- 1.1(8) Сегодня в Нижнем Новгороде -5 (минус пять), снег. (Chernyshov: 2019: 54)
- Today it is -5 (minus five) in Nizhny Novgorod, it is snowing.
- 1.1(9) Кто в семье убирает, покупает продукты, готовит? (Chernyshov: 2019: 59)
- Who cleans, buys groceries, and cooks in the family?
- 1.1(10) В Барселоне сегодня +25....27°, солнце. (Chernyshov: 2019: 76)
- In Barcelona, today it is +25....27°, the sun.
- 1.1(11) Но если вы играете на скрипке или на флейте, в волейбол или в теннис, игра – это жизнь! (Chernyshova: 2019: 73)
- But if you play the violin or the flute, volleyball or tennis, the game is life!

- 1.1(12) Раньше в Европе люди сначала вечером спали, потом ночью вставали и отдыхали: гуляли, ужинали, говорили, а потом снова спали. (Chernyshova: 2019: 94)
- Previously, in Europe, people first slept in the evening, then got up at night and rested: walked, had dinner, talked, and then slept again.
- 1.1(13) «Жаворонки» любят вставать рано и активно работают утром. (Chernyshova: 2019: 95)
“-Early Birds” like to get up early and work actively in the morning.
- 1.1(14) «Совы» любят спать утром и активно работают вечером и ночью. (Chernyshova: 2019: 95)
-“Night Owls” like to sleep in the morning and work actively in the evening and at night.
- 1.1(15) В результате школьники и студенты ночью не спят и рано встают, а потом хотят спать весь день! (Chernyshova: 2019: 95)
-As a result, school-children and students do not sleep at night and get up early, and then want to sleep all day!
- 1.1(16) Футбол – очень интересный и активный спорт, очень популярный в России, в Европе и в мире. (Chernyshova: 2019: 101)
- Football is a very interesting and active sport, very popular in Russia, in Europe and in the world.

1.2. Young individuals possessing advanced knowledge.

- 1.2(17) Делаем презентацию: сезоны, климат и погода у вас в стране. (Chernyshov: 2019: 55)
-We Make a presentation: seasons, climate and weather in your country.
- 1.2(18) Сегодня люди часто говорят, что климат на Земле – это проблема. (Chernyshova: 2019: 83)
-Today, people often say that the climate on Earth is a problem.
- 1.2(19) В лесу хорошо и красиво, но опасно. (Chernyshov: 2019: 42)
-The forest is nice and beautiful, but dangerous.
- 1.2(20) В Италии было красиво и интересно. (Chernyshov: 2019: 45)
-It was beautiful and interesting in Italy.
- 1.2(21) В Сибири очень красиво и интересно. (Chernyshov: 2019: 49)
-Siberia is very beautiful and interesting.
- 1.2(22) В Сибири есть ресурсы: нефть, газ, лес и золото. (Chernyshov: 2019: 49)
-Siberia has resources: oil, gas, timber and gold.
- 1.2(23) Европейский Союз – большой и богатый. (Chernyshov: 2019: 62)
-The European Union is big and rich.

- 1.2(24) А «Яндекс» знает всё! Это как Google, только в России. (Chernyshov: 2019: 73)
-And Yandex knows everything! It's like Google, only in Russia.
- 1.2(25) Как вы думаете, это можно или нельзя делать в России? А у вас в стране? (Chernyshov: 2019: 78)
-Do you think this can or cannot be done in Russia? And in your country?
- 1.2(26) У меня есть хорошая программа: я говорю, а мой компьютер пишет. (Chernyshov: 2019: 86)
- I have a good program: I talk, and my computer writes.
- 1.2(27) В России есть культура и ресурсы. (Chernyshova: 2019: 60)
- Russia has culture and resources.
- 1.2(28) Сочи – это отдых и спорт, солнце и комфорт, туризм и Олимпиада. (Chernyshova: 2019: 60)
-Sochi is about recreation and sports, sun and comfort, tourism and the Olympics.
- 1.2(29) В Таиланде красиво, тепло и интересно. Там приятно отдыхать. (Chernyshova: 2019: 63)
-Thailand is beautiful, warm and interesting. It's nice to relax there.
- 1.2(30) В Африке интересно, но опасно и жарко. Там трудно жить. (Chernyshova: 2019: 63)
-Africa is interesting, but dangerous and hot. It's hard to live there.
- 1.2(31) В Норвегии комфортно, но дорого. Там очень хорошо жить. (Chernyshova: 2019: 63)
-It is comfortable in Norway, but expensive. It's very good to live there.
- 1.2(32) Сингапур: остров маленький, но страна богатая и дорогая, там большой бизнес и большие дома. (Chernyshova: 2019: 101)
- Singapore: the island is small, but the country is rich and expensive, there is a big business and big houses.
- 1.2(33) В Африке страны бедные, но природа очень красивая! (Chernyshova: 2019: 101)
-In Africa, the countries are poor, but the nature is very beautiful!
- 1.2(34) Жить в Африке трудно и опасно, но дешево и тепло. (Chernyshova: 2019: 107)
-Living in Africa is difficult and dangerous, but cheap and warm.
- 1.2(35) Берлинское метро очень старое, но ещё работает. (Chernyshova: 2019: 104)
-The Berlin metro is very old, but it still works.
- 1.2(36) Мы активные студенты. Мы активно работаем в классе. (Chernyshova: 2019: 107)
-We are active students. We are actively working in the classroom.
- 1.2(37) Сегодня мы можем жить в деревне на природе, а работа в офисе в городе, потому что у нас есть машины, дороги и поезда, а раньше не могли. (Chernyshova: 2019: 114)
-Today we can live in the countryside in nature, and work in an office in the city, because we have cars, roads and trains, but previously we could not.

1.3. Young individuals in good manners, behaviors, and habits.

- 1.3(38) Я обычно думаю, что говорю. (Chernyshova: 2019: 89)
-I usually think what I am saying.
- 1.3(39) Но здесь играют роль не только мораль и погода: одежда – это ещё и символ, и культурный код. (Chernyshova: 2019: 138)
-But it is not just morality and the weather that play a role here: clothes are also a symbol and a cultural code.
- 1.3(40) Одежда играет большую роль в субкультуре. (Chernyshova: 2019: 139)
- Clothing plays a big role in subculture.
- 1.3(41) Иногда одежда – это религиозный символ, и люди носят эту одежду. (Chernyshova: 2019: 139)
-Sometimes clothes are a religious symbol, and people wear these clothes.
- 1.3(42) Мода – это большая и важная индустрия, люди много говорят и думают о ней, а наша одежда очень много говорит о нас. (Chernyshova: 2019: 139)
-Fashion is a big and important industry, people talk and think a lot about it, and our clothes say a lot about us.
- 1.3(43) Сегодня модно инвестировать в новый опыт и знания: изучать новые профессии и языки, путешествовать – делать все, чтобы жить лучше! (Chernyshova: 2019: 143)
-Today it is fashionable to invest in new experience and knowledge: to learn new professions and languages, to travel – to do everything to live a better life!

1.4. Young individuals learn the most effective communication and cooperation methods in organizational settings.

- 1.4(44) Соседи вас любят? Почему? (Chernyshov: 2019: 59)
-Do the neighbors like you? Why?
- 1.4(45) Моя собака очень умная и красивая. Она довольно большая и слишком активная. (Chernyshov: 2019: 64)
-My dog is very smart and beautiful. She's quite big and too active.
- 1.4(46) Собака всё понимает, но не говорит. (Chernyshova: 2019: 27)
-The dog understands everything, but does not speak.
- 1.4(47) Клиенты часто делают комплименты и говорят: «Спасибо!» (Chernyshova: 2019: 39)
-Customers often compliment and say, "Thank you!"

1.5. Young individuals search for and collect wealth and access to entrepreneurial ideas.

- 1.5(48) Её зовут Ольга. Она экономист. (Chernyshov: 2019: 22)
-Her name is Olga. She is an economist.

- 1.5(49) Его зовут Игорь. Он биолог. (Chernyshov: 2019: 22)
-His name is Igor. He's a biologist.
- 1.5(50) Меня зовут Игорь – биолог. Моя жена экономист. Сын – школьник.
(Chernyshov: 2019: 32)
-My name is Igor, a biologist. My wife is an economist. Our son is a schoolboy.
- 1.5(51) Я таксист. У меня есть машина. (Chernyshov: 2019: 35)
-I am a taxi driver. I have a car.
- 1.5(52) Я журналист-фрилансер. Работа интересная, но нестабильная. (Chernyshov: 2019: 63)
-I am a freelance journalist. The work is interesting, but unstable.
- 1.5(53) Я дизайнер и работаю в арт-студии. (Chernyshov: 2019: 72)
-I am a designer and I work in an art studio.
- 1.5(54) Какие интересные компании есть у вас в стране? Какой у них бизнес?
(Chernyshov: 2019: 73)
-What interesting companies do you have in your country? What kind of business do they have?
- 1.5(55) «Тата» - маленькая дешёвая популярная индийская машина, не очень быстрая. (Chernyshov: 2019: 74)
-The Tata is a small, cheap, popular Indian car, not very fast.
- 1.5(56) Раньше мужчины хотели лошадь, а сейчас они хотят машину. (Chernyshova: 2019: 77)
-In olden days, men used to want a horse, but now they want a car.
- 1.5(57) Я капитан; очень хорошая работа, трудная и иногда опасная. (Chernyshova: 2019: 101)
-I am a captain; a very good job, difficult and sometimes dangerous.
- 1.5(58) Раньше дети часто работали, а в наше время они не могут работать, но хорошо знают, как работают компьютеры и смартфоны. (Chernyshova: 2019: 114)
-Previously, children often worked, but nowadays they cannot work, but they know well how computers and smartphones work.
- 1.5(59) Но раньше на столе всегда были биопродукты, а сейчас одна химия, натуральные продукты очень дорогие. (Chernyshova: 2019: 114)
- But before, there were always bio-products on the table, and now there is only chemistry, natural products are very expensive.
- 1.5(60) Сегодня маркетолог – очень важная профессия. Бизнесмены и клиенты слушают и делают, что говорят маркетологи. (Chernyshova: 2019: 131)
-Today, a marketer is a very important profession. Businessmen and customers listen and do what marketers say.

Book – 2 (ref: 3.)

2.1. Physical well-being and strength.

- 2.1(61) Так как Антон любит играть в футбол, он часто ходит на стадион. (Belikova: 2020: 164)
- That Anton likes to play football, he often goes to the stadium.
- 2.1(62) У нас одинаковые вкусы. Мы любим пиццу с грибами, кофе с молоком и без сахара. (Belikova: 2020: 200)
- We have the same tastes. We love pizza with mushrooms, coffee with milk and without sugar.
- 2.1(63) Джон немного ленивый и не всегда аккуратно делает домашнее задание. (Belikova: 2020: 216)
-John is a bit lazy and doesn't always do his homework neatly.
- 2.1(64) В Санкт-Петербурге в июне ночью светло, иногда даже можно читать газету. Почему? Потому что город находится на севере, а на севере летом белые ночи. Летом ночи короткие, а дни длинные, а зимой наоборот. (Belikova: 2020: 218)
-In St. Petersburg, it is bright at night in June, sometimes you can even read a newspaper. Why? Because the city is located in the north, and in the north there are white nights in summer. In summer, the nights are short and the days are long, and in winter the opposite is true.
- 2.1(65) Мы гуляли в парке. Погода была хорошая. На улице было тепло. Листья на деревьях были жёлтые. Русские говорят: «Сейчас в России золотая осень». (Belikova: 2020: 218)
-We were walking in the park. The weather was good. It was warm outside. The leaves on the trees were yellow. Russians say, "It's golden autumn in Russia now."
- 2.1(66) Квартира большая, светлая, тёплая. В квартире 3 комнаты, кухня, ванная, где есть горячая и холодная вода. (Belikova: 2020: 222)
-The apartment is large, bright, and warm. The apartment has 3 rooms, a kitchen, a bathroom with hot and cold water.

