



Rule of Law Handbook for  
**Civil Society  
Organizations**

# **Rule of Law Handbook for Civil Society Organizations**

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# About the Konrad-Adenauer-Stiftung

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The basic principles underlying the work of the Konrad-Adenauer-Stiftung (KAS) are freedom, justice and solidarity. KAS is a political foundation, closely associated with the Christian Democratic Union of Germany (CDU), named after the first Chancellor of the Federal Republic of Germany, Konrad Adenauer (1876-1967), who united Christian-social, conservative and liberal traditions. His name is synonymous with the democratic reconstruction of Germany and his intellectual heritage continues to serve both as our aim as well as our obligation today.

We make a contribution underpinned by values to helping Germany meet its growing responsibilities throughout the world. With 100 offices abroad and projects in over 120 countries, we make a unique contribution to the promotion of democracy, the rule of law and a social market economy. To foster peace and freedom we encourage a continuous dialogue at the national and international levels as well as the exchange between cultures and religions.

We are guided by the conviction that human beings are the starting point in the effort to bring about social justice and democratic freedom while promoting sustainable economic activity. By bringing people together who embrace their responsibilities in society, we develop active networks in the political and economic spheres as well as in society itself. The guidance we provide on the basis of our political know-how and knowledge helps to shape the globalization process along more socially equitable, ecologically sustainable and economically efficient lines.

We cooperate with governmental institutions, political parties, civil society organizations, media and think tanks, building strong partnerships along the way. In particular, we seek to intensify political cooperation in the area of development cooperation at the national and international levels on the basis of our objectives and values. Together with our partners we make a contribution to the creation of an international order that enables every country to develop in freedom and under its own responsibility.

Since 2006, Konrad-Adenauer-Stiftung has had an active presence in Myanmar. The Myanmar country project focuses on four objectives:

- Strengthening society's representation in the legislature by enabling parliaments and parties to do effective work
- Building out the capacities of democratic and legal institutions as well as civil society and media
- Promoting a sustainable Social Market Economy
- Developing mechanisms of cooperation among Southeast Asian countries, Europe and Germany on the basis of democratic and peace-supporting principles

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# Acknowledgements

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The donor and editorial staff wishes to express sincere appreciation and thanks to the contributors to this volume. The work of writing is not a minor task, and KAS is grateful to the efforts of the authors to provide their individual expertise to this collective effort. Individually and collectively, the contributions from the authors are a work of public service directed towards helping Myanmar's ongoing transition. Each chapter is a product of goodwill, commitment, and hard work to a more functional liberal democracy in the future for the people of Myanmar. It is with respect and gratitude that KAS acknowledges the dedication and labor of each author, particularly under the challenges posed by current political circumstances. Conditions may change, and when they do KAS reserves the possibility of issuing a revised version of the contents herein.

Last, additional thanks should also be given to the administrative personnel, translators, and copy-editors that comprised the support staff for this handbook. The outcome of a project involving multiple members relies upon coordination, organization, attention to detail, and awareness of timelines. Such responsibilities were shouldered by the support staff, who worked tirelessly to keep the project going. The contributions of support staff may not be named within this volume, but their labor deserves as much credit as the authors whose names grace the chapters in this book.



# **Introduction – Rule of Law Handbook for Civil Society Organizations (CSOs)**

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## **Background**

The present volume follows the Rule of Law Handbook for Journalists in Myanmar (ROLH for Journalists) published in 2017. A co-production of Konrad Adenauer Stiftung (KAS) and the United Nations Development Programme (UNDP), the ROLH for Journalists was a dual-language edited volume with contents in both English and Myanmar languages aimed at lay audiences. The general purpose was to educate readers unfamiliar with technical language with information relevant for journalists in Myanmar, with a succinct review in ordinary language of Myanmar government, laws, court system, and ethics affecting journalists. While focused on the topic of journalists, the previous book reached out to Myanmar society to provide a broader understanding of the status and treatment of journalists in Myanmar.

In keeping with the general basis for the ROLH for Journalists, the present volume seeks to serve a similar function for the topic of Civil Society Organizations (CSOs) in Myanmar. The purpose of the following chapters is to present information about the current state of laws relevant for the operation of CSOs in Myanmar, using brief summaries written in non-technical language understandable to readers with less education. The goal is to support the growth of an informed population in Myanmar capable of understanding and engaging debates in Myanmar law or politics. In reaching out to lay readers, this handbook seeks to make Myanmar laws regarding CSOs accessible to a broader portion of Myanmar's population.

In using this handbook, it should be noted that the framework of the handbook distinguishes between an education function and an advocacy function. On the topic of CSOs in Myanmar, the education function would seek to inform a broad range of readers about Myanmar's laws affecting the formation and operation of CSOs. In contrast, the advocacy function (not to be confused with the profession of Advocates in Myanmar's legal system) would seek to argue in support of specific perspectives regarding potential problems in the text or implementation of Myanmar laws. Both functions are important for critical analysis, in that the education function is necessary to ensure that all people understand the current status of laws (e.g., what the law is), and the advocacy function is a component of debate advancing changes in the laws (e.g., what the law should be). In essence, education is seen as a precursor to advocacy, such that if advocacy is to reflect debates between informed parties diligently evaluating diverse perspectives then it calls for the provision of education to as broad a range of society as possible to foster an informed and diverse populace. The focus of this handbook is more towards the education function, with the intent of promoting an informed and diverse population capable of understanding and participating in debates on CSOs in Myanmar.

This book adopts the position that education about law should be accessible to everyone. Education about law can be construed as the domain of legal professionals like lawyers and judges, with legal education having a critical role in ensuring that lawyers and judges have sufficient competency to apply laws as part of a larger legal system that maintains expectations for rule-of-law.<sup>1</sup>

Education about law, however, goes beyond legal professionals, in that the rule-of-law means that laws apply equally to all members of state and society and legal actors like lawyers and judges use law on behalf of all members of state and society. To promote these efforts, it is beneficial for everyone, including legal and non-legal members of state and society, to have some understanding about law. The chapters in this handbook serve an education function aimed at reaching such a broad range of readers.

As a result, in using this handbook a number of points should be observed:

- The purpose is to summarize Myanmar laws in a way that reaches a diverse population with different levels of reading ability or understanding of politics and law. This advances the growth of civil society in Myanmar politics by supporting the development of an informed population regarding Myanmar laws on CSOs.
- The information presented in the chapters provides readers a common understanding of Myanmar laws on CSOs, and thereby gives readers a base of knowledge that allows them to reflect and discuss potential ways to improve the language or implementation of Myanmar laws. In essence, while the chapters serve an education function about laws and reserve debates over laws for other policy-oriented forums, the chapters provide a necessary step that helps readers understand and engage in such debates.

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<sup>1</sup> Jonathan Liljeblad, Democracy, Rule-of-Law, and Legal Ethics Education in Context: Directing Lawyers to Support Democratization in Myanmar, Georgia Journal of International and Comparative Law 47: 451-477 (2019).

- The orientation of the chapters furthers social justice, in that the chapters seek to present information in a way understandable to lesser educated readers unfamiliar with Myanmar laws. By using ordinary language and short summaries of law, the chapters serve segments of Myanmar's population that are otherwise marginalized by technical terms or specialized knowledge from the country's policy discussions. The chapters, in effect, support equity in terms of helping marginalized readers to become more informed about Myanmar laws, foster inclusion by allowing such readers to become informed members of a Myanmar civil society, and help access by giving readers sufficient information to understand and engage in Myanmar politics.
- The chapters deal with what the donor(s) considered to be the more critical laws affecting CSOs in Myanmar, and so are not intended to be a comprehensive text either in breadth or depth. The chapters do not intent to replace textbooks or institutional instruction (e.g., universities, capacity-building programs, etc.). The presentation of topics in the chapters is meant to supplement such alternative efforts.
- The handbook is intended to be one of an ongoing series of books dealing with different rule-of-law topics in Myanmar. As a result, topics not covered by the chapters in this handbook may be addressed in the future by subsequent handbooks.

The present handbook supports a spirit of enquiry with critical analysis, and under the above observations welcome—and fully encourage—readers to use the contents of the following chapters as a basis for further reflection, discussion, and debate over the language and application of laws regarding CSOs in relation to Myanmar's political and legal development.

## **Contents**

The authors in this volume committed themselves to serve the purpose of education that serves Myanmar's transition to democracy. The authors provided their respective chapters as a public service to Myanmar, contributing their expertise so that their knowledge could be shared openly and without cost to the government and people of Myanmar. Each chapter reflects a topic that the authors thought readers should understand regarding the operation of CSOs in Myanmar:

- **Chapter 1: Kyaw Min Sann –**  
basic information on Myanmar's legal system
- **Chapter 2: Nan Kham Mai –**  
general international principles for CSOs in democracies
- **Chapter 3: Berihun Adugna Gebeye –**  
right to free assembly for CSOs
- **Chapter 4: Dave Seibert –**  
right to free expression for CSOs
- **Chapter 5: Kyi Thawtar Suu –**  
right to privacy and information for CSOs
- **Chapter 6: Alex Bohusch –**  
laws on funding and taxation of CSOs in Myanmar
- **Chapter 7: Fabian Lorenz –**  
laws on management and ownership of CSOs in Myanmar

The authors were invited to participate in this volume because of their expertise on the topic of laws affecting CSOs in Myanmar. Specifically, each author is a scholar or practitioner in law possessing familiarity with Myanmar and Myanmar's legal system. Moreover, each author has prior experience on the topic of their chapter.

Authors were also invited for their ability to offer diversity in perspectives. While the contents of the chapters reference international norms regarding CSOs, the book as a whole is intended to educate Myanmar readers regarding Myanmar law. As a result, this volume sought to host chapters reflecting a mixture of international and domestic experts who work or reside in Myanmar.

Myanmar's laws are undergoing a broad process of reform, with the government drafting and issuing new legislation to further the country's political and economic development. The authors collectively recognize the dynamic conditions in Myanmar law. Care should be taken in applying the chapters in this volume, since the contents of each chapter reflect the status of Myanmar law recognized by the respective author at the time of writing (approximately May 2019). Effort has been made to keep the information as current as possible, but the editors reserve the right to revise the contents of this volume with updated laws as they may arise in the future.

Myanmar's current political transition is accompanied by numerous challenges that foster a tense environment for public debates. Such difficulties impede the public deliberation necessary for a functional democracy. In serving an education function to inform readers about the laws regarding CSOs in Myanmar, the authors are working to support the growth of public deliberation that provides constructive debate leading to effective solutions that address the challenges facing Myanmar's democracy.

## **International and Domestic Law**

In addition to the preceding discussion, it is also necessary to provide a comment regarding the association of international and domestic laws. Much of Myanmar's transition following the 2008 Constitution has been conducted with reference to international standards, with capacity-building efforts by various non-government organizations (NGOs) regarding rule-of-law involving reforms that bring Myanmar into greater alignment with international principles. Similarly, the chapters in this handbook also connect to international standards, both in terms of norms that set standards for appropriate (or inappropriate) conduct or rules enforcing standards of conduct. The existence, however, of an international legal system containing

norms and rules does not automatically mean direct application into domestic law, and so it is important to use some caution in connecting international law with domestic law.

The application of international law into a domestic legal system depends on each individual state (e.g., Myanmar). Under international law the concept of a state involves an attendant concept of legal personality, which means that a state holds rights and duties that can be enforced in the international legal system. Generally speaking, the legal personality of a state involves rights and duties as a sovereign, which means that the state has sovereignty in terms of holding exclusive control over the population, territory, and resources inside the state's borders. The consequence of sovereignty is that a state decides its own domestic legal system and hence decides the status of international laws within its domestic legal system.