2.2. Young individuals possessing advanced knowledge.

- 2.2(67) Я был в библиотеке. Я читал там книги и журналы. Завтра у меня будет экзамен. (Belikova: 2020: 156)
-I was in the library. I read books and magazines there. I have an exam tomorrow.
- 2.2(68) В воскресенье утром я готовила обед, днём занималась в библиотеке а вечером ходила на концерт. (Belikova: 2020: 165)
-On Sunday morning I cooked lunch, studied in the library in the afternoon and went to a concert in the evening.
- 2.2(69) Преподавательница сказала: «Молодец, Саманта! Вы делаете большие успехи. Я очень рада». (Belikova: 2020: 216)
-The teacher said, "Well done, Samantha! You are making great progress. I am very glad."

2.2(70) Эрик говорит, что это самое красивое место в городе: рядом находится прекрасный дворец, здесь не очень высокие дома, улицы чистые. (Belikova: 2020: 222)

-Eric says that this is the most beautiful place in the city: there is a beautiful palace nearby, the houses are not very tall, the streets are clean.

2.3. Young individuals in good manners, behaviors, and habits.

2.3(71) В свободное время Эрик любит гулять в парке. Но его друзья часто говорят: «Не гуляй поздно вечером в парке один. Это опасно!» (Belikova: 2020: 222)

-In free time, Eric likes to walk in the park. But his friends often say: "Don't walk alone in the park late at night. It is dangerous!"

2.4. Young individuals learn the most effective communication and cooperation methods in organizational settings.

2.4(72) Антон и Виктор – друзья, вместе учатся в университете. Летом в субботу и в воскресенье они всегда ездят за город. Там они гуляют в парке, играют в волейбол, загорают. (Belikova: 2020: 164)

-Anton and Victor are friends, they study together at the university. In summer, they always go out of town on Saturday and Sunday. There they walk in the park, play volleyball, and sunbathe.

2.4(73) Это большая, красивая и умная собака. (Belikova: 2020: 214)

-This is a big, beautiful and smart dog.

2.4(74) В воскресенье я позвонил маме по телефону. Мы долго говорили о доме, о папе, о сестре. (Belikova: 2020: 221)

-On Sunday, I called my mom on the phone. We talked for a long time about home, about Dad, about my sister.

2.4(75) Мы с Наташей гуляли в лесу. Мы говорили о природе, о погоде. Было очень весело. (Belikova: 2020: 221)

-Natasha and I were walking in the woods. We talked about nature, about the weather. It was a lot of fun.

2.5. Young individuals search for and collect wealth and access to entrepreneurial ideas.

2.5(76) Журналисты часто пишут о погоде в Санкт-Петербурге, здесь холодно, мало солнца. (Belikova: 2020:140)

-Journalists often write about the weather in St. Petersburg, it is cold here, there is little sun.

2.5(77) Эрик – директор фирмы. Он работает с утра до вечера, иногда даже в субботу и в воскресенье. Он говорит по-английски и по-немецки. (Belikova: 2020: 221)

-Eric is the director of a firm. He works from morning to evening, sometimes even on Saturday and Sunday. He speaks English and German.

2.5(78) В зале ресторана было очень красиво, светло, тепло, уютно. Официант был вежливый. Мы читали меню, но блюда были незнакомые, поэтому мы спросили и официант отвечал «Я рекомендую борщ и пельмени. Это национальные русские блюда. Есть вкусный шашлык из свинины. И ещё есть из говядины». (Belikova: 2020: 224)

- The restaurant hall was very beautiful, bright, warm, and cozy. The waiter was polite. We read the menu, but the dishes were unfamiliar, so we asked and the waiter replied, "I recommend borscht and dumplings. These are national Russian dishes. There is a delicious pork kebab. And there is also beef."

Book – 3 (ref: 4., 5.)

3.1. Physical well-being and strength.

3.1(79) Осень – это совсем не грустное, а прекрасное и красивое время года. (Olia: 2020: 113)

-Autumn is not a sad time at all, but a wonderful and beautiful time of the year.

3.1(80) Осенью лес очень красивый и можно гулять и собирать грибы. (Olia: 2020: 113)

-In autumn, the forest is very beautiful and you can walk and pick mushrooms.

3.1(81) Осенью можно играть с листьями и делать разноцветные букеты. (Olia: 2020: 113)

-In autumn, you can play with leaves and make colorful bouquets.

3.1(82) Осенью можно носить яркие плащи, сапоги и зонтики, уютные свитера, шарфы и шапки. (Olia: 2020: 113)

-In autumn, you can wear bright raincoats, boots and umbrellas, cozy sweaters, scarves and hats.

3.1(83) Женщины в декрете убирают дом, играют с детьми, готовят еду, стирают одежду. (Olia: 2020: 98)

-Women on maternity leave clean the house, play with children, cook food, wash clothes.

3.1(84) Традиционный русский завтрак – это каша, блины, сырники, бутерброд с ветчиной, колбасой или сыром, яичница и, конечно, чай. (Ekaterina: 2020: 75)

-A traditional Russian breakfast is porridge, pancakes, cheesecakes, a sandwich with ham, sausage or cheese, scrambled eggs and, of course, tea.

3.1(85) Франция – чашечка кофе и горячий круассан с джемом. А на обед мы едим салаты, мясо, рыбу и сыр и пьём кофе. (Ekaterina: 2020: 79)

- France – a cup of coffee and a hot croissant with jam. And for lunch we eat salads, meat, fish and cheese and drink coffee.

- 3.1(86) В Японии на завтрак едят мисо-суп с овощами, грибами, морепродуктами, сыром тофу, водорослями. (Ekaterina: 2020: 79)
 - In Japan, they eat miso soup with vegetables, mushrooms, seafood, tofu cheese, and algae for breakfast.
- 3.1(87) В Китае на завтрак едят рис или лапша с мясом, овощами, курицей, а суп. А баоцзы с мясом или с овощами и тофу. На обед и ужин то же самое. (Ekaterina: 2020: 79)
 -In China, rice or noodles with meat, vegetables, chicken are eaten for breakfast, and soup. And baozi with meat or with vegetables and tofu. It is the same for lunch and dinner.
- 3.1(88) Турецкий завтрак – это простые и полезные продукты, сыр, помидоры, оливки, маслины, яйца, хлеб. Турки очень любят кофе, но на завтрак пьют чай. (Ekaterina: 2020: 79)
 -Turkish breakfast consists of simple and healthy products, cheese, tomatoes, olives, pancakes, eggs, bread. Turks are very fond of coffee, but they drink tea for breakfast.
- 3.1(89) Марокко – завтрак свежий апельсиновый сок. Они едят сыр, йогурты, орехи и мёд и пьют кофе и зелёный чай. (Ekaterina: 2020: 79)
 -Morocco – breakfast is fresh orange juice. They eat cheese, yoghurts, nuts and honey and drink coffee and green tea.
- 3.1(90) Итальянцы завтракают кофе с молоком и хлеб с сыром. Английский завтрак – это бекон, сосиски, тосты с маслом, яичница, помидоры, фасоль. Едят кашу (овсянку), яйцо и пьют сок, кофе или чай. Швеция, на завтрак – это свежая рыба с картофелем, овощами, яйцами. Утренний бутерброд – хлеб с маслом, мясом или рыбой. А едят бутерброд с джемом и пьют горячий кофе. (Ekaterina: 2020: 80)
 -Italians have coffee with milk and bread with cheese for breakfast. English breakfast consists of bacon, sausages, toast with butter, scrambled eggs, tomatoes, beans. They eat porridge (oatmeal), an egg and drink juice, coffee or tea. Sweden, for breakfast – it's fresh fish with potatoes, vegetables, eggs. A morning sandwich is bread with butter, meat or fish. And they eat a sandwich with jam and drink hot coffee.
- 3.1(91) Борщ – горячий суп со свёклой, картофелем, морковью и мясом, со сметаной или майонезом. Щи как борщ, только без свёклы. Щи – это зелёный суп, а борщ – красный. Салат – это картофель, морковь, зелёный горошек, яйца, солёные огурцы и мясо. Соус в «Оливье» очень простой: майонез с петрушкой. Квас – это национальный русский напиток. Пельмени делают только с мясом и едят со сметаной. С икрой мы едим блины или бутерброды. (Ekaterina: 2020: 87)
 -Borscht is a hot soup with beets, potatoes, carrots and meat, with sour cream or mayonnaise. Cabbage soup is like borscht, but without beetroot. Cabbage soup is a green soup, and borscht is red. Lettuce consists of potatoes, carrots, green peas, eggs, pickles and meat. The sauce in Olivier is very simple: mayonnaise with parsley. Kvass is a national Russian drink. Dumplings are made only with meat and eaten with sour cream. We eat pancakes or sandwiches with caviar.

- 3.1(92) Зимой на улице так красиво. Всё белое. Белые деревья, белые дома. Я и мои друзья любим активный спорт, обожаем ездить в горы, кататься на лыжах и на сноуборде. (Ekaterina: 2020: 123)
-It's so beautiful outside in winter. Everything is white. White trees, white houses. My friends and I love active sports, we love going to the mountains, skiing and snowboarding.
- 3.1(93) Я часто хожу в парк гулять и смотреть на красные, жёлтые, зелёные листья. Конечно, осенью уже не жарко, но ещё не очень холодно. Я и моя семья осенью часто ездим в лес собирать грибы. (Ekaterina: 2020: 123)
-I often go to the park for a walk and look at the red, yellow, green leaves. Of course, it's not hot anymore in autumn, but it's not very cold yet. My family and I often go to the forest in autumn to pick mushrooms.
- 3.1(94) Весной по улице ходят красивые девушки, особенно в Париже. Они больше не носят тёплые шубы и длинные пальто, а надевают платья и юбки. И туфли на каблуках! Весной можно сидеть в кафе на террасе, пить красное вино и курить. (Ekaterina: 2020: 123)
-Beautiful girls walk down the street in spring, especially in Paris. They no longer wear warm fur coats and long coats, but wear dresses and skirts. And high-heeled shoes! In spring, you can sit in a cafe on the terrace, drink red wine and smoke.
- 3.1(95) Летом жарко, светит солнце и всегда хорошее настроение. Летом можно загорать на пляже, играть в волейбол, плавать в море, пить коктейли, носить шорты и футболки. (Ekaterina: 2020: 123)
- It's hot in summer, the sun is shining and you're always in a good mood. In summer, you can sunbathe on the beach, play volleyball, swim in the sea, drink cocktails, wear shorts and T-shirts.
- 3.1(96) Восмое марта – это женский праздник, который празднуют в России, в Китае, во Вьетнаме, на Кубе, в Камбодже, на Мадагаскаре, в Непале. Восьмого марта мужчины дарят жёнам, подругам, мамам, девушкам, знакомым, коллегам, бабушкам, дочерям и сестрам подарки, готовят им ужин или приглашают в ресторан. Женщины тоже дарят друг другу подарки. Популярные подарки на Восьмое марта – это цветы, шоколад, парфюм, украшения, косметика, путешествие и т. д. (Ekaterina: 2020: 131)
-The eighth of March is a women's holiday celebrated in Russia, China, Vietnam, Cuba, Cambodia, Madagascar, and Nepal. On the eighth of March, men give their wives, girlfriends, mothers, girls, acquaintances, colleagues, grandmothers, daughters and sisters gifts, cook them dinner or invite them to a restaurant. Women also give each other gifts. Popular gifts for the Eighth of March are flowers, chocolate, perfume, jewelry, cosmetics, travel, etc.