Despite the unique status of each state, there are categories that indicate trends in how countries deal with international law. Broadly speaking, there are the Monist and Dualist perspectives on international law. Monist perspectives, which are prevalent in countries that follow a Civil Law tradition (e.g. France, Germany, Spain), see international law and domestic law as parts of a universal system of law, such that international law can be readily implemented as domestic law. Dualist perspectives, which are prevalent in countries that follow a Common Law tradition (e.g., Australia, Canada, United Kingdom), assert that there is a difference between international and domestic law, where international law exists through the consent of states such that state action is necessary to implement international law as domestic law. With respect to Common Law countries, there is also a difference between Doctrine of Incorporation and Doctrine of Transformation. Doctrine of Incorporation essentially means that international law can automatically become domestic law so long as there is no inconsistency between them. In contrast, Doctrine of Transformation does not view international law as automatically becoming domestic law, and instead requires that international law must be made into domestic law by a domestic statute or judicial decision.

For Myanmar, the approach to international law held by the Union Attorney General's Office and Office of the Supreme Court of the Union is presented in *Evgoni T. Kovtunenko v U Law Yone* (1960), which observes that Burmese courts can only enforce international law that has been enacted by domestic legislative statutes.<sup>2</sup> As a result, to the extent that Myanmar follows the court cases of Burma, it appears that Myanmar effectively follows a Dualist approach consistent with a Common Law tradition, exercising the Doctrine of Transformation in terms of requiring parliamentary legislation to implement international law.

It should be noted that enactment via domestic law is not necessarily the same thing as ratification or accession. The process of making international agreements (e.g., treaties) involves negotiation between states, and at the conclusion of negotiations member states place signatures on the agreement to indicate their intent to comply with the agreement's terms. After signature, a state follows domestic procedures for ratification, which means that a state approves adoption of the agreement and expresses consent to be bound by the agreement. States that were not present at the negotiation and signing of an international agreement can choose accession, which means that a state declares that they will accept and comply with an international agreement. Neither ratification or accession, however, necessarily declares how an international agreement will be applied in a domestic legal system. Enactment, in contrast, addresses how an international agreement is enforced in a domestic legal system, and can occur separate from ratification or accession. Enactment involves the passage of domestic laws that implement an international agreement, so that it is possible for state offices to enforce it upon the population, territory, and resources within a state's borders.

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<sup>2</sup> *Evgoni T. Kovtunenko v U Law Yone* (1960), Burma Law Reports 1960: 58-59.

# **Myanmar's Legal System**

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**Kyaw Min San, LL.M (HKU)**  
**Supreme Court Advocate and Legal Consultant**

## **Introduction**

Myanmar's earliest legal system was introduced by the dynasties of the Bagan period. There was a system of absolute monarchy in the three branches of power: executive, legislative and judiciary. The King had power to make laws and make decisions in jurisdiction and administration.

The King decided criminal and civil matters based on Dhammathat, Yazathat and Phyat-htone.“Dhammathat” is the compilation of Myanmar customary practice, later called Myanmar customary law. It is the source of Myanmar’s legal system and includes Myanmar social norms and culture. U Kaung, senior minister to Kings Mindon and Thibaw, wrote 36 series of “Dhammathat” in 1893 under British colonial rule (1255 in the Myanmar Calendar). This is well-known and is used in Myanmar’s Courts today. “Yazathat” refers to the King’s Royal Decisions and Ordinances and is composed of the King’s commands and criminal laws. “Phyat-htone” (precedents) refers to the judicial decisions made by the King’s Hluttaw and various Benches and Courts in the country.

British rule introduced a colonial legal system in the country with a formal judicial system. On 4 April 1897 the British made Myanmar a substate of India. The 1861 India Council Act gave all Indian laws power in Myanmar. In 1852 the British founded the Chief Court of Lower Burma and various levels of courts in Burma. In 1886, the British established the Court of Judicial Commissioner for Upper Burma in Mandalay. In 1922, the High Court of Judicature of Yangon, then known as Rangoon, was established after the abolishment of the Lower and Upper Burma Courts. Sub-Divisional Courts, District Civil and Session Courts, and Township Courts were also established with specific jurisdictions. In addition, the British introduced several criminal laws as well as civil laws including the Indian Penal Code (1860), the Criminal Procedure Code (1862), the Indian Evidence Act (1872) and the Civil Procedure Code (1859). In 1935 the British introduced the Government of Burma Act 1935, which separated Burma from India and defined the exclusive jurisdiction and power of the High Court of Rangoon.

During and after the British period, compilations of Court cases and digests were made, with examples including U Po Thar's Digest of Burma Rulings Civil and Criminal (1937-1955), U Thein Han's Digest of Burma Rulings Civil and Criminal (1956-1976), U Ba Thaung Tin's Digest of 50 years in Criminal Law (1923-1973) and U Than Aung's Digest of Myanmar Rulings, Criminal and Civil (1971-2010).

Even after Burma's independence on 4 January 1948, Burma (later Myanmar) continued to apply and still continues to apply the Common Law legal system. The Supreme Court, High Court and other subordinate Courts were established at different levels under the Union Judiciary Act of 1948. The Supreme Court was the highest court as well as the final appeals court throughout the Union and its decisions were binding over all other courts. The Burma Code comprises 13 volumes and is the collection of all the laws since the British period until 1954. The Burma Law Reports are the collection of judgements of the Union Supreme Court. After 1954, the Burma Law Reports were called the Myanmar Law Reports and were used as valid precedents for deciding cases in Myanmar.

In 1962, the Revolutionary Council abolished the formal judicial system and formed the Chief Court to be in line with socialism. In 1974, it further introduced a new Constitution under which the Central Court, the State and Divisional Courts, the Township Courts, the Wards and Village Tracts courts were established.

In 1988, the State Law and Order Restoration Council transformed this socialist judicial system. The Supreme Court and High Court were re-established in the same year. In 2000 they were again repealed by the State Peace and Development Council. In 2010 the Union Judiciary Law was enacted to adopt Myanmar's current judicial system under the 2008 Constitution.

## **Myanmar Constitutions**

Before independence from the British, Myanmar (then called Burma), was governed by the Government of India Act (1915), the Government of India Act (1919, with a diarchical form of government), and the Government of Burma Act (1935). During the period of Japanese occupation there was the 1943 Constitution of Burma.

After independence from British rule on 4 January 1948, Burma/Myanmar had three constitutions: the Constitution of the Union of Burma, 1947 (1947 Constitution); the Constitution of the Socialist Republic of the Union of Burma, 1974 (1974 Constitution); and the Constitution of the Republic of the Union of Myanmar, 2008 (2008 Constitution). Under the 1947 Constitution Burma was a wealthy democratic country in South East Asia. This period only lasted for 10 years from 1948 to 1958, under the U Nu Government. From 1958-1960 there was civil war, and in 1962 a military coup led by General Ne Win abolished Burma's multiparty democratic system. Military rule without parliament prevailed from 1962-1974.

Under the 1974 Constitution the country was ruled in a one party socialist system, its market economy was abolished and all industries were nationalized. The country's economy became poor. In 1988, there were widespread protests and demonstrations and the socialist regime was brought down. The military ruled the country from 1988 to 2010. Various large demonstrations such as the 1996 student demonstration and the 2007 Saffron Buddhist Monks Movement led to the finalization of the 2008 Constitution (which had been in process since 1993). Under the 2008 Constitution, the Union Solidarity and Development Party (USDP) won the 2010 national election. The National League for Democracy (NLD) led by Daw Aung San Su Kyi boycotted the election. U Thein Sein's Government ruled the country for five years. In the 2012 by-election, the NLD won 43 out of 44 seats and entered Parliament (Hluttaw). In the 2015 election the NLD won a landslide victory and has governed the country until now.

### **The Constitution of the Union of Burma, 1947**

The 1947 Constitution was adopted on 24 September 1947 at the National Constituent Assembly of the Union of Burma, and ended in 1962 by military coup. It only existed for 14 years. The Head of State was the President and the Head of Government was the Prime Minister who was the key person driving the nation. The form of government was a democracy with a bicameral parliamentary system. There were two Hluttaws: the Chamber of Deputies and the Chamber of Nationalities.

The 1947 Constitution had 14 chapters and 234 sections. Chapters 1 and 2 explained the form of state, fundamental rights of the people such as the rights to equality, freedom and religion, economic, cultural and educational rights, criminal matters and constitutional remedies. Chapter 3 covered relations of the state to peasants and workers and Chapter 4 outlined directive principles of state policy. Chapters 5, 6, 7 and 8 covered the roles of the President, Parliament, the Union Government and Judiciary. Chapter 9 dealt with Shan State, Kachin state, Karen State, Karenni state, the Special division of Chins and new states. Chapter

10 described the right of secession and Chapter 11 provided for amendment of the constitution. Chapters 12 and 13 were about international relations, general provision and interpretation. Chapter 14 was a transitory provision. The 1947 Constitution, although democratic, cannot be described as federal because there was no state or regional parliament and government.

### **Constitution of the Socialist Republic of the Union of Burma, 1974**

Drafted by the Burma Socialist Programme party, the Constitution of the Socialist Republic of the Union of Burma was adopted and enacted on 3 January 1974. With this constitution, Myanmar became a socialist state under a one party system. This constitution ended on 18 September 1988, lasting only 14 years. The form of government was presidential where the Head of State was the President (Chairperson of the State Council). There was only one Hluttaw (a unicameral system) for legislation. Under the 1974 Constitution, U Ne Win was the supreme authority of the nation and the Socialist Party was the only political party in the country.

The 16 chapters of the 1974 Constitution described the state, its basic principles and structures, the Pyithu Hluttaw (the People's Parliament), Council of State, Council of Ministers, Council of People's Justice, Council of People's Attorneys, Council of People's Inspectors, the People's Council, the fundamental rights and duties of citizens, the electoral system, recall, resignation and replacement, the state flag, state seal, national anthem and state capital, amendments to the constitution and general provisions. There were 209 articles in the constitution. Different administrative areas were formed with wards or village-tracts, townships, states or divisions and the state (the Union). There were 14 states and regions under the 1974 Constitution. It was not democratic or federal because there was only one Union parliament and no regional or state Hluttaws or governments.

## **Constitution of the Republic of the Union of Myanmar, 2008**

The 2008 Constitution took 14 years to be written, from the 1993 National Convention until its completion on 3 September 2007. It was adopted on 29 May 2008 by means of a national referendum. This is Myanmar's current constitution. There are fifteen chapters, with 457 sections and 5 schedules. It sets out basic principles of the Union, state structures, the role of the Head of State, the legislature, executive, judiciary and defense services, the fundamental rights and duties of citizens, elections, political parties, provisions for a state of emergency, amendments to the constitution, the state flag, state seal, national anthem and the capital (Nay Pyi Taw), transitory provisions and general provisions. It lays down a presidential system and a bicameral system with the Union level House of Nationalities and House of People with 14 regional and state Hluttaws (parliaments), respectively. The Constitution is based on multi-party democracy but the military gets 25% of the seats in Union and regional or state parliaments. The military controls three main ministries: Defense, Home Affairs and Border Affairs. This Constitution can be described as a quasi-federal democracy because it has union and state or regional Hluttaws (parliaments) and Union and state or regional administrations. However, the President of the Union controls the appointment of Chief Ministers of the regions and states, and this Constitution does not recognize the autonomy of any states or regions.

## **Myanmar's Judicial System**

### **1948 - 1962**

After Independence Myanmar's courts followed the 1947 Constitution and the 1948 Union Judiciary Act. The Supreme Court and High Court were established and conferred jurisdiction to these courts. The Supreme Court was the court of appeal and the decision of the Supreme Court was in all cases final. The Supreme Court had the power to interpret questions as to the validity of any law regarding the provisions of the Constitution. The head of the Supreme Court was Chief Justice of the Union, and there were no more than five judges on the Supreme Court.

The High Court was a court of first instance and had power to determine all matters and questions whether of law or of fact. A Chief Justice headed the High Court and there were no more than 11 judges of the High Court. The High Court had exclusive original jurisdiction relating to any treaty made by the Union, all disputes between the Union and a unit or between one unit and another.

There were four classes of criminal courts in Myanmar: the Court of Session, Magistrate of the First Class (District Court), Magistrate of the Second Class, and Magistrate of the Third Class according to the Code of Criminal Procedure. This system is still in use now. There was also juvenile courts, special criminal courts and special criminal appeal courts. In the 1950 Courts Act, the Rangoon City civil court was established together with other civil courts such as the district civil courts, sub-divisional civil courts and township civil courts. From 1948 to 1962 these courts were independent and impartial, and people could apply for writs with respect to fundamental rights at the Supreme Court.

#### **1962 - 1974**

In 1962 the Revolutionary Council took power in a military coup and introduced an authoritarian system. The Chair of the Revolutionary Council solely controlled and practised legislative, executive and judiciary power. The Supreme Court and the High Court were abolished and a Chief Court was established. Subordinate courts were still the same and special criminal courts were also established. In 1972, a people's judiciary system was initiated and three representatives of farmers and labourers became the judges. Under the Chief Courts, there were state and division people's courts, township people courts and village and ward people's courts.

## **1974 - 1988**

The 1974 Constitution stipulated a People's Justice Body (a central court), state and division Justice Bodies (people's courts of state and division levels), township Justice Bodies (people's township courts), and village and ward Justice Bodies (people's courts of villages and wards). A People's Justice Body also sat at the Central Court and was accountable to legislative and administrative authority. Judges for the People's Justice Body were nominated by the People's Parliament (Pyithu Hluttaw) and judges for the different levels of justice bodies were also nominated by relevant various levels of council such as state/regional council, township council, ward and village council. The Central Court was the highest court of the country and there were subordinate courts such as people's courts of state and division, people's courts of township and people's courts of villages and wards. In addition there were also People's Legal Councils for the purpose of legal advice to the state. However, the courts were not independent and impartial at this time.

## **1988 - 2018**

The 1988 Judiciary Law established the Supreme Court with a maximum of five members including the Chief Justice and other Judges. The law also established state/regional courts and township courts. Subsequently, the 2008 Constitution and the 2010 Union Judiciary Act established a Supreme Court and under it High Courts for each state and region, Courts of Self-Administered Divisions, Courts of Self-Administered Zones, District Courts, Township Courts and the other courts constituted by law. Courts of Self-Administered Zones have the same ranking as District Courts. In case of appeal, they appeal to the High Court of the respective state or region. If there is a conflict of law, statutory law overrules customary law and Common Law precedents.

In addition, there are courts-martial and the Constitutional Tribunal of the Union. Courts-martial adjudicate cases relating to defence service personnel. The Constitutional Tribunal has nine members including a Chairperson. The functions and duties of the Constitutional Tribunal of the Union are as follows:

- a) interpreting the provisions of the Constitution;
- b) ensuring that laws promulgated by the Pyidaungsu Hluttaw, Regional Hluttaw, State Hluttaw or a Self-Administered Division Leading Body or a Self-Administered Zone Leading Body are in conformity with the Constitution;
- c) checking whether measures of the executive authorities of the Union, the Regions, the States, and the Self-Administered Areas are in conformity with the Constitution;
- d) deciding Constitutional disputes between the Union and a Region, between the Union and a State, between a Region and a State, among Regions, among States, between a Region or a State and a Self-Administered Area and among the Self-Administered Areas;
- e) deciding disputes arising out of the rights and duties of the Union and a Region, a State or a Self-Administered Area in implementing the Union Law by a Region, State or Self-Administered Area;
- f) checking and deciding matters intimated by the President relating to the Union's Territory;
- g) other functions and duties conferred by laws enacted by the Pyidaungsu Hluttaw.

The Supreme Court has the original jurisdiction in matters arising out of bilateral treaties concluded by the Union and in other disputes except for constitutional problems. It has jurisdiction between the Union Government and a regional or state Government, among the regions, among the states, between regions and states and between the Union Territory and a region or state; and in other matters as prescribed by any laws. The judgements of the Supreme Court are final and conclusive. The Supreme Court also has the power to issue writs concerning fundamental rights of the people for the following: habeas corpus, mandamus, prohibition, quo warranto and certiorari. Supreme Court judges may number between seven to eleven, including the Chief Justice,

State and regional High Court judges may number from three to seven. They hear and determine civil cases in which the amount in dispute or value of the subject matter exceeds 500,000,000 kyats. High Courts of regions or states are not normally concerned with any criminal offences as courts of first instance except where special circumstances require them to do so. The High Court of a region or state has appellate jurisdiction on the judgment, decree and order passed by a Court of a Self-Administered Division, Court of a Self-Administered Zone or a District Court, and revisional jurisdiction on a judgment or order in accord with law. They also adjudicate on the transfer of cases from one court to another within a Region or State. High Courts of the regions or states adjudicate on appeal against acquittal of any subordinate court. When an accused person is convicted of an offence and sentenced by the High Courts of a region or state, he can appeal against his conviction, sentence, or both to the Supreme Court of the Union.

The hierarchy of Courts in Myanmar is as follows:

- Union Supreme Court
- States/Regional High Court
- District Court (if there are no self-administered areas in the region or state or in the Union Territory) or Court of Self-Administered Division (if there is a self-administered division) or Court of Self-Administered Zone (if there is a self-administered zone)
- Township courts

District Courts, Courts of a Self-Administered Division, and Courts of a Self-Administered Zone have jurisdiction relating to original criminal cases, original civil cases, appeal cases or matters prescribed by any law. Township Courts have jurisdiction relating to original criminal cases, original civil cases or matters prescribed by any law.

In addition, there are also Juvenile Courts and other courts founded according to the laws to try municipal and traffic cases.

## **Myanmar's Legal Practitioners**

There are two classes of lawyers in Myanmar: Supreme Court Advocate and Higher Grade Pleader. A Supreme Court Advocate can practise in every level of court including the Supreme Court but a Higher Grade Pleader can practise only in township and district courts. Legal practitioners are governed by the Bar Council Act (1926) and the Legal Practitioner Act (1879).

The minimum requirement to practice in the Courts of Myanmar is a Bachelor of Laws degree (LL.B) plus one year's practice as a Chamber Student with a Chamber Master who is an advocate of at least five years of experience. After completing this a person can apply to be a Higher Grade Pleader. After three years practice as a Higher Grade Pleader, he or she can apply to be a Supreme Court Advocate. The Bar Council of the Union then has the right to investigate cases of lawyer misconduct and report the case to the Union Supreme Court for disciplinary action such as disbarment if they have doubts about a candidate's suitability. Lawyers must follow a code of conduct published as a book entitled the *Ethical Principles of Lawyers and Practitioners*, published in 1990 and 1997.

There is a bar association in every capital city of Myanmar's states and regions. The Independent Lawyers' Association of Myanmar was founded in 2013 with support from the International Bar Association. In addition, there are many lawyers' networks such as Myanmar Legal Aid Network and Myanmar Lawyers' Network. The Legal Aid Law was passed in 2016 and legal aid management bodies were set up in 2018 at all levels from the Union to township. Legal aid allows poor people, women and other vulnerable people to access justice and legal assistance if they are not able to afford lawyers themselves.

Judges and public prosecutors are recruited by the Union Supreme Court and Union Attorney General's Office, respectively, by government entrance examinations after graduating with a Bachelor of Laws (LL.B). Currently the Union Supreme Court has developed a Court Management System under the Judicial Strategic Plan. The Supreme Court website is open to the public and it is easy to see reported cases and case lists. The Code of Judicial Ethics was developed and published on 2 August 2017, enabling judges to be independent and impartial.

## **Myanmar Laws**

### **Customary Law**

Customary law is practised in Myanmar in relation to inheritance, marriage, divorce and administration of property. Myanmar customary law applies to Buddhists. For Christians, Muslims and Hindus related customary laws are applied based on their religion. Decisions are based on justice, equality and good conscience.

In Myanmar U Mya Sein's book *Customary Law* is well known. According to Myanmar customary law, polygamy was allowed but the new marriage law introduced in 2015 abolished polygamy and only allows monogamy. This overrules all previous customary law; polygamy is currently criminalized in Myanmar.

## **Criminal Law and Civil Law**

Myanmar's criminal law was introduced by the British as the Penal Code of India Act (1861) and the Code of Criminal Procedure (1898). The Penal Code involves 511 sections and the Code of Criminal Procedure has 565 sections and five schedules. The Penal Code covers punishments, general exceptions, the right to private defence, abetment, criminal conspiracy, offence against the state, offences relating to the constitution and the art of parliaments, libel against foreign powers, offences to the Army, Navy and Air Force, offences against the public peace, offences by or relating to public servants, offences in relation to elections, contempt of the lawful authority of public servants, false evidence and offences against public justice, coins and government stamps, weights and measures, offences affecting public health, safety, convenience, decency and morals, offences affecting the human body, offences against property, offences relating to documents, to trade or property marks, offences relating to marriage, defamation, criminal intimidation, insult and annoyance, attempts to commit offences. In addition, there are different laws enacted by parliament such as child law, traffic law, anticorruption law, etc.

The Code of Civil Procedure (1909) is also applied in Myanmar for civil cases.

Myanmar's Courts Manual relates to the administration of courts for both civil and criminal matters. The Evidence Act (India Act 1872) is very important for both criminal and civil matters for deciding a case. It covers relevancy of facts, proof including oral and documentary evidence, production and effect of evidence, witness, the examination of witnesses, improper admission and rejection of evidence.

There are also laws enacted by Parliaments relating to different government ministries, called special and general laws. Examples include a Gambling Law (2018), Forestry Law (2018), Anti-Money Laundering Law (2019), Telecommunications Law (2013), etc.

## **Conclusion**

Myanmar is currently in transition to federal democracy and can abolish some of the laws which infringed on human rights such as the laws on household registration, the law safeguarding the state from the people who want to destroy it, the amendment of quarter and ward administration act, etc. The Myanmar Company Law (2017) opens up space for local and international investors to do business in Myanmar; it is very easy to establish a company in Myanmar. In February 2019 the Union Parliament set up a Constitutional Reform Joint Committee for further reforms to the 2008 constitution with different parties and military representatives working together.

The Union Supreme Court has published its Judicial Strategic Plan for 2018-2022, following its three-year Strategic Plan (2015-2017). The Union Supreme Court plans to facilitate public access to law and court services, to promote public awareness, to enhance judicial independence of administrative capacity, to promote and ensure the professionalism, accountability and integrity of the judiciary and to promote case management and court specialization.

The Legal Aid Law was passed in 2016, a collaborative effort of Myanmar Legal Aid Networks, the Union Attorney General office, the Union Supreme Court, the Bill Committee of Pyithu Hluttaw, the UNDP and the UNODC. The Union Attorney General's Office has actively promoted the rule of law in Myanmar and fair trials. This handbook is part of that effort.

Anticorruption laws were also passed in 2014 and amended in 2016, 2017 and 2018. To promote the rule of law, the NLD government has actively pursued law enforcement on anticorruption since 2015.

To conclude, Myanmar is in a legal reform process working towards a democratic federal system, highlighting the rule of law and Human Rights.

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# **Introduction to International Principles Regarding Civil Society and the Role of CSOs in a Democratic Societies**

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## **Introduction**

This chapter addresses a number of international principles which support civil society organisations (CSOs). The chapter highlights the role of CSOs in democracy based on worldwide experiences in the development of democracy.

## **General Principles**

Seven principles enable civil societies to operate freely.<sup>3</sup> They are:

1. The right to entry (freedom of association);
2. The right to operate free from state interference;
3. The right to freedom of expression;
4. The right to communicate and cooperate;
5. The right to freedom of peaceful assembly;
6. The right to seek and secure resources; and
7. The right to state protection.<sup>4</sup>

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<sup>3</sup> Defending the Civil Society Report (2012). World Movement for Democracy, pp 34-53.  
Available at <http://defendingcivilsociety.org>.