3.2. Young individuals possessing advanced knowledge.

- 3.2(97) Итальянский флаг – зелёно-бело-красный. Итальянцы – очень стильная нация. (Olia: 2020: 62)
- The Italian flag is green, white and red. Italians are a very stylish nation.

- 3.2(98) Я изучаю архитектуру и русский язык. Я играю на саксофоне. Это моё хобби. Ещё я люблю рисовать и слушать музыку, особенно блюз. (Olia: 2020: 39)
-I study architecture and Russian. I play the saxophone. This is my hobby. I also like to draw and listen to music, especially blues.
- 3.2(99) Сестра зовут Мери. Она студентка. Она очень хорошо танцует. Я думаю, что она гений. Она обожает Елена, 18, модель. Не люблю готовить. Люблю Лондон, Париж, Рим и шопинг. Говорю по-английски, обожаю делать домашнее задание. Я и моя сестра вместе ходим в театр. (Olia: 2020: 39)
-My sister's name is Mary. She's a student. She dances very well. I think she's a genius. She adores Elena, 18, a model. I don't like cooking. I love London, Paris, Rome and shopping. I speak English, I love doing my homework. My sister and I go to the theater together.
- 3.2(100) Николай, 54, бизнесмен, трудоголик. Есть яхта, вилла в Испании, «Порше». Говорю по-испански и французски и по-итальянски. (Olia: 2020: 38)
-Nikolai, 54, businessman, workaholic. He owns a yacht, a villa in Spain, a Porsche. I speak Spanish and French and Italian.
- 3.2(101) Я обожаю готовить паэлью. Есть дочь. Люблю гольф и играю на саксофоне. (Olia: 2020: 38)
-I love making paella. I have a daughter. I love golf and I play the saxophone.
- 3.2(102) Жанна, 28, стюардесса. Люблю путешествовать, смотрю фильмы Альмодовара и слушаю джаз. Люблю фитнес, моду и шик. (Olia: 2020: 38)
-Jeanne, 28, flight attendant. I like to travel, watch Almodovar movies and listen to jazz. I love fitness, fashion and chic.
- 3.2(103) Я изучаю медицину и русский язык. И играю в футбол и на гитаре. Когда я путешествую, я всегда много фотографию. (Ekaterina: 2020: 47)
-I am studying medicine and Russian. And I play football and guitar. When I travel, I always take a lot of photos.
- 3.2(104) Я Ли. Я живу в Китае. У меня есть бунгало. Я люблю минимализм. В комнате есть только ковёр, стол и стул. Я люблю сидеть на ковре и медитировать. (Ekaterina: 2020: 55)
- My name is Lee. I live in China. I have a bungalow. I love minimalism. The room has only a carpet, a table and a chair. I like to sit on the carpet and meditate.
- 3.2(105) Красный цвет машины предпочитают активные, импульсивные и иногда агрессивные люди. У них сильная энергетика. (Ekaterina: 2020: 73)
- The red color of the car is preferred by active, impulsive and sometimes aggressive people. They have a strong energy.
- 3.2(106) Оранжевый цвет – это хороший антидепрессант. Его выбирают весёлые и коммуникабельные люди, они легко работают в коллективе. (Ekaterina: 2020: 73)
-The orange color of the car is a good antidepressant. He is chosen by cheerful and sociable, they easily work in a team.

- 3.2(107) Жёлтый цвет машины выбирают оптимистичные и харизматичные люди, они коммуникабельные и интеллигентные. (Ekaterina: 2020: 73)
-The yellow color of the car is chosen by optimistic and charismatic people, they are sociable and intelligent.
- 3.2(108) Если у вас зелёный автомобиль, то вы спокойный человек, и у вас лёгкий характер, вы реалист и любите природу. (Ekaterina: 2020: 73)
- If you have a green car, then you are a calm person, and you have an easy character, you are a realist and love nature.
- 3.2(109) Синий цвет автомобиля предпочитают не очень эмоциональные, рациональные и умные люди. (Ekaterina: 2020: 73)
- The blue color of the car is preferred by not very emotional, rational and intelligent people.
- 3.2(110) Фиолетовый цвет выбирают творческие люди. (Ekaterina: 2020: 73)
-The color purple of the car is chosen by creative people.
- 3.2(111) Белый – это нейтральный и спокойный цвет. Его выбирают и мужчины, и женщины любят всё чисто. (Ekaterina: 2020: 73)
-White is a neutral and calm color. This color of the car is chosen by both men and women who like everything clean.
- 3.2(112) Чёрный цвет – это символ статуса. Его предпочитают бизнесмены и политики. (Ekaterina: 2020: 73)
-Black is a status symbol. This color of the car is preferred by businessmen and politicians.
- 3.2(113) Серая машина, то вы скромный, практичный и педантичный человек. (Ekaterina: 2020: 73)
-If you have a gray color car, then you are a modest, practical and pedantic person.
- 3.2(114) Коричневая, вы скорее семейный и консервативный человек, любите традиции и стабильность в жизни. (Ekaterina: 2020: 73)
- The brown color of the car, you are rather a family and conservative person, you love traditions and stability in life.
- 3.2(115) Розовый предпочитают sentimentальные и романтические натуры, они смотрят на мир через «розовые очки». (Ekaterina: 2020: 73)
-The pink color of the car is preferred by sentimental and romantic natures, they look at the world through "rose-colored glasses".

3.3. Young individuals in good manners, behaviors, and habits.

- 3.3(116) Масленица – это традиционный славянский праздник. Его празднуют неделю. А потом начинается Великий пост. Пост – это время, когда нельзя есть молочные, мясные и морепродукты, масло, яйца, рыбу и даже белый

хлеб, а можно есть фрукты, овощи и каши. Ещё во время поста нельзя веселиться и пить алкоголь. (Olia: 2020: 125)

-Maslenitsa is a traditional Slavic holiday. It is celebrated for a week. And then Lent begins. Fasting is a time when you can not eat dairy, meat and seafood, butter, eggs, fish and even white bread, but you can eat fruits, vegetables and cereals. Even during the fast, you can not have fun and drink alcohol.

3.3(117) Я должен носить белую форму. У меня на работе всегда должно быть чисто. Я и моя команда работаем вместе. Мы работаем с инструментами и продуктами. (Ekaterina: 2020: 96)

- I have to wear a white uniform. My work should always be clean. My team and I are working together. We work with tools and products.

3.3(118) Анастасия – главный редактор журнала «Moscopolitan». Каждое утро она встаёт в 6:15 и идёт в парк гулять с собакой. В 8 часов она едет на работу. В 14 часов она идёт с коллегами на обед. В 23:00 она едет домой. Дома она пьёт чай и идёт спать. (Ekaterina: 2020: 118)

-Anastasia is the editor-in-chief of the magazine "Moscopolitan". Every morning she gets up at 6:15 and goes to the park to walk her dog. She goes to work at 8 o'clock. At 2 p.m., she goes to lunch with her colleagues. At 23:00 she goes home. At home, she drinks tea and goes to bed.

3.3(119) Ли любит шахматы и философию. Лиза любит кино и сальсу. Джванни любит футбол и пиццу. Жан любит русский балет и багет. Клаус любит пиво и литературу. Фрэнк любит колу и музыку. Маша любит шопинг и поэзию. (Ekaterina: 2020: 148)

-Lee loves chess and philosophy. Lisa loves movies and salsa. Giovanni loves football and pizza. Jean loves Russian ballet and baguette. Klaus loves beer and literature. Frank loves coke and music. Masha loves shopping and poetry.

3.3(120) В 7:30 я иду в спортзал на тренировку. У меня тренировки каждый день, потому что я балерина. В 9:30 я иду на работу в Большой театр. В 19 часов я играю в спектакле. После спектакля я иду домой и ужинаю. (Ekaterina: 2020: 148)

-At 7:30, I go to the gym for a workout. I train every day because I am a ballerina. At 9:30, I go to work at the Bolshoi Theater. At 19 o'clock I am acting in a play. After the performance, I go home and have dinner.

3.3(121) Я встаю в 7 часов утра, завтракаю, бреюсь и в 8 часов принимаю пациентов. Ровно в час у меня обед. В 15 часов я снова принимаю пациентов и работаю до вечера. После работы я и моя семья вместе ужинаем, а после ужина я снова работаю дома, пишу и редактирую статьи для психоаналитических журналов. В два часа ночи моя жена говорит: «Дорогой, пора спать! » (Ekaterina: 2020: 108)

-I get up at 7 a.m., have breakfast, shave, and see patients at 8 a.m. I have lunch at one o'clock sharp. At 15 o'clock I see patients again and work until evening. After work, my family and I have dinner together, and after dinner I work at home

again, writing and editing articles for psychoanalytic journals. At two o'clock in the morning, my wife says, "Darling, it is time to go to bed!"

- 3.3(122) Я живу в Швейцарии, обычно я встаю рано, в 7 часов, бреюсь, завтракаю и медитирую. До обеда я работаю у себя в кабинете, я пишу книги. В 18:30 иду покупать английские газеты в киоске. В 19 часов обед. Я часто смотрю футбол. В 21 час я иду в кровать и читаю 2 часа. (Ekaterina: 2020: 108)

- I live in Switzerland, I usually get up early, at 7 o'clock, shave, have breakfast and meditate. I work in my office until lunch, I write books. At 18:30 I go to buy English newspapers at the newsstand. Lunch is at 19 o'clock. I often watch football. At 21 o'clock I go to bed and read for 2 hours.

- 3.3(123) Смотреть и покупать товары быстро. Они любят покупать дорогие вещи и ходить по магазинам без компании. (Olia: 2020: 82)

-View and buy goods quickly. They like to buy expensive things and go shopping without company.

3.4. Young individuals learn the most effective communication and cooperation methods in organizational settings.

- 3.4(124) В Масленицу люди провожают зиму, говорят ей «до свидания» и встречают весну. Дата Масленицы каждый год разная, но всегда в феврале. (Olia: 2020: 125)

- On Shrovetide, people see off winter, say goodbye to it and welcome spring. The date of Carnival is different every year, but always in February.

- 3.4(125) Масленицу любят и взрослые, и дети. Всю неделю Масленцы люди веселятся, гуляют, играют в весёлые шумные игры и катаются на санках, на коньках и на лыжах, едят вкусные горячие блины со сметаной, с икрой, с рыбой и с джемом. (Olia: 2020: 125)

-Maslenitsa is loved by both adults and children. All week long, people are having fun, walking, playing fun noisy games and sledding, skating and skiing, eating delicious hot pancakes with sour cream, caviar, fish and jam.

- 3.4(126) А в последний день Масленицы, в воскресенье, они жгут чучело и водят хороводы. Чучело это кукла Масленицы. Люди верят, что вместе с чучелом горят все старые неприятности и проблемы. (Olia: 2020: 125)

-And on the last day of Maslenitsa, on Sunday, they burn an effigy and lead round dances. The scarecrow is a Carnival doll. People believe that all the old troubles and problems will burn down with the scarecrow.

- 3.4(127) После обеда я буду спать, а потом играть с детьми. Вечером я встречаюсь с друзьями в деревне. Мы будем пить вино и играть на гитаре. (Olia: 2020: 111)

-After lunch, I will sleep and then play with the kids. I am meeting friends in the village in the evening. We will drink wine and play the guitar.