<sup>4</sup> Ibid.

## The Right to Entry (Freedom of Association)

The right to entry or freedom of association is the right of individuals to form, join and participate in any association, which includes political parties, NGOs, civil society organisations, religious associations, trade unions and so on.<sup>5</sup> This right is granted under the 2008 Constitution of Myanmar, which states: "Every citizen shall be at liberty in the exercise of the following rights" that include the right "to form associations and organizations."<sup>6</sup>

Freedom of association is expressed in many international treaties. According to article 20(1) of the Universal Declaration of Human Rights (UDHR), an individual has the right to freely form civil society organisations. Article 20(1) states that: "Everyone has the right to freedom of peaceful assembly and association."<sup>7</sup> Likewise, the International Covenant on Civil and Political Rights (ICCPR) reaffirms the right to freedom of association. Under Articles 21 and 22 of the ICCPR freedom of association comprises three kinds of individual rights protected by international law:

- The right of all people in an association together with anyone who voluntarily joins that association to achieve a common goal.<sup>8</sup>
- The right of all people, regardless of legal personality or nationality, to establish an association freely.
- The right to choose whether or not to belong to an association.<sup>9</sup> This principle also means that an individual is free to choose to which organization he or she wishes to belong, and has the freedom to form an association of his or her own.<sup>10</sup>

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<sup>5</sup> Article 22 of ICCPR.

<sup>6</sup> Section 354(c) of 2008 Constitution. Source: <http://www.myanmar-law-library.org/law-library/laws-and-regulations/2008-constitution.html>.

<sup>7</sup> Source: <https://www.un.org/en/universal-declaration-human-rights/>

<sup>8</sup> Article 22(1) of ICCPR- Everyone shall have the right to freedom of association with others, including the right to form and join a trade union for the protection of his interest.

<sup>9</sup> Resolution 53/144 adopted by the General Assembly of the United Nations on 9 December 1998. Source: <http://www.ohchr.org/english/law/freedom.htm>.

<sup>10</sup> Source: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

Freedom of association can also be seen in regional human rights agreements. Article 10 of the African Charter on Human and People's Rights states: "1. Every individual shall have the right to free association provided that he abides by the law. 2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association."<sup>11</sup> Similarly, Article 16 (1) of the American Convention on Human Rights states: "Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes."<sup>12</sup> Likewise, Article 12(1) of the Charter of Fundamental Rights of the European Union states: "Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests."<sup>13</sup>

Associations are free to determine their membership. An association may determine special requirements for its members, as long as those who do not satisfy those requirements and therefore cannot be members of the association have the right to establish an association of their liking.<sup>14</sup> Freedom of association also means the freedom not to join, form or participate in an association. Individuals should generally not be forced to join an association. The United Nations Human Rights Council has reaffirmed that "no one may be compelled to belong to an association".<sup>15</sup>

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<sup>11</sup> Source: [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf).

<sup>12</sup> Source: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

<sup>13</sup> Source: [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf).

<sup>14</sup> Report of the Special Reporter A/HRC/20/27, para.55 on 21 May 2012.

[https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession20/A-HRC-20-27\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession20/A-HRC-20-27_en.pdf)

<sup>15</sup> Resolution A/HRC/RES/15/21 adopted by the Human Rights Council on 30th Sept 2010.

Source: [http://ao.ohchr.org/documents/dpage\\_e.aspx?si-A/HRC/RES/15/21](http://ao.ohchr.org/documents/dpage_e.aspx?si-A/HRC/RES/15/21).

The principle of freedom of association, as mentioned in the ICCPR, recognizes the right of individuals, through CSOs, to pursue a broad range of objectives. Permissible purposes generally embrace all ‘legal’ or ‘lawful’ purposes which do not disturb community peace and tranquility or public order and morality, and which do specifically include the promotion and protection of human rights and fundamental freedoms.<sup>16</sup> The concept of international human rights is built on the idea that all persons, including non-citizens, enjoy certain rights, including the freedom of association.

### **The Right to Operate Free from Unjustified State Interference**

Once established, CSOs have the right to operate freely without interference from the state. First, states may use various laws and regulations to intrude or interfere with CSOs’ activities.<sup>17</sup> To counter this, international law generally creates a presumption against any regulation or restriction that would amount to interference in CSOs’ recognized rights.<sup>18</sup> This does not mean that a state’s intrusion or interference is absolutely barred by international law. International law allows restricted regulations which can be justified by the provision of law. Usually, such restrictions are deemed necessary in a democratic society for the interests of national security, public order, the protection of public health or morals or the protection of the rights and freedoms of others.<sup>19</sup> However, laws and regulations governing CSOs should be implemented and enforced in a fair, apolitical, objective, transparent and consistent manner. Regulations relating to the involuntary termination or dissolution of a CSO should meet the standards of international law.<sup>20</sup> Second, CSOs are protected against unjustified governmental

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<sup>16</sup> International Journal of Not-for-Profit Law, Vol.14, no. 3 Sept 2012. Source: [www.icnl.org](http://www.icnl.org).

<sup>17</sup> Julia Kresienkamp, Responding to the Global Crackdown on Civil Society, report of the Global Governance Institute, Sept 2017.

Source: <https://www.ucl.ac.uk/global-governance/sites/global-governance/files/policy-brief-civil-society.pdf>

<sup>18</sup> Articles 21 and 22 of ICCPR

<sup>19</sup> Ibid.

<sup>20</sup> Checklists for CSOs Law provided by International Center for Not-for-Profit, available at [www.icnl.org](http://www.icnl.org).

intrusion in their internal governance and affairs. Freedom of association embraces the freedom of the founders and/or members to regulate the organization's internal governance.<sup>21</sup> Last, representatives of CSOs, individually and through their organizations, are protected against unjustified interference with their privacy.<sup>22</sup>

### The Right to Freedom of Expression

Civil society representatives, individually and through their organizations, enjoy the right to freedom of expression. The right to freedom of expression is recognized internationally in the UDHR and ICCPR. Article 19 of the UDHR states that

*“Everyone shall have the right to hold opinions without interference”  
and everyone shall have the right to freedom of expression; this right  
shall include freedom to seek, receive, and impart information and  
ideas of all kinds, regardless of frontiers either orally, in writing or in print,  
in the form of art, or through any other media of his choice.”<sup>23</sup>*

CSOs are protected in their ability to speak critically about government law or policy and to speak favourably about human rights and fundamental freedoms. According to Article 19 of the UDHR, freedom of expression includes the right to hold an opinion freely and the right to express it without interference. This right may be exercised through people's activities and objectives including participating in matters of political and public debate regardless of whether the position taken is in accord with government policy or advocates a change in the law.<sup>24</sup> The rights mentioned in this Article consist of seeking, receiving, and imparting information and ideas of all kinds. Everyone can exercise this right in whatever ways they

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<sup>21</sup> Johan D. Vander Vyver, State Interference in the Internal Affairs of Religious Institutions, Emory International Law Review, Vol.26 pp1-9, (2012).

<sup>22</sup> Carly Nyst, Data Protection Standards for Civil Society Organizations. <http://encl.org/wp-content/uploads/2018/01/Data-protection-Standards-for-CSOs.pdf>

<sup>23</sup> Source: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

<sup>24</sup> Article 19 of the UDHR.

desire. General Comment 34 of Article 19 explains this as follows: "It includes political discourse, commentary on one's own and on public affairs, canvassing, discussing of human rights, journalism, cultural and artistic expression, teaching, and religious discourse. It may also include commercial advertising."<sup>25</sup>

Like other principles, freedom of expression is justified by law but can be constrained for the protection of national security, public order, public health or morals. It is also necessary to respect the rights or reputations of others. Under Article 19 of the ICCPR a person who exercises the right to freedom of expression has special duties to follow certain restrictions and responsibilities. Article 19 of the ICCPR states that "the exercise of this right carries 'special duties and responsibilities'"<sup>26</sup> and may, therefore, be subject to certain restrictions when necessary to respect the right or reputation of others or for the protection of national security or of public order or of public health or morals."<sup>27</sup>

### The Right to Communicate and Cooperate

In order to expand the network of CSOs and support the effective performance of their functions, CSO representatives, individually or through their organization, can communicate and seek cooperation with other representatives of civil society, the business community and international organizations and governments, both within and outside their home countries.<sup>28</sup> As we live in a digital age, the right to receive and impart information, not only via media channels but also via the internet and information and communication technologies (ICTs) is accepted. To pursue legitimate aims, the right to form and participate in networks and coalitions in order to enhance communication and cooperation is an important right as well.<sup>29</sup>

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<sup>25</sup> Para 11 of Comment 34 of Article 19 of ICCPR.

<sup>26</sup> Para 21 of Comment 34 of Article 19 of ICCPR.

<sup>27</sup> Human Rights Committee Communication n.1296/2004.

Source: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=CCPR/C/90/D/1296/2004](https://www.un.org/en/ga/search/view_doc.asp?symbol=CCPR/C/90/D/1296/2004), <http://freeassembly.net/foaa-online/conditions-legitimate-restrictions/>

<sup>28</sup> Article 19 and 28 of the UDHR.

<sup>29</sup> William J. McIver, Jr., William F. Birdsall & Merrilee Rasmussen, the Internet and the Right to Communicate, First Monday Peer Review-Journal on the Internet, Vol.8, Nov.12 - Dec 1, 2018.

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## The Right to Freedom of Peaceful Assembly

Civil society representatives have the right to freedom of peaceful assembly individually via their organizations. Article (21) of the ICCPR expresses this as follows:

*"The right of peaceful assembly shall be recognized. No restriction may be placed on the exercise of the right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."*

Pursuant to Article 21, there are three points to be noted. First, international human rights law only protects assemblies that are peaceful, i.e. those that are not violent, and where people who participate in the assembly have peaceful intentions. Peacefulness should be presumed by the authorities.<sup>30</sup> Second, the law should not restrict assemblies or counter-demonstrations, while recognizing the government's responsibility to protect peaceful assemblies and participants in them.<sup>31</sup> Third, restriction on freedom of assembly can only be imposed where it is in conformity with the law and necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.<sup>32</sup>

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<sup>30</sup> A/HRC20/27.

Source: <http://freeassembly.net/wp-content/uploads/2013/11/Best-practices-freedom-of-assembly.pdf>

<sup>31</sup> Ibid.

<sup>32</sup> Article (21) ICCPR.

## The Right to Seek and Secure Resources

Resources are important for every association, and may include financial, material and human resources. Without resources,<sup>33</sup> associations cannot survive and perform their function properly; without the ability to access resources, the right to freedom of association can be rendered meaningless.

The right of CSOs to seek and secure funding from legal sources, including individuals, businesses, civil society, international organizations and inter-governmental organizations as well as local, national, and foreign governments is an integral part of the right to freedom of association.<sup>34</sup> This right is recognized by the Human Rights Committee<sup>35</sup> which states that this right “relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities”.<sup>36</sup> Article 13 of the Declaration on Human Rights Defenders also expressly states that “everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.”<sup>37</sup>

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<sup>33</sup> A/HRC/23/39.

Source: [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39\\_EN.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf).

<sup>34</sup> Human Rights Committee Communication n.1274/2004.

Source: <http://hrlibrary.umn.edu/undocs/1274-2004.html>.

<sup>35</sup> The Human Rights Committee is a Body of independent experts that monitors implementation of the ICCPR by its State parties

<sup>36</sup> Ibid.

<sup>37</sup> General Assembly Resolution A/RES/53/144.

Source: <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>;  
<https://www.protecting-defenders.org/en/content/declaration-human-rights-defender>

Resources can come from domestic, foreign or international sources. Associations shall have the right to seek and receive them freely, regardless of the place where the resources for the pursuit of their activities originate.<sup>38</sup> A State shall not impose undue restrictions on the access of associations to resources on the grounds of the nationality or the country of origin of their source, nor stigmatize those who receive such resources. It is a violation of the right to freedom of association under Article 22 of the ICCPR.<sup>39</sup>

It is possible for States to limit the right to freedom of association (and by extension associations' ability to access resources) but only under very specific and limited circumstances mentioned in Article 22 paragraph 2 of the ICCPR.<sup>40</sup>

### The Right to State Protection

The enjoyment of this right of CSOs relates to the extent of fulfillment of State obligations as an international person; such obligations are the promotion of human rights and fundamental freedoms, and protection of the rights of civil society.<sup>41</sup> The State's obligation is both negative and positive. The negative obligation means to refrain from interference with human rights and fundamental freedoms. The positive obligation means ensuring respect for human rights and fundamental freedoms.<sup>42</sup>

The difference between the two obligations is the State's negative obligation includes merely the State itself refraining from interference with the right and freedom of association.<sup>43</sup> However, the State's positive obligations include not only enacting the law but also implementing practices to protect CSOs from the interference of non-state actors (i.e. private individuals that the state could or should have prevented).<sup>44</sup>

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<sup>38</sup> General Assembly Resolution A/RES/53/144.

<sup>39</sup> Source: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

<sup>40</sup> Ibid.

<sup>41</sup> Article 2 of ICCPR.

Source: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

<sup>42</sup> A/HRC/31/66.

Source: <http://freeassembly.net/reports/managing-assemblyies/>

<sup>43</sup> Para 14 of A/HRC/31/66/.

<sup>44</sup> Para 21 of A/HRC/31/66/.

## **The Role of CSOs in Democracy**

It is not possible to build a democratic society without the active participation of CSOs. Myanmar is currently in transition and moving towards building a democratic society. Therefore, it is very important to understand the role of CSOs in a democracy, so that every citizen is able to participate in the process of building a democratic society. CSOs play a vital role in every stage of the democracy movement. They generate the political pressure for reform, lead to liberalization of the political system and can eventually bring down dictatorial regimes. Generally, the roles of CSOs can be divided into five categories of action which CSOs may be involved in: monitoring, advocacy, promoting political participation, provision of services, and capacity building.<sup>45</sup>

### **Monitoring**

Monitoring is a basic role of civil society. In this process, civil society serves to limit the power of the state, including challenging abuses of authority; monitoring various activities in the country; monitoring human rights and strengthening the rule of law; and monitoring elections and enhancing the overall quality and credibility of the democratic process.<sup>46</sup>

By monitoring, CSOs watch how state officials use their powers, expose the corrupt conduct of public officials and lobby for good governance reforms. Although anti-corruption laws and enforcement bodies may exist, they cannot function effectively without the active support and participation of civil society. Monitoring can reduce political corruption and force government to be more accountable, transparent and responsible to the public.<sup>47</sup>

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<sup>45</sup> Note: It is a difficult task to gauge the number of possible roles of CSOs. However, based on the study of activities of CSOs worldwide, five categories of CSO roles in a democracy emerged but this is not a limited list.

Source: <https://openknowledge.worldbank.org/discover?query=CSOs%20in%20democracy>

<sup>46</sup> Larry Diamond, Development Democracy: Towards Consolidation, John Hopkins University Press, 1999, pp 239-240.

<sup>47</sup> Diamond, op. cit., p. 242.

Civil society organizations have a vital role to play in monitoring the conduct of elections to ensure that the voting and vote counting is entirely free, fair, peaceful and transparent. It is very hard to have credible and fair elections in a new democracy unless civil society groups perform this role.

### **Advocacy**

Advocacy here refers to the role of CSOs in lobbying directly for the policy options they prefer or against those they oppose and which policy influences positively attempts at consolidating democracy. Advocacy includes the many activities that CSOs undertake including media campaigns, public speaking, commissioning and publishing research or conducting exit polls, among others.<sup>48</sup> For instance, CSOs lobby for access to information, including freedom of information laws, and for rules and institutions to control corruption. They may lobby for the needs and concerns of their members, as women, students, farmers, environmentalists, trade unionists, lawyers, doctors, and so on. CSOs can help interest groups by presenting their views to the legislative body (i.e. Hluttaw in Myanmar), by contacting individual members and testifying before parliamentary committees. They can also establish a dialogue with relevant government ministries and agencies to lobby for their interests and concerns.

### **Promoting Political Participation**

A third function of civil society is to promote political participation. CSOs can do this by educating people about their rights and obligations as democratic citizens, and encouraging them to listen to election campaigns and vote in elections. CSOs can supplement the role of political parties in encouraging people to get involved in politics, especially as a voter in elections.<sup>49</sup>

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<sup>48</sup> Elizabeth J.Reid, "Understanding the Word 'Advocacy': Context and Use" in Nonprofit Advocacy and the Policy Process Seminar Series Vol. 1, edited by Elizabeth J.Reid, The Urban Institute Press, 2000, p. 1-8.

<sup>49</sup> Gordon White,"Civil Society, Democratization and Development: Clearing the Analytical Ground", Democratization Journal, Vol.1 Issue 2, 1994, p. 375-390.

<https://doi.org/10.1080/13510349408403399>

## **Provision of Services**

Civil society organizations can help inform the public about important public issues. This is not only the role of the mass media, but also of CSOs which can provide forums for debating public policies and disseminating information about issues before parliament that affect the interests of different groups, or of society at large. CSOs can also help develop citizens' skills to work with one another to solve common problems, to debate public issues, and express their views.<sup>50</sup>

One important role of CSOs is mediating and helping to resolve conflict in society. CSOs may develop formal programmes and training of trainers to relieve political and ethnic conflict and teach groups to solve their disputes through bargaining and accommodation.<sup>51</sup>

## **Capacity Building**

CSOs can play a role in capacity building by providing support to communities, institutions of the state or other CSOs and related bodies. CSOs can also train future political leaders. People who participate in the activities of CSOs can learn how to raise public awareness, organize and motivate people, publicise programmes, reconcile conflicts and build alliances. As a result, they learn how to deal with political challenges and are able to be competent political leaders.<sup>52</sup>

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<sup>50</sup> Andrew Clayton, Peter Oakley & Jon Taylor, "Civil Society Organization and Service Provision", United Nations Research Institute for Social Development, 2000.

[http://www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/19AB2640214382A380256B5E004C94C5/file/intrac.pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/19AB2640214382A380256B5E004C94C5/file/intrac.pdf)

<sup>51</sup> Ibid.

<sup>52</sup> Diamond, op. cit., p.245

## **Summary**

To summarize, international principles protect the rights of CSOs and provide an environment for CSOs to operate freely in promoting democracy. Citizens' rights to participate in civil society are included in the constitutions of many states. Interference with CSOs' rights can only be justified where it is in conformity with the law and necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. CSOs have an important role in every stage of the democracy movement. Strong and reliable CSOs can represent the interests of the people. They generate the political pressure for reform, lead to the liberalizing of the political system, and eventually can bring down dictatorial regimes. The efforts of CSOs help the government to be more honest, transparent, accountable and responsive to people's needs.

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# The Right to Peaceful Assembly

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## Introduction

The right to peaceful assembly is an internationally recognized fundamental human right. It is the right of individuals to come together to express their support or grievances about shared values, ideas or issues. The right to peaceful assembly enables people to participate in the governance of their country by creating conditions for people to echo their collective and shared voices. By exercising the right to peaceful assembly, individuals can shape and transform their societies for the better.

The right to peaceful assembly is one of the cornerstones of a democratic system of government that respects human rights and upholds plural views, values, and identities. Along with other political rights and civil liberties, the right to peaceful assembly contributes towards the development of a democratic, open, and free society. It also advances the values of solidarity and fraternity among individuals and groups in society, which is an important ingredient for stability, peace, and

development of democratic states. However, failure to recognize the right to peaceful assembly can lead to conflict, instability, and chaos, and can adversely impact on the democratic development of states.

The right to peaceful assembly has three main components. The first is the contents of the right to peaceful assembly: what is the right to peaceful assembly about? The second is the subject of the right to peaceful assembly: who are the right holders or who can have the right to peaceful assembly? The third is the addressee of the right to peaceful assembly: who is the duty bearer or responsible body to implement the right to peaceful assembly? In addition, it is also useful to look at the right to peaceful assembly during a state of emergency and conflict situations. In the remainder of this chapter, we see the right to peaceful assembly in light of these components and circumstances.

### **Contents of the Right to Peaceful Assembly**

The Universal Declaration of Human Rights (UDHR) recognizes the right of everyone the right to peaceful assembly in Article 20 (1). Following the UDHR, the International Covenant on Civil and Political Rights (ICCPR) and other regional human rights conventions in the Americas, Africa, and Europe reaffirm the recognition of the right to peaceful assembly. The Association of Southeast Asian Nations (ASEAN) Human Rights Declaration follows a similar course in recognizing the right to peaceful assembly in Article 24. As the ICCPR has a broader international application and comprehensive treatment of the right to peaceful assembly, this chapter takes it as a subject of discussion.

Article 21 of the ICCPR is allocated to the right to peaceful assembly and reads as follows:

*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

The right to peaceful assembly has to be peaceful. Violent assemblies are not protected by the right to peaceful assembly. Assemblies have to be conducted in a peaceful manner. However, participants in the right to peaceful assembly can express their dissatisfaction, grievances, and opposition about a certain subject matter in as much as they can show their agreement, support, and solidarity to the same. Nonetheless, the fact that some violence or conflict erupts during the conduct of the assembly will not make it a violent assembly. Instead, persons responsible for the incident will be held responsible and accountable in accordance with the law.

The right to peaceful assembly can be conducted in a public space or publicly accessible private property. As it is a public activity, the right to peaceful assembly should be conducted in a public place accessible to the general public. It is also possible to have peaceful assembly in a private property if it is accessible to the general public. Nevertheless, it cannot be conducted in a private property not accessible to the public.

Peaceful assemblies can be exercised through various forms. They can be exercised through demonstrations, protests, public or town hall meetings, processions, strikes, rallies, and sit-ins.

The right to peaceful assembly is not an absolute right. It has some legitimate limitations. In this regard, there are two major limitations. The first limitation comes from Article 20 of the ICCPR. According to this Article, if the assembly is about a propaganda for war, an advocacy of national, racial or religious hatred or an incitement to discrimination, hostility or violence, it is prohibited. The second limitation comes from Article 21 itself that recognise the right to peaceful assembly. There are some legitimate restrictions to the right to peaceful assembly in the interest of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.

The restriction of the right to peaceful assembly under Article 21 is not without limitations. The restrictions or limitations have to fulfil the elements of legality, necessity, and proportionality in a democratic society. First, the limitations have to be imposed by law not by some officials or state administrators. Second, the limitations have to be necessary without which the existence of a democratic society will be threatened. Third, the limitations have to strike a proper balance between the nature and extent of the interference to the right to peaceful assembly and the reason for such interference. Hence, the limitations to the right to peaceful assembly should be narrowly designed.

### **Holders of the Right to Peaceful Assembly**

As the right to peaceful assembly is a human right, it is applicable to everyone without discrimination. As a result, everyone who lives in the territory of a state has the right to peaceful assembly. Accordingly, it can be exercised by citizens and non-citizens such as foreign nationals, migrant workers, asylum seekers, and refugees. Moreover, the right to peaceful assembly is also applicable to children who may not have the right to vote and to be elected.

Although the right to peaceful assembly is an individual right, it can only be exercised collectively with others. The existence of a common purpose, shared vision, similar views, and ideas bring many individuals together to peacefully assemble and express their ideas and views. The purpose and vision that brought individuals together have to be primarily related with public or societal affairs.

According to international standards, there is no condition to exercise the right to peaceful assembly. However, in order to conduct a peaceful assembly, organisers may notify the state authorities in advance. Even if prior notification is an important element for the smooth operation of assemblies, its absence will not make the conduct of peaceful assembly unlawful. Nevertheless, notification is important for both the organizers and the state authorities to cooperate in the exercise of peaceful assemblies to protect the safety and the security of the participants, on the one hand, and the safety and security of others and property, on the other.