- 3.4(128) Метро – очень популярный вид транспорта в Москве, потому что в городе всегда пробки. Пробка – это когда на улице все машины стоят и не едут. А ещё пробка есть в бутылке. (Ekaterina: 2020: 115)

-The metro is a very popular form of transport in Moscow, because there are always traffic jams in the city. A traffic jam is when all the cars are standing on the street and not going. And there is also a cork in the bottle.

- 3.4(129) Иногда я езжу на трамвае. Я люблю смотреть на город из окна. Ездить на трамвае, конечно, дёшево, но довольно медленно. (Ekaterina: 2020: 115)

- Sometimes I take the tram. I like to look at the city from the window. It is cheap to ride a tram, of course, but it is pretty slow.

- 3.4(130) Ходить по магазинам с подругами и смотреть на все товары. Сто раз мерить одежду и разговаривать с продавцами. После шопинга они любят ещё раз мерить одежду дома. (Olia: 2020: 82)

-Go shopping with friends and look at all the goods. Try on clothes a hundred times and talk to sellers. After shopping, they like to try on clothes at home again.

- 3.4(131) Мы немного устали, потому что выходные в Париже были очень интенсивные. Сейчас мы сидим в кафе, пьём кофе и планируем велосипедный маршрут. Завтра мы будем отдыхать на пляже, загорать и плавать, а вечером будем кататься на яхте. (Ekaterina: 2020: 143)

-We were a little tired because the weekend in Paris was very intense. Now we are sitting in a cafe, drinking coffee and planning a bike route. Tomorrow we will relax on the beach, sunbathe and swim, and in the evening we will go sailing.

- 3.4(132) Празднуйте день рождения в компании друзей без телефонов, компьютеров, фейсбука, инстаграма и твиттера. Весь день только вы говорите друг с другом, веселитесь, идите на пикник и наслаждайтесь праздником и природой без шума города. (Ekaterina: 2020: 133)

-Celebrate your birthday with friends without phones, computers, Facebook, Instagram and Twitter. All day long, just you talk to each other, have fun, go on a picnic and enjoy the holiday and nature without the noise of the city.

- 3.4(133) Путешествие в свой день рождения – это тоже отличная идея. Идите с друзьями на вокзал, покупайте билет туда, где вы ещё не были. В путешествии фотографируйте, ешьте экзотические блюда, гуляйте, смейтесь и наслаждайтесь эмоциями. (Ekaterina: 2020: 133)

- Traveling on your birthday is also a great idea. Go to the train station with your friends, buy a ticket to a place you have not been before. While traveling, take photos, eat exotic dishes, walk, laugh and enjoy emotions.

3.5. Young individuals search for and collect wealth and access to entrepreneurial ideas.

- 3.5(134) На работе всегда есть результат: удачный контракт, новый клиент, интересная командировка, продуктивная встреча. (Olia: 2020: 97)

- There is always a result at work: a successful contract, a new client, an interesting business trip, a productive meeting.

3.5(135) Профессиональный «соня» - странная профессия, но в отеле Finn в центре Хельсинки есть такая вакансия. Отель нанимал летом 2013 года профессионального соню. Он должен был тестировать кровати и комнаты и писать о комфорте отеля в его блоге. Рабочие требования: уметь коротко и часто спать, говорить по-фински, по-английски и по-русски. (Olia: 2020: 90)

-A professional "sonya" is a strange profession, but there is such a vacancy at the Finn Hotel in the center of Helsinki. The hotel hired a professional sonya in the summer of 2013. He had to test the beds and rooms and write about the comfort of the hotel on his blog. Work requirements: be able to sleep briefly and often, speak Finnish, English and Russian.

3.5(136) Я хотела быть как известная балерина Майя Плисецкая. Я думала, что балерина – это творческая и романтическая профессия, но мои родители говорили, что я ношу «розовые очки», и что профессия балерины очень тяжёлая и эмоциональная. Сейчас я директор банка. Но я всё ещё обожаю балет. Я смотрю все премьеры, а наш банк спонсирует интересные танцевальные проекты. (Olia: 2020: 88)

-I wanted to be like the famous ballerina Maya Plisetskaya. I thought that ballerina was a creative and romantic profession, but my parents said that I wear "rose-colored glasses" and that the profession of a ballerina is very difficult and emotional. Now I am the director of the bank. But I still love ballet. I watch all the premieres, and our bank sponsors interesting dance projects.

3.5(137) Отель на дереве находится в Вестеросе, это 100 километров от Стокгольма. Дом на деревне это многофункциональное место. Там можно играть, отдыхать, громко слушать музыку, работать, романтично проводить время. В отеле есть два балкона, кухня, кровать, туалет и миниатюрная библиотека. (Olia: 2020: 52)

-The hotel on the tree is located in Westeros, it is 100 kilometers from Stockholm. The house in the village is a multifunctional place. There you can play, relax, listen to music loudly, work, and have a romantic time. The hotel has two balconies, a kitchen, a bed, a toilet and a miniature library.

3.5(138) Отель на воде тоже находится в Вестеросе. Это очень необычный отель, потому что веранда, коридор, кухня, ванная и туалет находятся на воде, а спальни – в воде. В отеле есть только две спальни, а в окна смотрят рыбы. (Olia: 2020: 52)

-The hotel on the water is also located in Westeros. This is a very unusual hotel, because the veranda, corridor, kitchen, bathroom and toilet are on the water, and the bedrooms are in the water. There are only two bedrooms in the hotel, and fish look out the windows.

3.5(139) Отель-самолёт Jumbo Jet находится в Арланде, недалеко от Стокгольма. В отеле есть одна комната-локс, где ванная и туалет находятся в комнате, и обычные комнаты, где ванная туалет находятся в коридоре. В отеле также есть кафе. (Olia: 2020: 52)

-The Jumbo Jet Hotel is located in Orlando, near Stockholm. The hotel has one room, a lock, where the bathroom and toilet are in the room, and ordinary rooms, where the bathroom and toilet are in the hallway. The hotel also has a cafe.

3.5(140) На горе Арапат растёт сладкий виноград. (Ekaterina: 2020: 53)

- Sweet grapes grow on Mount Ararat.

3.5(141) В Цюрихе есть оригинальный офис компании Google. Он как музей, как детская комната или аттракцион. Моё рабочее место находится в капусте. Я могу спокойно читать письма, отвечать на имейлы, и изучать контракты. (Ekaterina: 2020: 60)

- There is an original Google office in Zurich. It is like a museum, like a children's room or an attraction. My workplace is in cabbage. I can safely read emails, reply to emails, and study contracts.

3.5(142) Сотрудники Google работают много, они практически живут на работе. Но работать в таком офисе очень престижно и приятно. В кухне всегда есть еда и напитки: круассаны, суши, бутерброды, фрукты, салаты, конфеты, кофе, чай и иногда даже пиво. (Ekaterina: 2020: 60)

- Google employees work a lot, they practically live at work. But it is very prestigious and pleasant to work in such an office. There is always food and drinks in the kitchen: croissants, sushi, sandwiches, fruits, salads, sweets, coffee, tea and sometimes even beer.

3.5(143) Франция – это французская мода, французский шарм и французское вино. (Ekaterina: 2020: 71)

-France is French fashion, French charm and French wine.

3.5(144) Шведскую компанию H&M (эйчэндэм) знают и в Европе, и в Азии, и в Америке, и в Австралии. Всего в мире 2300 магазинов. H&M – это модная и недорогая одежда, обувь, нижнее бельё, купальники, аксессуары, косметика и товары для дома. (Ekaterina: 2020: 92)

- The Swedish company H&M is known in Europe, Asia, America, and Australia. There are 2,300 stores in the world. H&M is fashionable and inexpensive clothing, shoes, underwear, swimwear, accessories, cosmetics and household goods.

3.5(145) Банкир, адвокат или консультант и работает с клиентами, должен надевать в офис белую рубашку и деловой костюм. Костюм должны носить и мужчины, и женщины. В банке UBS в Швейцарии есть инструкция «Дресс-код в офисе». Она даже говорит, какого цвета должно быть нижнее бельё. (Ekaterina: 2020: 94)

-A banker, lawyer or consultant who works with clients should wear a white shirt and a business suit to the office. The suit should be worn by both men and women. The UBS bank in Switzerland has an instruction "Dress code in the office". The company even says what color underwear should be.

3.5(146) Я работаю с режиссёрами, актёрами, сценаристами. Я могу быть домохозяйкой, детективом и даже вампиром. Я всегда должна быть в форме. (Ekaterina: 2020: 96)

- I work with directors, actors, and screenwriters. I can be a housewife, a detective, and even a vampire. I always have to be in shape.

3.5(147) Покупки в интернете уже не экзотика. Если у вас есть компьютер, интернет, кредитная карта, то вы можете заказать в интернете, практически всё – от сувенира до самолёта. (Ekaterina: 2020: 98)

-Online shopping is no longer exotic. If you have a computer, Internet, credit card, then you can order almost everything online – from a souvenir to an airplane.

3.5(148) Интересно, что в Сирии Восьмое марта – это день Революции, в Замбии – день молодёжи, а в Малайзии – день султана. (Ekaterina: 2020: 131)

- Interestingly, in Syria, the eighth of March is Revolution Day, in Zambia it is Youth Day, and in Malaysia it is Sultan's Day.

3.5(149) А сейчас прогноз погоды. Добрый вечер, завтра утром в Москве будет холодно, местами пройдёт небольшой дождь, температура воздуха 10-12 градусов. Не забудьте зонтики. Днём погода улучшится, выглянет солнце, максимальная температура воздуха 15 градусов. В Петербурге весь день будет холодно, 3-4 градуса, будет дуть сильный ветер. В Новосибирске уже зима. Завтра будет идти снег и дуть холодный ветер, температура воздуха -3-5. В Сочи будет жарко, солнце, температура воздуха 22-25 градусов. (Ekaterina: 2020: 148)

-And now the weather forecast. Good evening, tomorrow morning it will be cold in Moscow, with light rain in some areas, and air temperature of 10-12 degrees. Do not forget your umbrellas. In the afternoon, the weather will improve, the sun will come out, and the maximum air temperature will be 15 degrees. It will be cold in St. Petersburg all day, with temperatures of 3-4 degrees, and a strong wind blowing. Winter has already arrived in Novosibirsk. Tomorrow, it will snow with a cold wind blowing, and the air temperature will be -3-5 degrees. It will be hot in Sochi, with sunny skies and air temperature of 22-25 degrees.

Findings and Results

In the classrooms, students receive training for physical development, health care, social and emotional development, high ethical values, sympathy, social consciousness, politeness, and courtesy, aesthetic development, logical thinking and problem-solving skills, disciplining, and diversity and unity.

Gain the ability to view the entire world through the teachings provided by the teacher in class. Gain the ability to observe the world and coexist in balance with nature. Being open to learn from lessons about the environment, having a curiosity for science, being prepared to put in extra effort, maintaining high morale, and having an open mind can help generate new ideas. This will get individuals and communities ready for their future welfare.

School serves as a training ground for both future societal functions and individual experiences. Goal number 4 of the United Nations' 17 long-term development goals focuses on improving the quality of education.

A person spends only a quarter of their life in school, so their life outside of school, where they must interact cooperatively with society, is longer than their time in school. As a result, he frequently mingles with individuals to enhance his understanding of living, social interactions, governmental decisions, ethical attitudes towards attire, manners, and acceptance.

The table “Implement youth policy that incorporates knowledge gained and lessons imparted”.