## **The Duty Bearers of the Right to Peaceful Assembly**

The right to peaceful assembly imposes a range of duties on the state. As every human right, as provided in Article 2 of the ICCPR, the state assumes three general duties towards the right to peaceful assembly. The first duty is to respect the right to peaceful assembly that the state should not interfere or refrain from interfering in peaceful assemblies. This basically means that the state should leave participants of the right to peaceful assemble alone and it should be accommodative of peaceful assemblies even if they are directed against the state. This duty is usually called a negative duty of the state as it requires the state to refrain from interfering in the exercise of the right that it should not prohibit, block or disrupt peaceful assemblies without good cause as noted above.

The second duty is to protect the right to peaceful assembly. This duty includes the adoption of legislative, executive, administrative, and judicial measures to give effect to the right to peaceful assembly. The enactment of laws, the deployment of law enforcement agencies during assemblies, protection of participants, and provision of effective remedies in case of violations are some of the duties of the state in this regard. The duty to protect is usually called a positive duty of the state as it requires state action and positive intervention for the enjoyment of the right to peaceful assembly.

The third, and final, duty is the duty to fulfill the right to peaceful assembly. This duty requires the state to take all necessary measures to realize the full implementation of the right to peaceful assembly. The state has to proactively create a suitable and enabling environment for the realization of the right to peaceful assembly. Like the duty to protect, the duty to fulfill is a positive obligation of the state aimed at advancing and realizing the right to peaceful assembly.

## **The Right to Peaceful Assembly during a State of Emergency and Conflict**

In addition to the substantive limitations to the right to peaceful assembly as noted in section II, the existence of some circumstances and situations can limit its application. The existence of a state of emergency is one of the circumstances that suspend the exercise of the right to peaceful assembly. A state of emergency is a situation in which the government is allowed to do or take some exceptional measures which otherwise are prohibited normally. Emergency situations include, among others, the occurrence of a natural disaster, civil war or civil unrest, and armed conflict.

If these situations threaten the life of the nation, the government can officially proclaim a state of emergency and can derogate from some of its human rights duties to the extent strictly required by the exigencies of the situation. According to Article 4 of the ICCPR, the right to peaceful assembly is a derogable right and, consequently, its application in a state of emergency can be suspended. However, the government should expressly declare that the right to peaceful assembly is suspended for the duration of the state of emergency. If the government does not include the right to peaceful assembly in the list of derogated rights, it will still be applicable in a state of emergency despite the existence of civil unrest or conflict. Thus, the existence of a state of emergency and conflict in itself does not suspend the applicability of the right to peaceful assembly.

## **Conclusion**

The right to peaceful assembly, therefore, is an individual right exercised collectively in a public space to express or advance some shared views, ideas, agendas, and values in a peaceful manner. It is an important right for the development and sustainability of a peaceful and democratic society. And the state assumes the duty to respect, protect, and fulfill the right to peaceful assembly. The right to peaceful assembly is not an absolute right and can be limited in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others when necessary in a democratic society. Moreover, the right to peaceful assembly can be suspended temporarily during a state of emergency. However, while the limitation to the right to assembly has to pass the test of legality, necessity, and proportionality, its suspension should be narrowly designed to the extent necessary by the exigencies of the emergency situation.

## **Editorial Note:**

*Brief comment should be made regarding the state of the right to assembly for CSOs in Myanmar. Current political conditions in Myanmar pose challenges for analysis of the right to assembly, including difficulties for authors engaged in public commentaries about the content of laws on the right to assembly for CSOs. The right to assemble in groups for political purposes is a component of public deliberation, and so is an important element in the operation of effective democracy. CSOs are groups of people trying to address shared concerns, and the existence of CSOs with political purposes are a common feature of functional democracies. International and domestic observers, however, have noted that the activities of CSOs in Myanmar are affected by a mixture of laws on free speech and free assembly, including examples such as the Right to Peaceful Assembly and Procession Law (2011, along with its 2016 amendments and currently proposed amendments), the Telecommunications Law (2013), the Unlawful Associations Act (1908), and the Penal Code (1861). Readers are left to compare current Myanmar law with international standards.*



# Laws and Strategies regarding the Right of Free Expression for CSOs in Myanmar

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Dave Seibert

## Relevant Laws

The right of free expression can be sourced in the 2008 Constitution. However, protections and limitations to freedom of expression are found throughout the law, including:

- \* Burma Laws Act of 1898 ("BLA");
- \* Constitution 2008 ("Constitution");
- \* Electronic Transactions Law of 2004 and 2014 amendment ("ETL");
- \* Evidence Act of 1872 ("EA");
- \* Limitation Act of 1909 ("LA");
- \* Penal Code of 1861 ("Penal Code"); and
- \* Telecommunication Law of 2013.

## Constitution

Upon a plain reading of the Constitution, the principal rights of freedom of speech are clear. The Constitution at Section 354 states:

*"Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality:*

- a) *to express and publish freely their convictions and opinions;*
- b) *to assemble peacefully without arms and holding processions;*
- c) *to form associations and organizations; and*
- d) *to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths."*

Collectively, these are akin to the basic personal freedoms we see in other countries. Generically, we have come to refer to these personal freedoms in Section 354 a) to c) as:

- the freedom of expression;
- the freedom of press;
- the freedom of assembly; and
- the freedom of association.

These freedoms extend to communications that are publicly made and displayed. For instance, the freedom of assembly extends to public assembly. If assembled publicly, there is not a per se limitation or restriction on this activity. Pursuant to this right, no government entity or third party can interfere with this freedom.

A reader should understand that these are not without limitation; such limitations are explained further below.

As well as these freedoms, or public rights, the Constitution protects private communication. Guidance for this can be found in the Constitution at Section 357: "The Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of this Constitution."

So, it is worth noting that there is a distinction between private and public speech. This right to privacy, simply stated, can be interpreted as meaning that a government entity or third party cannot intercept or otherwise require disclosure of private communications. It is not intended to be public and the Constitution protects this private speech. This basic right is the foundation upon which further protections are premised, as explained in further detail below, under the Electronic Transactions Law and the Telecommunications Law. Understanding what speech is protected is informed by looking at what is not protected. In other words, the freedom of expression is fundamental and constitutionally protected. However, these personal rights and freedoms are not absolute and without limitation.

## **Prohibitions and Limitations**

### **(a) Defamation**

While the Constitution may provide for a number of expression-related freedoms, it is understood that the freedom of expression ends where another person's freedom to not be defamed begins. That is to say, the law providing the freedom of speech does not extend to the right to defame someone.

#### *Penal Code 1861*

Legal provisions on libel and slander are embodied in the Penal Code as "defamation." Allegations or declarations relating to a person (the term "person" includes a company or association) can be in verbal, written, or gestural with the intention of harming the reputation of that person. "Gestural" means a visible representation, in other words actions which convey a meaning.

Section 499 of Penal Code defines defamation as follows:

*"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."*

This text is followed, in the Penal Code, by a number of explanatory illustrations and exceptions.

Explanation 1 extends the limitations of section 499 to the deceased. It is defamation of a deceased person “if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or near relatives.” Section 499, under both instances, has an element of intent, or mens rea.

Section 499, at explanation 4, further explains, “no imputation is said to harm a person’s reputation unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state or in a state generally considered as disgraceful.”

This deviates a bit from creating a clear standard as to what qualifies as “defamation”. However, generally it should be cautioned that the law allows for a wide interpretation as to what is defamatory. Under this explanation 4, the estimation of others is weighed in determining if a statement is defamatory. So, where it may be difficult to prove a mens rea, or intent, the court may look to the impressions of the recipients of the statements to see how the statement was received. This creates a potentially unfavourable precedent for finding a low threshold may be applied in determining if a statement was defamatory. It would appear that one person’s opinion that a statement has lowered the credibility of a person is enough. For example, if an utterance is made and the recipient believes the person being discussed is in any less of a position than they were previous to the utterance, in that one person’s opinion, then this may be defamatory and prosecuted under the Penal Code. This then means that the aggrieved party need not to show personally that they were harmed in some way.

There are certain exceptions for instances that will not amount to defamation under the Penal Code. For example, true statements cannot be defamatory, regardless of the intention of the person communicating the statement. Also, a publication concerning a specific person made in the public interest, publication of a true report of court proceedings, and expressions made in good faith of any opinion regarding the merits or demerits of any performance, which its author submits for the judgment of the public, each cannot be found to be defamatory. Defamation is not committed if the disclosure is required by any authority.

Section 500 of the Penal Code prescribes up to two years of imprisonment for defaming another. Section 501 extends liability to those who know, or have good reason to know, they are printing (or engraving) a defamatory statement. The law was enacted well before social media. However, Section 501 makes it clear that those who use a written medium can be guilty of defamation; this written medium would include posting online.

Defamation is also considered a cognizable criminal offence, meaning the defendant can be arrested without a warrant or court order and further investigation can begin after the arrest. The accused could be arrested simply upon being accused. The defendant may apply for bail upon being arrested.

The uncertain threshold for guilt and the fact that defamation is a cognizable criminal offense, subject to up to two year imprisonment, taken together, make the charge of defamation rather serious.

#### *The Electronic Transactions Law 2004*

Creating, modifying or altering information or distributing information created by electronic means cannot be covered under the rather antiquated Penal Code. Instead these actions are punishable under the Electric Transactions Law 2014.

The Electronic Transactions Law 2004 and the law amendment of 2014, together provide that whoever creates, modifies or alters information or distributes information created, modified or altered by electronic technology that is detrimental to any organization or person shall, on conviction, be subject to a fine from MMK 5 million to 10 million. Failure to pay the fine will result in imprisonment of between one to three years under the Electronic Transactions Law.

#### *The Telecommunication Law 2013*

Section 66(d) of the Telecommunication Law 2013 also provides that anyone who extorts, defames, disturbs, or threatens any person by using any telecommunications network shall be punishable with imprisonment for up to two years, a fine of up to MMK one million, or both. In order to file a lawsuit at a competent court under Section 66 (d) of the Telecommunication Law, prior permission from the Ministry of Telecommunication and Information Technology must be obtained and must be filed by the victim him/herself or by his/her authorized representative.

#### *Tort*

In addition to criminal actions, civil suits claiming compensation for libel and slander, i.e. defamation, can also be instituted under the law of torts. However, there is no prescribed statutory relief provided under any civil law for those harmed by defamatory statements. This means that the harm and resultant damages would need to be proven in a civil action. It is not clear what precisely would be weighed as a preponderance of evidence to support the calculation of damages but it is noteworthy to say that the claim for damages must be supported.

Suits must be filed within one year from the date the libel is published under the first schedule of LA. The timeframe is the same for slander. In considering the merits of the suit and damages under the law of tort, the decision shall be rendered in accordance with justice, equity and good conscience under Section-13(3) of the Burma Laws Act 1898.

### **(b) Intimidation, Threats, and Insults**

Another restriction to the freedom of expression lies in the criminal offense of “threats.” Under the Penal Code at Section 503:

*“Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation”.*

Similar to the defamation restrictions above, the explanatory note extends to protect the reputation of any deceased person.

The criminal activity turns on whether there is “harm.” The question of what is harm can be widely interpreted and a clear precedent cannot be established, and would therefore be considered on a case-by-case basis.

Section 504 extends the liability to intentional insults, based on the resultant behaviour of the recipient, not necessarily based on what was communicated. “Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence”. This creates a rather wide window of opportunity to be found guilty to an insult. This means that the court may look solely at the result of the communication. The mens rea (mental state or intent) is not specifically required to be considered.

Independent of Section 504 above, Section 505 of the Penal Code looks at the intent of the actor in publishing statements which may result in acts against the state. Again, the mens rea must be shown. Section 505 states that “whoever makes, publishes or circulates any statement, rumour or report with intent to cause, or which is likely to cause, fear or alarm to the public whereby any person may be induced to commit an offence against the State or against public tranquility” or “intent to incite, or... likely to incite, any class or community of persons to commit any offence against any other class or community.”

The exception provided under Section 505 gives some support to the mens rea requirement by excepting behaviour which the person making, publishing or circulating the statement “has reasonable ground for believing that such statement... is true and makes, publishes or circulates it without any such intent...” Because the Penal Code was issued prior to social media, as is the case with defamation, it is assumed that these prohibitions are extended to online communications, i.e. especially posting on social media.

Finally, the Myanmar Penal Code has “attempt” provisions. In other words the above criminal defamation and intimidation behavior is criminal if actually performed, but also if “attempted” to be performed. So, where the actor attempts to make an illegal statement but fails to do so, the attempt to do the act may be enough to find criminal liability. For example, someone writes a defamatory statement and prints 1,000 copies with the intent to distribute them in the neighbourhood. But while carrying the copies to the neighbourhood centre a storm hits and washes away the ink and renders the copies completely unreadable, this is still an attempt to defame someone. This is criminal activity. It is not dispositive evidence to avoid criminal liability to simply show that the attempt to defame failed. The penalty for attempt is one-half of the prison sentence and/or fine associated with performing the act.

# **Law and Strategies regarding the Right to Privacy and Information for CSOs in Myanmar**

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## **Introduction**

The right to privacy and the right of access to information are components of the most fundamental human rights. With the enormous growth of the Information Technology (IT) revolution, the importance of privacy and right of access to information has been highlighted in many human rights discussions. Between these two rights, there are conflicts in concept and practice explained in this chapter.

Privacy rights mainly focus on protecting a person's private information from being unlawfully disclosed, while the right to information pursues public access to information mainly from government but also from individuals. Therefore, a government is responsible not only to protect the privacy rights of its citizens but also to provide right to access to information through legislative and executive actions.

## **Right to Privacy**

Privacy means the quality or condition of being free from public attention or intrusion into one's actions.<sup>53</sup> Privacy underpins human dignity and other key values such as the freedom of association and the freedom of speech. The right to privacy is clearly recognized in international treaties such as Article 12 of the United Nations Declaration on Human Rights (UDHR), Article 17 of the International Covenant on Civil and Political Rights (ICCPR), Article 8 of the European Convention on Human Rights (ECHR) and Article 21 of the ASEAN Human Rights Declaration (AHRD). For example:

- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. (Article 12, UDHR) (Article 17, ICCPR)
- Every person has the right to be free from arbitrary interference with his or her privacy, family, home or correspondence including personal data, or to attacks upon that person's honor and reputation. Everyone has the right to the protection of the law against such interference or attacks. (Article 21, AHRD)

Privacy means an individual's private or family life, home, honor or reputation. In AHRD it includes personal data which is part of a person's fundamental property, for example a person's blood type, DNA, medical, financial, banking, occupational information, etc.

In summary, a government is responsible for protecting such rights from being violated by either individuals or public authorities. Two basic ideas underlie the right to privacy: 1) everyone must have the right to his or her privacy, and 2) government should protect this right through legislation and its administration.

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<sup>53</sup> Black's Law Dictionary

## **Right to Privacy in Myanmar**

A Constitution is a fundamental legal contract between a state and its citizens. The fundamental rights of citizens are enshrined in it. The right to privacy is embodied in the 2008 Constitution of the Republic of the Union of Myanmar.

Section 21 of the current 2008 Constitution of the Republic of the Union of Myanmar states as basic principles of the Union that:

- (a) Every citizen shall enjoy the right of equality, the right of liberty and the right of justice;
- (b) No citizen shall be placed in custody for more than 24 hours without the permission of a Court;
- (c) Every citizen is responsible for public peace and tranquility and prevalence of law and order;
- (d) Necessary laws shall be enacted to make citizen's freedoms, rights, benefits, responsibilities and restrictions effective, steadfast and complete.

Section 353 of the 2008 Constitution also states that "nothing shall, except in accord with existing laws, be determined to the life and personal freedom of any person." This provision applies to not only citizens but also to half or non-citizens. Further, Section 357 states that "the Union shall protect the privacy and security of home, property, correspondence and other communications of citizens under the law."

## **The Law Protecting the Privacy and Security of Citizens, 2017**

According to Section 21 (d) of the 2008 Constitution, the State is obliged to legislate laws ensuring fundamental rights are guaranteed in the Constitution as necessary. Thus in 2017, the Union Parliament promulgated the Law Protecting the Privacy and Security of Citizens by Law No. 5/2017. Under Section 2(c) of the law, “privacy” means the right to freedom of movement, freedom of residence and freedom of speech of a citizen in accordance with the law. Under Section 2(d), “security” means security of the private affairs of a citizen. It includes the security of a compound or building, possessions, correspondence and other communications of a citizen. “Privacy” and “security” are closely connected.

Section 2(e) of the same law lays out that the Ministry of Home Affairs is the relevant ministry regarding the protection of privacy and security of Myanmar’s citizens. In Section 2(f), “responsible authorities” means the relevant government department, organization or officials. Within the scope of this term, common types of responsible authority are police, prison officials and members of local administrative bodies.

Sections 3 and 4 guarantee the privacy and security of citizens. Section 3 states that citizens have the right to enjoy their privacy and security as prescribed by the Constitution. Section 4 requires that relevant ministries, government departments, and responsible authorities protect the privacy and security of citizens.

The Ministry of Home Affairs is responsible for ensuring the privacy and security of citizens under this law. Therefore, under Section 5, the relevant Ministry and Responsible Authorities shall:

- (a) *"Ensure that there is no damage to the privacy and security of Myanmar's citizens except where this occurs in accordance with existing law.*
- (b) *When acting in accordance with existing law, not enter into a person's residence or a room used as a residence, or a building, compound or building in a compound, for the purpose of search, seizure, or arrest, unless accompanied by a minimum of two witnesses who should be Ward or Village Tract Administrators, Hundred- or Ten-Householder Heads."*

This means that relevant authorities are authorized to exercise their lawful power against the right to privacy and security in certain circumstances. So, it is important for a citizen to understand whether a public authority is exercising their power legally correctly or not.

Section 6 of the law allows individuals who have grievances regarding violations of their privacy and security to make a complaint to the relevant ministry or authorities. Authorities receiving the complaint must reply to the complainant within 30 days, stating the reasons and advising which department the complaint should be directed to. Section 9 of the same law summarizes this by saying "whoever suffers violation of any of the prohibitions under Section 7 and 8 of this law may make a report to the police." The police, on receiving such a report shall take immediate action in accordance with Section 154 of the Criminal Procedure Code. Under the procedures of Section 154, the police shall, if the report is given orally, put it in writing either by the complainant or under his direction. This should be read over to the informant, and all the information should be kept by the officer.

Section 7 states that unless a detention is lawful, no one shall be detained for more than 24 hours without permission from a Court. This is a universally accepted practice. If a person is arrested, he should be brought before a magistrate within 24 hours. Detention should not be routine (Police Manual paragraph 1785). Bail is a general right and the presumption of innocence demands that detention be the exception, not the rule.<sup>54</sup> To detain a person more than 24 hours must be in accordance with Section 167 of the Criminal Procedure Code. The detainee shall be brought, heard and given right to a defense before the Court in a remand hearing where the Judge decides on a remand order or releases the accused. This is a constitutional right. Section 376 of the 2008 Constitution says that:

*“No one shall be held in custody for more than 24 hours without the remand of a competent magistrate, except for matters on precautionary measures taken for the security of the Union, prevalence of law and order, peace and tranquility in accord with the law, in the public interest.”*

Moreover, in the absence of an order issued in accordance with existing law, or permission from the Union President or a Union level Government, the following actions are prohibited by Section 8 of the Law:

- (a) Entering into a private residence for the purpose of search or arrest
- (b) Surveillance or investigations that disturb privacy, security and dignity
- (c) Intercepting or disturbing any communications between persons
- (d) Obtaining personal telephonic and electronic communications data from operators
- (e) Searching, seizing or destroying any correspondence, envelope, package or parcel
- (f) Unlawfully interfering in a person's personal matters to harm his or her reputation
- (g) Unlawfully seizing movable or immovable property of a citizen

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<sup>54</sup> Stevens, J. (2018), Myanmar Criminal Defence practice Manual, International Bridges to Justice, Myanmar

However, public authorities may exercise their lawfully vested powers against or beyond the prohibitions prescribed in Section 7 and 8 of this law. With regard to conducting of search, seizure and arrest by a public authority, mainly the police, Section 149 of the Criminal Procedure Code notes that:

*"Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent the commission of any cognizable offence."*

'Cognizable offence' means a criminal offence that needs immediate action, it is punishable with a severe sentence and the police may arrest without warrant. (For more detail of the types of criminal cases, see Second Schedule of the Criminal Procedure Code, 1898.)

Section 8<sup>55</sup> (a) of the Law Protecting the Privacy and Security of Citizens 2017 prohibits entering into a citizen's private residence for the purpose of search, seizure or arrest. However, authorized persons are allowed to exercise lawful search, seizure or arrest. This point is made clear in Section 47 of the Criminal Procedure Code:

*"If a person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within any place, the person residing in, or being in charge of such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein."*

In this situation, there are two types of person who can enter and search a building or place where the person to be arrested is believed to have entered or is hiding: (1) a police officer with authority to arrest (2) anyone acting with a warrant of arrest. The person residing in that building shall cooperate with those persons.

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<sup>55</sup> NOTE: Hereinafter, Section 8 and relevant sub-sections shall refer to Section 8 (a) to (g) of the Law Protecting the Privacy and Security of Citizens 2017

Obviously, the exercise of due process is important in this situation although this does allow certain people with authority to enter into a person's residence to search and arrest. Moreover, there are exceptions where public authorities can exceed the prohibitions. Section 48 of the Criminal Procedure Code states that:

*"Persons being authorized or the police officer thereof to enter into a residence or correspondence as aforesaid in Section 47 shall, if he cannot otherwise obtain admittance after announcement of his authority and purpose and demand of admittance duly made, lawfully make to get an entrance or to search into such place, and to break open any outer or inner door or window of any house or place whether that of the person to be arrested or of any other person."*

Section 8 (e) prohibits anyone to open, search, seize or destroy another person's private correspondence, envelope, package or parcel. However, under Section 94 of the Criminal Procedure Code, the Court or any officer in charge of a police station is authorized as follows:

*"Where any Court or officer in charge of a police station considers that production of any document or other thing is necessary for the purposes of investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order."*

This does not, however, apply to evidence or disclosure of unpublished official records relating to state affairs and official confidence made to a public officer where he believes that public interest would suffer from disclosure of that information (Sections 123 and 124 of the Evidence Act, 1872 respectively). Further, the provision of Section 94 of the Criminal Procedure Code shall not apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authorities.

Under Section 8 (g), every citizen shall be protected and free from having their lawfully-owned moveable or immoveable property being seized or intentionally destroyed either directly or by indirect means. This reflects the provision of Section 356 of the 2008 Constitution, which states that: “The Union shall protect according to law moveable and immoveable properties of every citizen that are lawfully acquired.”

Section 8 (b) prohibits surveillance, spying or investigation in a manner disturbing the privacy and security or affecting the dignity of a citizen. Section 8 (c) and (d) also stipulate that every one shall be free from being intercepted or disturbed in their communications with other persons; no one shall demand or obtain a person's personal telephonic and electronic communications data from telecommunication operators. Section 8 (f) also ensures that no one shall interfere with a citizen's personal or family matters or act in any way to slander or harm their reputation. This includes social media privacy breaches in Myanmar. These rights are enshrined in the 2008 Constitution Sections 353 and 357.