Item	Appropriated Sentence Numbers	Sum
1. Education	1.1(15), 1.2(24), 1.2(26), 1.3(41), 1.3(43), 1.5(48), 1.5(49), 1.5(50), 1.5(58), 2.2(67), 3.2(103)	11
2. Health	1.1(1), 1.1(4), 1.2(36), 1.4(45), 2.1(61), 2.4(72), 3.1(84), 3.1(85), 3.1(86), 3.1(87), 3.1(88) 3.1(89), 3.1(90), 3.4(132)	14
3. Drug, Abuse	1.1(2), 1.1(6), 3.1(94)	3
4. Sport and Recreation	1.1(3), 1.1(5), 1.1(7), 1.1(12), 1.1(16), 2.1(63), 2.1(65), 2.4(75), 3.1(81), 3.1(92), 3.1(93), 3.1(95), 3.3(118), 3.3(122), 3.4(131), 3.5(136)	16
5. Job opportunity	1.2(20), 1.2(28), 1.3(42), 1.5(51), 1.5(53), 1.5(60), 2.5(77), 3.3(117), 3.3(120), 3.5(135)	10
6. Economy	1.2(21), 1.2(22), 1.2(27), 1.2(29), 1.2(34), 1.5(54), 2.1(62), 2.1(66), 2.5(78), 3.1(82), 3.3(121), 3.4(128), 3.4(129), 3.5(134), 3.5(137), 3.5(138), 3.5(139), 3.5(141), 3.5(142), 3.5(144), 3.5(147)	21
7. Poltics	1.2(23), 3.4(125), 3.4(126), 3.4(127)	4
8. Literature & Culture	1.1(11), 1.2(25), 2.2(68), 2.4(74), 3.1(91), 3.1(98)	6
9. Research	1.2(37), 1.3(39), 1.3(40), 3.2(104), 3.2(105), 3.2(106), 3.2(107), 3.2(108), 3.2(109), 3.2(110), 3.2(111), 3.2(112), 3.2(113), 3.2(114), 3.2(115), 3.3(123), 3.5(145)	17
10. Science & Technology	1.2(35), 1.5(55)	2
11. Civic and Good-Citizen	1.1(13), 1.1(14), 1.4(47) 2.2(69), 2.4(73), 3.2(101), 3.3(116)	7

12. Resources & Care Environment	1.1(8), 1.1(10), 1.1(17), 1.2(18), 1.2(33), 1.4(44), 2.2(70), 2.5(76), 3.1(79), 3.1(80), 3.5(140), 3.5(149)	12
13. Peaceful & Savety Life	1.2(19), 1.2(30), 1.2(31), 1.2(32), 1.5(52), 1.5(57), 1.5(59), 2.3(71), 3.4(124), 3.5(146)	10
14. Gender Equality	1.1(9), 3.1(83), 3.1(96)	3
15. Human Rights	1.3(38), 1.4(46), 1.5(56), 3.3(119), 3.4(130), 3.4(133)	6
16. International Relations	2.1(64), 3.1(97), 3.2(99), 3.2(100), 3.2(102), 3.5(143), 3.5(148)	7

Conclusion

Throughout history, governments have supported the holistic development of youth in order to prepare them for citizenship and personal growth by focusing on physical, intellectual, moral, social, and economic aspects. Health and fitness, strong mental abilities, positive conduct and routines, successful teamwork and interaction within companies, financial growth, and creating business concepts are crucial for young people.

The characteristics of a true human being include physical wellbeing, psychological balance, advanced growth, ethical virtue, empathy, positive social interactions, kindness, logical decision-making skills, cooperation with individuals of diverse temperaments, shared activities, shared learning, and shared experiences. Being a responsible individual who upholds the well-being of both the class and the school. Civics, morals, and manners should be improved. Interpersonal relationships are the most crucial aspect of life. It is necessary for us to coexist peacefully with the environment.

From the time we are young until we reach adulthood, we learn and grow:

- we gain knowledge through learning,
- to accomplish tasks effectively,
- to possess positive ethical conduct,

and to coexist harmoniously without any forms of discrimination, encompassing all issues. Living in balance with the community and society is of utmost importance.

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A STUDY OF THE DEVELOPMENT OF CHINA'S HIGHER EDUCATION SYSTEM

Htar Htar Wai¹

Abstract

China has significantly enhanced the quality of education through comprehensive curriculum reforms and other strategic initiatives. With a goal to build a modern education system, China aims to achieve universal access to quality pre-school education, advance vocational training, support development for disabled youth, and establish an education management framework that engages society as a whole, beyond government involvement alone. The Chinese education system is recognized globally for its high standards. In recent years, China's rapid economic growth has spurred substantial advancements in educational standards. Currently, the education system in China is progressing along multiple dimensions. This study examines the structure and functioning of the Chinese education system, with the aim of providing valuable insights for the learners and scholars of the Chinese language.

Keywords: China, Higher Education, Chinese Schools, Development

Introduction

A nation's progress and prosperity are inherently tied to the educational opportunities available to its people. As the second most populous and the third largest country globally, China's higher education system plays a critical role in assuring the quality of human resources through knowledge creation and application, serving as a cornerstone for technological innovation, industrial transformation, and societal advancement. Education is a crucial factor in a nation's overall development, closely linked to the comprehensive growth of its citizens. "The development of a society must begin with the country's education system." (Deng Xiaoping, 1978). Today, China's educational progress is both observable and commendable.

Aim

China's higher education has achieved notable advancements in terms of scale, quality, and structural development after years of rapid growth. As China's economy accelerates, the educational standards have risen to impressive levels. This study aims to explore the complex and multifaceted evolution of the Chinese education system.

Research Question

1. How is China's education system?
2. How China's Higher education development in various aspects related to its education system?

Data and Research Methodology

Data for this paper has been collected from the articles related to the Chinese education system, Xinhua News Agency, and various other media outlets. The research utilizes descriptive and interpretative methods to analyze the collected data.

Literature Review

Pu Shi (2021), in his paper "The Development and Influencing Factors of Higher Education in China," discusses the scale of higher education, education input, education output

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and analyzes the current situation of the development of China's higher education and looks for the possible problems.¹ Li Huashu (1994), in his paper "China's Higher Education Evaluation System and its Development Trends," discusses the evolution and future directions of China's higher education evaluation system. He highlights the significance of research and manual studies in the field of higher education evaluation as pivotal components for the advancement of higher education.²

Similarly, Li Jun (2020), in "The Study of the 'Chinese Model' of Higher Education," examines the development and reform processes within China's higher education. His study aims to elevate China's education system to an international standard, recognizing it as a world-class educational framework.³

Tin Nyunt (2019), in his book "The Analysis of China's Education System," analyzes how the current generation is being nurtured in science and technology to foster national development. He vividly illustrates the country's efforts to promote scientific advancement through education to remain competitive on the global stage.⁴

The development of Chinese higher education

China's higher education system has roots dating back to the Han Dynasty, with modern higher education generally emerging in the late 1890s. Following the founding of the People's Republic of China in 1949, higher education in China began a period of significant growth. At that time, there were only 205 higher education institutions, including 123 state and provincial universities, 61 private universities, and 21 church-affiliated universities, with a total enrollment of 120,000 students. The gross enrollment rate was extremely low, with barely one in 10,000 Chinese people participating in higher education. The Cultural Revolution (1967–1976) severely impacted higher education, more than any other sector, leaving lasting effects into the 21st century. In 1977, Deng Xiaoping's decision to reinstate the National Higher Education Entrance Examination (Gaokao) profoundly influenced China's higher education.

Since the late 1990s, China's higher education has experienced rapid expansion. In 1999, China initiated a decade-long higher education expansion with an annual increase rate of 2%, leading to a gross enrollment rate of 30% by 2012. Official statistics indicates that China's higher education system includes over 2,442 academically oriented colleges and universities, 348 adult higher education institutions, and 823 non-academic private agencies. Among these institutions, 1,623 were affiliated with provincial or local governments, 113 with national ministries, receiving additional funding and prestige, and 706 were privately funded and operated.

Since the founding of the People's Republic of China, higher education has undergone numerous reforms, especially following the reform and opening-up period. In the early 1990s, a national strategy aimed at rejuvenating the country through science and education was launched, achieving remarkable progress over two decades. The study of the development of China's higher education system offers valuable insights into the country's modernization efforts.

¹ Pu Shi (2021) *The Development and Influencing Factors of Higher Education in China*, Guanxi Normal University, Guanxi.

² Li Huashu (1994) *China's Higher Education Evaluation System and its Development Trends*, Journal of Chengdu University of Traditional Chinese Medicine, Chengdu.

³ Li Jun (2020) *The Study of the 'Chinese Model' of Higher Education*, Fudan Education System, Shanghai.

⁴ Tin Nyunt (2019) *The Analysis of China's Education System*, Mauka Press, Yangon.

In 2023, China had 498,300 schools enrolling 291 million students and employing nearly 18.92 million full-time teachers. The gross enrollment rates reached 91.1% for preschool, 91.8% for secondary education, and 60.2% for higher education. According to the *QS World University Rankings 2024*, China continues to excel in higher education, with 118 institutions among the world's top 1,000 universities, making it the third most represented country after the United States and the United Kingdom.

Chinese education Schools System

The Chinese educational structure consists of six years of primary school, three years each of lower secondary and upper secondary school, and four years in standard university programs. The compulsory education system covers six years of primary school and three years of lower secondary school, both tuition-free. Parents are only responsible for school uniform and book costs. This system assigns academic levels to students, who must complete each level to pursue higher education. The school age divisions are as follows: kindergarten for ages 2–6, primary education for ages 6–12, lower secondary education for ages 12–15, and upper secondary education for ages 15–18.

Kindergarten Education

In China, preschool or kindergarten is viewed as an essential stage in a child's education, available to children aged two and above. These schools engage children in activities fundamental to academic progress, and in some regions, kindergarten attendance is mandatory. Chinese parents place high importance on early education, with most children enrolling in kindergarten or pre-primary programs where the Chinese language is introduced as the primary language of instruction.

Primary education

Primary education in China, starting at ages six or seven, is provided free of charge. Chinese primary schools differ from Western counterparts by introducing students to Chinese language, mathematics, music, art, and dance. Due to the importance placed on early education, primary school teachers are well-compensated. Formal exams are not administered at this level.

Secondary education

Secondary education in China is divided into lower secondary (compulsory) and upper secondary education, spanning ages 12 to 18. Lower secondary education is mandatory until age 15. After completing lower secondary school, students may attend upper secondary, vocational, or professional schools. Only about 30% of students who complete the middle school exam advance to high school.

Higher education

Higher education in China includes high schools, vocational high schools, secondary vocational schools, and technical schools. High school is a critical level where students take monthly tests assessed by the school, with teachers, students, and parents collaborating to prepare for government exams. Primary, middle, and high schools are typically separate, although some rural schools combine multiple levels due to limited resources. By September 2022, the national enrollment rate in higher education reached 91.4%, a 6.4% increase from a decade prior. In 2023, college registrations rose to 12.91 million, setting a new record, with college entrance exams held every June on designated dates.

Table 1: College Entrance Examination Schedule

Date	Time	Major
June 7	09:00-11:30	Chinese
	15:00-17:00	Maths
June 8	15:00-16:30	English
	15:00-17:00	Russian, Japanese, German, French, Spanish
June 9	08:00-09:30	Physics
	11:00-12:30	Political
	15:30-17:00	Chemistry
June 10	08:00-09:30	History
	11:00-12:30	Biology
	15:30-17:00	Geography

The total score for the high school entrance exam is 750. Admission to universities is determined based on this score, with a minimum of 600 points required to apply to top-tier Chinese universities. Students pass the exam with a score of 450 or above.

The Chinese education system emphasizes holistic development, incorporating academic learning alongside social relations, health, and fitness. Monthly report cards inform parents not only of academic performance but also of health metrics such as body weight, height, vision, and hearing. Parents are encouraged to discuss their child's health and education with teachers. Grading extends beyond academics to include participation in social activities, reflecting the well-rounded focus of Chinese education. Although China's education system may not yet surpass Western standards, it has shown significant progress across various dimensions. President Xi Jinping has introduced reforms inspired by Western educational models to further enhance the system.

Over the past decade, China has appointed 1.48 million full-time teachers in primary and secondary education, bringing the total number to 10.57 million, according to the Ministry of Education. Currently, 207,000 students are enrolled in the nine-year compulsory primary education program. The enrollment rate for compulsory education students under the National Education System has increased from 91.8% in 2012 to 95.4% in 2022. Based on entrance exam scores, students apply for college admission. All newly admitted university students are required to undergo military training for a minimum of 15 days, with scores awarded as part of their curriculum.

Huai Jinpeng, China's Minister of Education, recently stated that China, with its population of 1.4 billion, has established the world's largest education system. He added that by 2035, China aims to be a global leader in education, a long-standing national aspiration.

International Studies in China

In recent years, China has become an increasingly popular destination for international students. However, the number of American students studying in China has declined significantly, from a peak of 15,000 a decade ago to around 350 in 2023.

Myanmar students who pass the matriculation exam and the HSK Level 4 can pursue higher education at Chinese universities, selecting their preferred subjects and applying for scholarships. Those who pass HSK Level 5 are eligible to pursue a Master's degree in China. As China is a neighboring country with similar food and cultural practices, Myanmar students often find studying in China accessible and relatable. Through policies promoting international exchange, China offers numerous scholarships, supporting students from around the world, including Myanmar. For example, Beijing Language and Culture University hosts students from over 180 countries. Increased exchange between China and Myanmar through scholarships can provide valuable insights for Myanmar's educational development.

Finding and Discussion

China boasts the largest state-run education system globally, with over 518,500 schools enrolling 293 million students and employing 18.8 million teachers as of 2022. China's education system has undergone significant evolution, from traditional schooling to advanced contemporary education, achieving remarkable outcomes. The higher education system is particularly instrumental in fostering comprehensive national development. The ongoing development and progress in China are closely linked to its robust education system, with higher education experiencing notable achievements in recent years, particularly due to internationalization. As China's neighboring country, it is beneficial for us to study and adopt relevant strengths of China's educational advancements for the benefit of our own educational development.

Conclusion

Since the late 19th century, China has consistently advanced its national higher education system, incorporating distinct Chinese characteristics. This evolution reflects a blend of Western educational influences and China's enduring national ideology and cultural values. Education remains a cornerstone of Myanmar's development, emphasizing lifelong learning as essential for societal growth. Valuing education at every level and fostering a continuous learning environment are critical. This responsibility extends to parents, teachers, and students alike. Education is not solely for obtaining degrees or status; it is about genuine learning and effectively applying acquired knowledge. This paper presents an overview of China's current education system, highlighting the ongoing development of its higher education system across multiple dimensions in today's modern age.

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A STUDY OF THE EFFECTIVENESS OF USING AIDS IN TEACHING SYNTAX AT YUFL

Moe Yin Nyeinn¹, Sandar Htay², Theingi Htar³

Abstract

This study investigates the effectiveness of using tree diagrams and visual presentations of syntax components to understand syntactic rules and develop students' reading skills. It aims to examine whether the targeted syntax teaching enhances students' decoding abilities and comprehending the texts, especially, general linguistics. Syntax stands as an important role in various areas, especially reading comprehension, writing and translation. But most of the students usually focus on vocabulary and other strategies when they read the new texts. They do not realize the importance of syntax in reading comprehension. This research addresses this gap by examining how specific syntax components improve comprehending the texts. In this study, the students from Japanese major were tested with the created design. At the beginning, the teachers from the department of linguistics were interviewed whether they agreed that teaching syntax is needed to understand the complex sentences and then the experimental group, First Year Japanese Specialization students from Yangon University of Foreign Languages, was asked to answer the yes/no questions about the knowledge of syntax and reading comprehension tests. After that they received targeted syntax instruction for six periods. Data were collected through reading comprehension tests and sentence analyzing. Finally, same tasks of the beginning of the experiment were asked again to get the feedback from students. The final findings pointed out the significant improvements of students in reading comprehension, better decoding of complex sentences and analyzing the components of sentences compared with the beginning results. Therefore, it can be seen that using visual aids in teaching syntax appears to be a useful tool for promoting reading skills. Moreover, the results enhance overall reading proficiency. Future research could further discover the effects and application of syntax instruction in translation and writing skills.

Keywords: syntax instruction, reading comprehension, decoding skills, translation and writing skill

Introduction

Understanding both vocabulary and syntax is essential for comprehending any text. However, many students tend to focus primarily on vocabulary and other reading strategies when encountering new texts, often neglecting the importance of syntax—the set of rules that govern how words are arranged to form sentences. While vocabulary helps students recognize individual words, comprehension of complex sentences depends heavily on understanding their structure. Syntax plays a key role in reading comprehension, writing, and translation, yet it is often underemphasized in traditional language instruction. This gap in instruction becomes more pronounced when students face complex academic texts, particularly those related to linguistics, where syntax is a central component.

Research shows that explicit syntax instruction significantly improves students' ability to process and understand complex sentences. For example, a study by Hsieh (2012) demonstrated that students who received direct instruction on sentence structures performed better in reading comprehension tests compared to those who focused solely on vocabulary. Similarly, Alseweed (2019) found that students' ability to analyze sentence components is crucial for decoding

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meaning, especially in academic texts. Despite these findings, syntax is still overlooked in many language curricula, and most students do not receive adequate training in this area.

Furthermore, many existing studies on visual aids in language learning have focused on broader aspects of grammar, such as teaching tenses or parts of speech, rather than on syntax specifically. Visual tools like tree diagrams are known to help students conceptualize abstract grammatical rules and break down complex sentence structures, but their specific impact on syntax learning remains under-researched, particularly for non-native learners studying complex linguistic texts. The lack of targeted studies on this topic presents a significant gap in the literature.

This study aimed to address this gap by investigating how visual aids, such as tree diagrams, can be used to enhance students' understanding of syntax and improve their reading comprehension.

The focus is on first-year Japanese major students, who often struggle with understanding complex linguistic theories due to a lack of explicit syntax instruction. By providing targeted syntax instruction using visual aids, this study seeks to explore whether these tools can help students better analyze sentence structures, identify key components, and improve their overall reading comprehension skills.

The purpose of the study is to describe the way that using visual aids can help students analyze various phrases in a sentence and to discover that way can improve students' reading comprehension skill especially in understanding the linguistic theories. This paper describes that by using visual aids in teaching syntax instructions, students can improve their syntactic awareness and reading comprehension skill. The experiment group has to answer the questions about the knowledge of syntax and the reading comprehension questions and syntactic structure exercises which have the same test components. Five teachers from the department of linguistics, YUFL are also interviewed about their perspectives on their experience of teaching syntax to students. In this paper, mixed methods, qualitative and quantitative methods are used to analyze data and integrate the findings. These findings can give another significant way of teaching syntax in other areas, such as writing and translation.

Research Questions

1. How do modifiers in syntax influence students' reading comprehension?
2. In what ways does understanding modifiers in syntax improve students' ability to decode and process complex sentences in linguistic theories?
3. What is the impact of syntax instruction on overall understanding of linguistic theories and other readings?
4. In what extent do visual aids in teaching syntax help students understand the grammar rules?

Literature Review

Syntax, the study of the structure and rules that govern the arrangement of words in sentences, is one of the fundamental branches of linguistics. It not only helps students understand the grammatical relationships within sentences but also improve their reading comprehension

skill. The understanding of the syntactic rules and reading comprehension are integrated each other. According to Perfetti (1985), a strong understanding of syntactic structures is essential for understanding complex texts. Mayer's Cognitive Theory of Multimedia Learning (2009) states that integrating visual and verbal information can facilitate deeper learning. Beamer and Biber (2013) found that such visualizations enable learners to break down complex sentences, improving their comprehension of the underlying syntax. Gardner's Multiple Intelligences theory (1983) suggests that visual aids cater to visual learners and enhance engagement across various learning styles and can help accommodate diverse student needs, making syntax instruction more inclusive.

Incorporating visuals in syntax instruction can make lessons more inclusive and effective. Research by Hock et al. (2009) indicates that visual representations of syntax not only aid in understanding but also enhance retention, as students can recall information better when it is presented visually. Studies have shown that sentence diagramming can lead to improved syntactic awareness and reading comprehension (Graham & Perin, 2007).

Traditional teaching methods are good to use in teaching syntax but they often rely on text-based approaches. Instead, students can have lots of benefits from visual learning strategies. Some researchers examine on the effectiveness of using visual aids in teaching syntax. They highlight their impact on learning outcomes and implications for classroom practice. Some research shows that visual aids can improve comprehension of syntactic concepts that can lead to understanding the reading passages. Hsieh (2012) found that using sentence diagrams helped students visualize grammatical relationships, leading to better retention and understanding of syntax. Visual aids can increase students' interactive learning and engagement. According to Alseweed (2019), students reported higher motivation and participation when lessons incorporated visual elements, such as info graphics and interactive tasks that illustrate syntactic rules. Some researchers described the benefits of some strategies of using visual aids in teaching syntax. A study by Hwang et al. (2020) found that students who learned with multimedia resources performed better on syntax assessments compared to those who received traditional instruction.

As mentioned above, existing studies (e.g., Beamer & Biber, 2013; Hwang et al., 2020) have shown that visual aids, such as sentence diagramming and multimedia resources, are effective in breaking down syntactic structures, thus improving students' comprehension. However, there remains a gap in exploring how visual aids can be used to specifically target and teach syntactic modifiers, clause structures, and sentence composition, which are critical in understanding linguistic theories.

Moreover, Research by Alseweed (2019) and Hsieh (2012) highlights the positive effects of visual aids on student engagement and motivation, particularly in complex subjects. However, there is still limited focus on application of these methods, especially for non-native speakers studying in specialized fields like linguistics. This study aims to address these gaps by exploring the impact of visual aids on enhancing syntactic awareness and reading comprehension in first-year Japanese major students, who often struggle with understanding syntactic rules.

Methodology

The experiment group is eighty-five First Year Japanese specialization students at (YUFL) Yangon University of Foreign Languages. All the first-year students from YUFL have to take the general linguistics as one of the core courses at their first year. Linguistics is the new subject for all the first-year students at YUFL. They have a little knowledge of linguistics but they do not understand most of the linguistic theories so that they cannot apply with Myanmar. It shows that they have difficulties in sentence structure. Syntax, the study of sentence structure, is one of the important parts of the levels of general linguistic analysis. In syntax, the components about phrase structure, clause structure, sentence structure are taught. All are important and among them, learning modifiers in phrase structure can increase the student's ability to understand the complex sentences and clauses.

The researcher developed interview questions for teachers who teach General Linguistics to First Year Students at YUFL. Then set the yes/no questions to realize the clear syntax knowledge level of the experiment group. These questions were used before teaching syntax. These yes/no questions were also used after the Post-test to get the feedback from students that what are their views on teaching syntax. To discover students' ability on analyzing complex texts and syntactic rules, Pre- and Post-tests were created with same test items. For this, short passages from the linguistic text and another authentic text were used to evaluate students' reading comprehension skill as well as their understanding of the linguistic theories and understanding the phrase structure, clause structure and sentence structure in syntax. (See in Appendixis)

The experiment group was taught syntax six weeks by using visual aids for effectiveness in their learning process. There are two periods in a week to teach syntax. In the first two weeks, phrase structure rule, in the second two weeks, clause structure rule, and in the last two weeks, sentence structure rules were taught.

In teaching syntax, visual aids were used as an effective tool in every steps. Using these visual formats helped students arrange and manage complex ideas. During the lecture, the most commonly used to represent the syntactic structure of a sentence is 'tree diagrams'. To explain different parts of speech, different color was used (for example- green for nouns, red for verbs, blue for adjectives, black for preposition, pink for Np). It is called color-coding. This helps students see the different parts of the sentence components. To help students recognize sentence patterns, to arrange them, to create grammatically correct sentences, to be able to form complete and meaningful sentences, and to illustrate the process of sentence construction (for example, start a sentence with a subject, verb and followed by objects, complements and modifiers), word cards, sentence strips, syntax tree and flowcharts were used. At the same time, students' comprehension check was made to know their understanding the syntactic structure and comprehending the linguistic rules. Teaching schedule can be seen in the following table, Table 1.

Table 1. Teaching Schedule

No.	Week	Procedures	Period
1.	Week 1	Phrase structure rules	1 period
	Week 2	Visual aids: Tree diagrams, Color-Coding, word cards,	1 period

No.	Week	Procedures	Period
2.	Week 3	Clause structure	1 period
	Week 4	Visual aids: sentence strips, Flowcharts,	1 period
3.	Week 5	Sentence structure	1 period
	Week 6	Visual aids: syntax tree, (Syntax sorting game)	1 period

Data Collection

The perspectives of five teachers from the department of linguistics were collected to know their experience in teaching syntax and how visual aids are effective in their lessons. The results can be seen in Table 2.

Table 2. Teachers' perspectives (5 teachers)

No.	Questions	Yes	No
1.	Do you have an experience of teaching syntax to students?	4	1
2.	Do you agree that teaching syntax is profitable for students?	5	0
3.	Do you think that teaching syntax can support students in comprehending any passages?	3	2
4.	Do you agree that if the students know the process of sentence structure very well, they can understand the complex sentences?	5	0
5.	Do you usually use visual aids when teaching syntax to your students?	3	2
6.	Can your students analyse the complex sentences after teaching the structure of phrases, clauses and sentences?	3	2
7.	Describe your other opinions based on your teaching experience in syntax.		

The students' perspectives were also collected before teaching syntax and after teaching. The results of students' perspectives can be seen in Table 3 and 4.

Table 3. Students' perspectives (Before teaching) (85 Japanese major students)

No.	Questions	Yes	No
1.	Do you understand what syntax is?	10	75
2.	Can you analyse the various kinds of modifiers in complex sentences?	14	71
3.	Can you categorize the kinds of sentences?	7	78
4.	Do you agree that visual aids help you to understand sentence structure and grammatical rules?	70	15
5.	Do you agree that understanding the rules of sentence structure can help you to comprehend the complex sentences?	65	20

Table 4. Students' perspectives (After teaching) (85 Japanese major students)

No.	Questions	Yes	No
1.	Do you understand what syntax is?	70	15
2.	Can you analyse the various kinds of modifiers in complex sentences?	70	15
3.	Can you categorize the kinds of sentences?	68	17
4.	Do you agree that visual aids help you to understand sentence structure and grammatical rules?	80	5
5.	Do you agree that understanding the rules of sentence structure can help you to comprehend the complex sentences?	75	10

For the Pre- and Post-tests, the test with same items was created. For this, get short passages from the linguistic text and another authentic text (see in Appendix B and C) to evaluate students' reading comprehension skill and to decode their abilities as well as their understanding of the linguistic theories and understanding the phrase structure, clause structure and sentence structure in syntax. The results of Pre-test can be seen in Table 5 and the results of Post-test in Table 6.

Table 5. Results of Pre-test

Item	No. of questions	All items-correct	2 and under 2 items correct	All items-wrong
Reading 1(from Text)	3	10 Ss (12%)	75 Ss (88%)	0
Reading 2 (from Text)	3	20 Ss (24%)	65 Ss (76%)	0
Reading 3 (not from Text)	4	5 Ss (6%)	80 Ss (94%)	0
Others (from Text)	5	0 (0%)	65 Ss (76%)	20 Ss (24%)

Table 6. Results of Post-test

Item	No. of questions	All items-correct	2 and under 2 items correct	All items-wrong
Reading 1(from Text)	3	75 Ss (88%)	10 Ss (12%)	0
Reading 2 (from Text)	3	80 Ss (94%)	5 Ss (6%)	0
Reading 3 (not from Text)	4	70 Ss (82%)	15 Ss (18%)	0
Others (from Text)	5	65 Ss (76%)	20 Ss (24%)	0

Analysis

Five teachers from the Department of Linguistics were asked about their experience in teaching linguistics. For the first question, about their experience of teaching syntax to students, 80% of the teachers said that they have experience of teaching syntax. In No.2, 80% of the teachers agreed that teaching syntax is very profitable and that improve students' reading comprehension skill. In No.3, 60% of the teachers thought that teaching syntax can give a great support to students to improve their reading comprehension skill. For No.4, 80% agreed that if the students understand the process of sentence structure, they can understand all kinds of sentences; simple, compound and complex. In No.5, only 60% of the teachers agreed that not only vocabularies but also the structure of words is important to know when reading. In No.6, 60% of the teachers agreed that students can analyze the complex sentences after teaching the structure of phrases, clauses and sentences. For the question No.7, the two teachers gave their opinions on teaching syntax that some of the students still could not decide whether it was a clause or a clause as a modifier, one of the teachers said most of the students could not decide whether it was a phrase modifier or clause modifier, and the other two teachers said that some of the students could not analyze whether the sentences are compound or simple or complex even though they have already taught the sentence structure rules. The perspectives of the teachers from linguistic department can be seen in Figure 1.

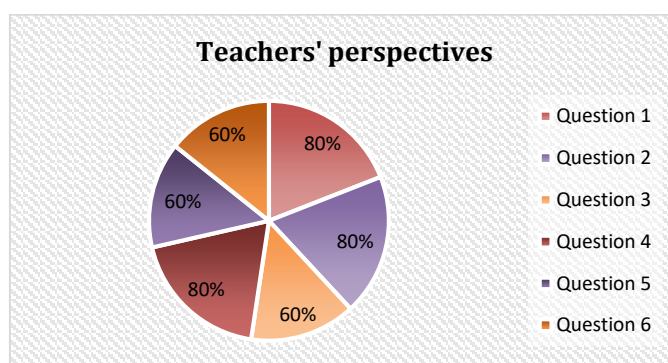


Figure 1. Teachers' perspectives

The eighty-five students from First Year Japanese major were determined as an experiment group. First, they were asked the questions to know their clear knowledge about syntax. Figure. 2 is the data of students' knowledge about syntax before teaching.

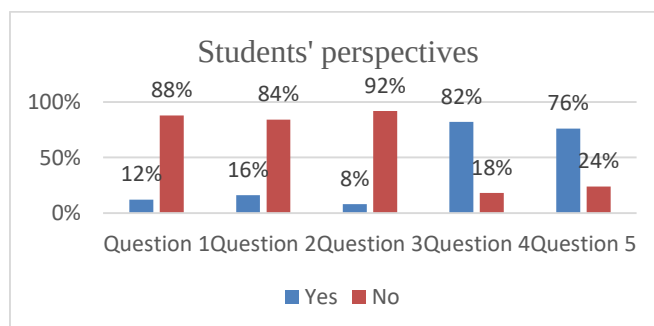


Figure 2. Students' perspectives (Before teaching) (85 students from Japanese major)

In Question No.1, 88% of the students said that they thought if they understood new vocabularies and some reading strategies, they can understand the whole passage easily. 12% said that they did not think that only understanding new vocabularies was not the solution of the understanding the texts. But in No. 2, 84% of the students agreed that without knowing the sentence structure, they could not understand the whole text. For No.3 question, 'do you have any knowledge of syntax', only 8% said that they had but 92% said 'no'. In No. (4), 82% of students said they did not remember which is called phrase, clause and kinds of sentences. In No. (5), 76% of the students agreed that if they knew the rules of sentence structure, they could understand the complex sentences. Therefore, it can be seen that some of the students have the knowledge of sentence structure rules but some do not. It can be said that some do not remember or they may not know that these grammar rules are included in syntax.

The students' perspectives also changed after teaching. They were asked about their own opinion on learning sentence structure rules in syntax again. This can be seen in Figure 3.

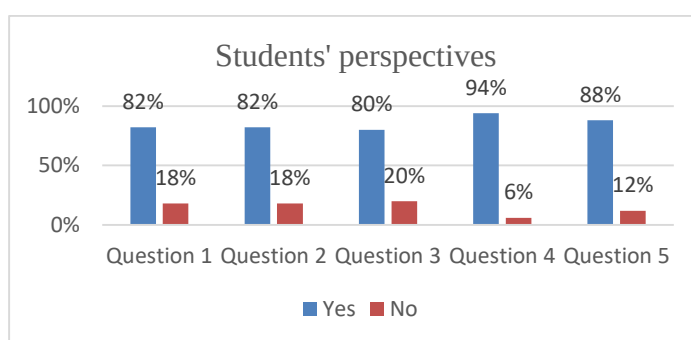


Figure 3: Students' perspectives (After teaching)

In Question No.1, 88% of the students said that they understand what syntax is. In No.2, 84% responded that they could analyze various kinds of modifiers in sentences but 16% of the students said they still confused between the word and modifiers. In No. (3), 92% described that they could easily categorize the different kinds of sentences. The positive views of students for teaching syntax can be seen in No. (4) and (5). In No.4, 82% agreed that visual aids helped them to understand grammatical rules and analyze sentence structure. They could comprehend the linguistic theory more easily than the earlier. In No.5, 76% of the students agreed that they could analyze the complex sentences. But 24% of the students still confused between the sentence types.

After the six weeks of teaching syntax, most of the students realized that not only knowing the various reading strategies but also understanding the sentence structure rules are important for improving their reading comprehension skill. After teaching, the students' positive view on the questions, No.1, 2 and 3 were totally changed. It shows that students can describe the modifiers that are important in a sentence and categorize the kinds of sentences. The comparison between the results of before teaching and after teaching can be seen in Figure 4.

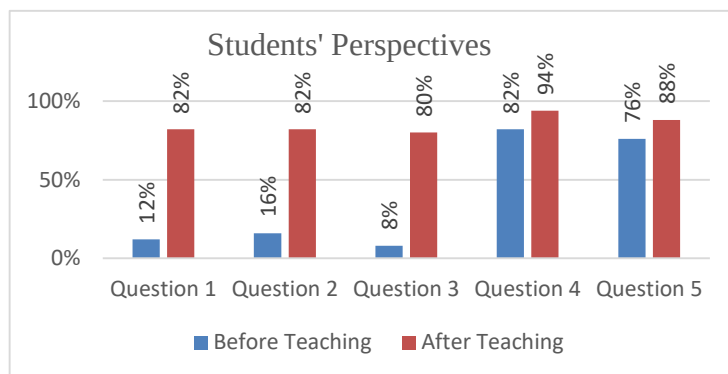


Figure 4. Comparison between Before Teaching and After Teaching

Students also did the Pre- and Post-tests which were created with same test items to check their reading comprehension skill and understanding the sentence structure rules. For this, used short passages from the linguistic text and another authentic text were used. Before teaching syntax, students were asked to answer the Pre-test reading comprehension questions and did sentence structure exercises to know their level of reading comprehension skill and knowledge of the sentence structure rules. Before teaching syntactic rules, only 12% of the students could answer all the questions in Reading (1), correctly. In Reading passage (2), 24% and in Reading passage (3), 59% of the students could answer correctly. But a few students could answer correctly for other questions about modifiers. Students could answer at least two questions correctly from each item. The results of Pre-test can be seen in Figure 5.

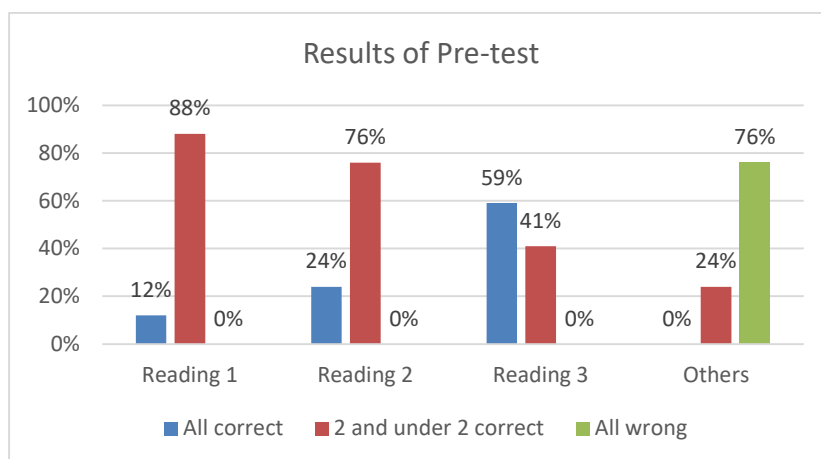


Figure 5. Results of Pre-test

Then the Post-test was conducted. The progress of students' improvement in their reading comprehension skill can be seen in Figure 6.

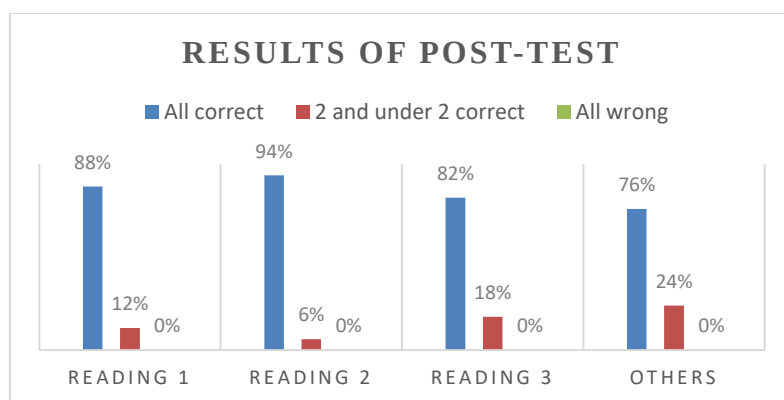


Figure 6. Results of Post-test

It shows that students' understanding of syntactic rules gives a great help to comprehend the reading passages. In Reading (1), 88% of the students, in Reading (2), 94% and in Reading (3), 82% could answer all the questions correctly. The most interesting is that 76% of the students could answer other questions about modifiers that a few could answer in Pre-test.

Findings and Discussions

According to the results, it can be seen that not only the ordinary way of teaching method but also using the visual aids can lead to a successful and interesting lecture period for the students. Moreover, using visual aids can improve students' reading comprehension skill. But a balanced approach that combines visual aids with explicit instruction is needed. By using visual aids in teaching syntax, students improve their reading comprehension skill. Most of the students but not all can categorize the grammar tag name of the words in a sentence. Therefore, at a phrase level, they can describe a phrase and a phrase as a modifier. But a few of the students still confused between a phrase and a phrase as a modifier. In a clause structure, all of the students understand the structure of a clause but some of the students cannot describe what a dependent clause is and what an independent clause is. It is because they still have not understood what the coordinating conjunctions, subordinating conjunctions and their functions are. They confused the function of 'that' as a relative pronoun and as a complement word. Then they cannot describe whether it is a complex or a simple sentence. They cannot explain whether it is a relative clause or an independent clause, whether it is a clause or a clause as a modifier. It can be found that if the students understand the modifiers in syntax improve their ability in decoding and processing complex sentences in linguistic theories. Moreover, students can construct clear and coherent sentences that make students' spoken and written communication more effective, analyze and understand the structure of English. In addition, understanding syntax improves their ability to decode complex texts, i.e. students can identify the relationships between words and phrases more easily. The most profitable point is that understanding the rules of syntax can ease the process of learning a new language.

The results of this study confirm that incorporating visual aids into syntax instruction leads to notable improvements in students' reading comprehension and their ability to decode complex sentences. Visual aids, such as tree diagrams and other graphical representations, were found to make lessons more engaging and effective. These findings align with Mayer's (2009) Cognitive Theory of Multimedia Learning, which emphasizes the importance of integrating

visual and verbal information to promote deeper understanding. As seen in the literature (Beamer & Biber, 2013), students who engage with visual tools show a better ability to break down and comprehend complex syntactic structures. This study reinforces that point, showing that students benefited from visual aids in terms of sentence parsing and understanding grammatical relationships.

In the area of clause structure, students demonstrated an improved understanding of the basics, yet some continued to confuse independent and dependent clauses, particularly when identifying subordinating and coordinating conjunctions. The confusion over the word "that" as both a relative pronoun and a complementizer further highlighted the need for more direct instruction on conjunctions and their functions. These findings suggest that while visual aids can provide a solid foundation, students benefit most when they are paired with more explicit instruction on complex syntax. This aligns with Hsieh's (2012) findings, which emphasized the need for a balanced instructional approach that integrates visual learning with detailed syntactic analysis.

Moreover, students who understood modifiers in syntax showed improved abilities in decoding and processing complex linguistic texts. This supports Perfetti's (1985) argument that syntactic awareness is crucial for understanding intricate sentence structures. Students who understand the use of modifiers could construct clearer, more coherent sentences and displayed greater confidence in both spoken and written communication. Additionally, their ability to analyze English sentence structures improved, making it easier for them to identify relationships between words and phrases.

One of the most significant findings is that understanding syntax not only helps them in reading comprehension but also facilitates the learning of new languages. Students who developed strong syntactic skills found it easier to apply these skills to new linguistic contexts. This aligns with Gardner's (1983) theory on multiple intelligences, which highlights the diverse ways students can engage with and process information, particularly through visual means.

In summary, the results indicate that visual aids play a critical role in enhancing syntactic awareness and reading comprehension. However, there are still areas where students need further support, particularly in distinguishing between different clause types and understanding the functions of conjunctions. This suggests that a comprehensive instructional approach, combining visual tools with explicit teaching of specific syntactic rules, is the most effective strategy for improving students' understanding of syntax.

Conclusion

This study shows that visual aids play an important role in teaching syntax, especially in improving students' reading comprehension and their ability to understand complex sentences. Tools like tree diagrams and color-coded sentence parts helped students recognize sentence patterns and analyze modifiers and clause structures. These tools made lessons more engaging and helped students better understand syntax. This study supports the ideas of Beamer & Biber (2013), Hsieh (2012), Mayer (2009) and Perfetti (1985), who showed that visual aids help students understand complex sentences and improve their reading skills. Additionally, Gardner's (1983) theory that visual tools can reach different types of learners is confirmed, as these aids made learning more accessible to a wide range of students.

However, this study also had some limitations. While most students benefited from visual aids, some were still struggling with understanding the differences between independent and dependent clauses and identifying certain conjunctions. This shows that visual aids alone may not be enough and should be paired with more detailed explanations. Another limitation was the short length of the study, which may not have given students enough time to fully understand all the syntax rules. Future studies should explore if longer-term use of visual aids combined with clear instruction would lead to better results.

Additionally, this study was done with a specific group of first-year Japanese major students at YUFL, so it is difficult to achieve the generalizability and also difficult to apply to all student groups, especially those in other academic or linguistic settings. Future research should include students from different backgrounds to see if these results are consistent across various groups.

In conclusion, visual aids are a helpful tool for teaching syntax, but they work best when combined with clear, detailed instruction on grammar rules. The limitations of this study suggest that longer teaching periods and more focused instruction may be needed to fully address complex syntactic concepts. Future research should also look into the long-term effects of visual aids on other language skills, such as writing and translation, and explore how they can be used to teach more advanced syntax topics.

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Appendix A

Teachers' Interview Questions

No.	Questions	Yes	No
1.	Do you have an experience of teaching syntax to students?		
2.	Do you agree that teaching syntax is profitable for students?		
3.	Do you think that teaching syntax can support students in comprehending any passages?		
4.	Do you agree that if the students know the process of sentence structure very well, they can understand the complex sentences?		
5.	Do you usually use visual aids when teaching syntax to your students?		
6.	Can your students analyse the complex sentences after teaching the structure of phrases, clauses and sentences?		
7.	Describe your other opinions based on your teaching experience in syntax.		

Questions for students' perspective (Before Teaching)

Answer the questions.

No.	Questions	Yes	No
1.	Do you understand what is syntax?		
2.	Can you analyse the various kinds of modifiers in complex sentences?		
3.	Can you categorize the kinds of sentences?		
4.	Do you agree that visual aids help you understand sentence structure and grammatical rules?		
5.	Do you agree that understanding the rules of sentence structure can help you comprehend the complex sentences?		

Questions for students' perspective (After Teaching)

Answer the questions.

No.	Questions	Yes	No
1.	Do you understand what is syntax?		
2.	Can you analyse the various kinds of modifiers in complex sentences?		
3.	Can you categorize the kinds of sentences?		
4.	Do you agree that visual aids help you understand sentence structure and grammatical rules?		
5.	Do you agree that understanding the rules of sentence structure can help you comprehend the complex sentences?		

Appendix B

(I) Read the sentences and answer the questions.***Reading I***

Utterance meaning involves day-to-day interactions. It depends on context. It is studied in pragmatics. Utterances identify the person who has uttered such utterances. There are three types of utterance meaning: referential, social and affective.

Pragmatics is a subfield of linguistics. They deal with what is communicated by the manner and style of an utterance. Pragmatics includes the study of how people use language to establish their identities through social meaning, to perform speech acts with performative sentences and so on. Performative sentences are the utterances that perform speech acts.

- (a) What does the word 'who' refer to in No.1?
- (b) What does pragmatics focus on?
- (c) What are performative sentences?

Reading II

A plosive occurs when a complete closure in the vocal tract is suddenly released. The air pressure which builds up behind the closure rushes out with an explosive sound. A complete closure at the glottis is known as a glottal stop. An affricate occurs when the air-pressure behind a complete closure in the vocal tract is gradually released.

- (a) When does a plosive occur?
- (b) What kind of air pressure rushes out with an explosive sound?
- (c) A complete closure of where is known as glottal stop?

Reading III

A phoneme is a contrastive unit in the sound system of a particular language. A good way to think about a phoneme is as a group of phonetically similar sounds **that** are treated as members of the same sound category. Because the members of a sound category are treated as “the same sound” in a language, they cannot be used for communicating differences in meaning. English speakers treat [th] and [t] as belonging to the same sound category, so they cannot be used to distinguish one word from another.

1. What does the word '**that**' refer to?
2. Can the members of the sound category be used for communication? Why?
3. In English, which sound is treated as belonging to the same sound [t]?
4. In this text, which are simple, which are compound and which are complex sentences?

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- (iii) Materials & Methods/ Premises / Hypotheses
- (iv) Results / Findings
- (v) Discussion
- (vi) Summary/ Conclusion
- (vii) Acknowledgements
- (viii) References

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Author's name. Capital & lower case. The designation of the first author and email (where the number of authors is more than two) and the name of the institution where the work was carried out should be given at the bottom of the title page; but academic degree of the author is not necessary.

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To a thesis: May Soe Thu (1995) *Taxonomy of Offshore Fishes Caught by Bottom Trawl Operations in Myanmar Waters*. M.Sc. Thesis Zoology Department, Yangon University (Unpublished).

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