Likewise, under Section 66 (d) of the Telecommunication Law 2013, activities that extort, defame, disturb or threaten any person by using any telecommunication network is strictly prohibited and shall, on conviction, be liable to imprisonment not exceeding 2 years or to a fine not exceeding one million, or both. Section 66 (d) is mainly applicable in the telecommunication sector; its provisions also protect the privacy and security of a citizen's private life from threats via telecommunication networks.

Accessing and disturbing a telecommunication network, altering or destroying the determination of technical standards without permission to do so and also stealing, cheating, misappropriation or mischief of any money or property by using telecommunication networks, are prohibited under Sections 66 (a) and (c) of the Telecommunication Law 2013 and shall, on conviction, be liable to imprisonment of not exceeding 3 years, or a fine, or both.

The offences covered in the Telecommunication Law of 2013 are cognizable offences under its Section 80, which means police may take action without a warrant. It does not explicitly say whether they are bailable or not. The Law Protecting the Privacy and Security of Citizens 2017 does not state whether the offences are cognizable or not. However, a bill amending that law proposes that offences contained in the Law shall be regulated as bail able offences.

The penalty provisions of the Law Protecting the Privacy and Security of Citizens 2017 are provided in Sections 10, 11 and 12 and tabulated as follows:

Section	Provision	Punishable to	Imprisonment	Fine
Section 10	Violation of Section 7 or 8 of the LPPSC Law 2017	Anyone who commits	6 months to 3 years	300,000 kyats to 1,500,000 kyats
Section 11	Failing without due cause to assume the duty under Section 9 of the LPPSC Law 2017	Police Officer	1 year up to 5 years	500,000 kyats to 2,500,000 kyats
Section 12	Encouraging, ordering or abetting any offence under the LPPSC Law 2017	Anyone who encouraged, ordered or abetted	Sentence equivalent to that of the crime committed thereof	

(Comparison of communication related offences and penalties of the Law Protecting the Privacy and Security of Citizens 2017 and the Telecommunication Law 2013:)

Law Protecting the Privacy and Security of Citizens 2017	No one shall be intercepted in their communication with other persons. (Section 8 c) No one shall demand or obtain personal communications data from telecommunication operators. (Section 8-d)	6 months to 3 years	300,000 kyats to 1,500,000 kyats
Telecommunication Law 2013	Accessing, disturbing a telecom network, altering or destroying technical standards or an original form owned by another person without permission. (Section 66-a) Extorting, defaming, disturbing, or threatening any person using any telecom network. (Section 66-d)	3 years (66-a)  2 years (66-d)	With fine (amount not specified)

Section 13 of the law stated that the Law Protecting the Privacy and Security of Citizens shall prevail, notwithstanding anything contained in other existing laws, in the violation of privacy/security related rights of the individuals. Therefore, it is assumed that violation of privacy/security over a telecom network should come under this law.

### Right to Information

*“A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives”.*

James Madison, the fourth president of the United States explained the salience of the power of information as early as 1822.<sup>56</sup> This right is also enshrined in Article 19 of both UDHR and ICCPR, which states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

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<sup>56</sup> Roy Reled and Yoram Rabin, “The Constitutional Right to Information”, Columbia Human Rights Law Review [42:357], p. 360

## **Right to Information in Myanmar**

Although in the 2008 Constitution of Myanmar the right to information is not explicitly guaranteed as fundamental rights of the citizens to request and receive information from the government or its agencies, Section 4 of the 2008 Constitution states that the sovereign power of the Union is derived from the citizens. This implicitly supports that a citizen should be entitled to the right to access government information.

## **Myanmar Official Secrets Act 1923**

Nevertheless, Section 3 and 5 of the Myanmar Official Secrets Act 1923 limits people for obtaining, sharing information about the government. It defines information as codes, passwords, sketches, plans, models, articles, notes or documents. These sections do not include any limitations.<sup>57</sup> A tabulated summary of Sections 3 and 5 is as follows:

Section	Provision	Prohibited to	Punishment
Section 3	Prohibits collecting, publishing or communicating information that may be useful to an enemy.	Anyone	14 years of imprisonment for committing the offence in any defense, military, station, minefield, factory, dockyard, camp, ship or aircraft 3 years for other cases
Section 5	Prohibits possessing, controlling, communicating, using, retaining or receiving information classified as secret under the law.	Anyone	2 years of imprisonment or with fine or with both

<sup>57</sup> <http://freeexpressionmyanmar.org/official-secrets-act/>

## **News Media Law 2014**

The right of access to information is, to some extent, provided to news media workers in Chapter 3 of the News Media Law, 2014. According to this law, media workers may investigate, publish and broadcast information and related opinions to which every citizen is entitled, may collect information, and be provided with accommodation and entry to certain offices, departments and organizations in accordance with the rules and regulations of relevant departments. They may also request to see news and information which is accessible to the public except statements, photographs, and records whose security is rated as high by law or by directives of a certain authority. They may also ask for information from non-governmental organizations, associations or enterprises which are running their operations with public funds.

## **Consumer Protection Law 2019**

In the new Consumer Protection Law 2019, the right to information of consumers is also added. The information in this law is about products and services. Under Section 19(c), consumers have the right to accurate information, and to access and receive evidence thereof in making their selection of goods or services. Also, in Section 19(g), the consumer shall have the right to know all necessary knowledge and their rights relating to goods and services. According to Section 21(a), it is the duty of any enterprise to provide simple and accurate information about their goods or services. Under Section 21(e), the enterprise shall, if in nature the product is to be tested, give the consumer the chance to test the quality of the goods before he or she buys it. In Section 21(j), an enterprise has a duty to inform the department of consumer affairs and the public if their product or service is hazardous. Under Section 22, the enterprise is responsible for providing information about its products which cannot be seen through human eyes. Under Section 23(g), the enterprise is responsible to provide goods comply with the quality declared in the instruction, advertisement, proposal or promotion. 24(d), if the enterprise fails to provide sufficient information about its product, the consumer has the right to redeem compensation for any damage caused by lack of information. According to Section 26(a) and (b), the enterprise is responsible for providing any necessary information about its services and responsible for

providing those services as declared thereof. Otherwise, the consumer has the right to compensation under Section 27. The Department of Consumers Affairs is also responsible to supervise the standards of goods and services and under Section 29 (e), upon finding of hazardous goods or service, shall be responsible to announce such information to the public. Under Section 34, regarding hazardous products or goods to be withdrawn from the market, the Department of Consumer Affairs has a duty to disseminate accurate information to consumers. An enterprise is also responsible for including indications or instructions about its product under Section 41.

### **Occupational Safety and Health Law 2019**

The Occupational Safety and Health Law of 2019 aims to promote safe and secure working environments for workers, and also contains provisions relating to information. Under Section 26 of this law, the employer is responsible for providing employees with necessary information about working site safety, health instruction, precautions, through notices, posters and direction signboards in accordance with specification. The employer should also provide, distribute and create easy access for the employee to the knowledge, technology, skills and perceptions included in the worksite safety and health manual and directives distributed by the relevant Ministry. The employer is also responsible for appointing an investigation officer to investigate the site area, access the information, documents, evidences or the seizing thereof.

### **Myanmar's Draft Bill of the Right to Information Law**

There is no right to information legislation in Myanmar yet, although in February 2016 the Ministry of Information (MOI) prepared a draft bill regarding the right to information law. However, the nature and content of this draft law is worth discussing for a better understanding of the right to information.

According to Section 2 of the bill “information” means material to be able to understand the meaning of a subject. It does not only refer to handwriting, print, sounds, a thing created by electronic or by other techniques, but also to the things or documents necessary to be able to understand the words or idea through pictures or figures. The authority appointed for this is the “information

officer". The person who requests access to information under this law is called the "requester". The draft bill includes a limit to making requests for information to prevent vexatious requests intended to disturb the relevant public department.

The bill purports to grant right of access to information that the public should know about which is in the hands of public bodies, to promote accountability, responsibility, good governance and to facilitate access of information in a speedy way. Section 4 of the bill recognizes the right of a citizen to access information from public bodies. Section 5 of the bill says no other law shall deny the request of a citizen for information from a public body unless it is denied in this law.

Basic information relating to law, rules, policies, budget income and expenditure reports, announcements and related information are regarded as information that public bodies shall update and issue. The requester can complain to the Union Government and respective bodies if his request is not granted. Request for information can be made in person, by post, fax or other electronic type of communication. Information which a public body can decline to provide upon request is information which, if disclosed, will harm national security, or Myanmar's relationship with other countries, result in commission of a crime, disturb an investigation, betray a confidential source, facilitate an escape from legal custody and any other information relating to loss or damage thereof if disclosed. The detail of the non-disclosure of information is proposed in Section 18 of the bill.

The prohibitions, offences and penalties in the bill are summarized and tabulated as follows:

Prohibited to -	Prohibitions	Offences and Penalties
Public body/Information Officer	No one is allowed to decline, procrastinate, ban the application of the rights stated in the bill, without lawful reason (Section 24)	Fine from at least 30,000 to 300,000 kyats (Section 27)
Anyone	No one is allowed to disturb, prohibit, threaten, and force the undertaking of a public body under this law. (Section 25)	Fine from at least 30,000 to 300,000 kyats (Section 27)
Anyone	No one is allowed to destroy any record of a public body in any way without permission. (Section 26)	Fine from at least 50,000 to 500,000 kyats (Section 28)

The Right to Information Law is still only a bill and has not been enacted yet. However, the above description gives an idea of how the right to information is defined, and what kind of information we will be allowed to access and what not.

A good example: the Department of Examination in the Ministry of Education recently announced that a person who desires his answer paper to be reviewed can make an application, by filling out a form with fees specified, either in Office Building 52, Myanmar Examination Department, Nay Pyi Taw or in its branch in Yangon, Parami Road, Hlaing Township. The requester may not physically see their answer paper but the department will reply with its findings about whether the candidate has answered all the questions or not, whether the paper was graded in accordance with the marking scheme or not etc.

Another example supporting the right to information in Myanmar is that nowadays information centres have been opened in courts where the public can about for court information and routines. Some districts have a walk-in municipal information centre where the public can request information relating to municipal policies, rules and related activities. Besides, under Yangon Municipal Committee Urban and Land Planning Rules, Chapter (9), paragraph 43, the committee shall allow the public to access to urban plans, maps and land registration and shall allow to copy with the relevant charges.

With the rise in information technology, many government departments and ministries have established websites and upload information for the public to access, about laws and legal information. Examples are the Supreme Court, the Constitutional Tribunal, the Pyidaungsu Hluttaw, the President's Office and the Ministry of Information. The Ministry of Information, among other Union Ministries, is particularly important for pursuing access to information because it is responsible for the printing and publishing of all official laws.

It is interesting to wait and see how Myanmar will enact the right to information law in the very near future.

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# **Laws and Strategies regarding Funding and Taxation of CSOs in Myanmar**

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**Alex Bohusch**

## **Introduction**

Most CSOs are non-profit organizations without business income generated from the sale of goods or services. As such, they usually rely on various types of funding for their projects, activities, staff salaries and other costs. Funds may be provided by individual or institutional donors, foreign governments or development organizations, for example in the form of donations, grants or loans. Non-profit organizations may of course also generate funds from the sale of goods or services, if allowed in their constitutional documents.

Myanmar presently lacks specific laws for the taxation of non-profit organizations. Rather, the general tax laws shall apply and do provide for certain provisions concerning the taxation of charitable enterprises. In practice, the taxation of CSOs and their staff are further governed by the policies and practices of the Internal Revenue Department (hereafter “IRD”) under the Ministry of Planning and Finance (hereafter “MoPF”). Regulations, notices and internal guidelines issued by the MoPF and the IRD provide for the interpretation of the existing laws, but also additional requirements imposed on CSOs and their staff. This can lead to confusion concerning a CSO’s obligations concerning the deduction, filing and payment of taxes.

## **Funding**

In general, as in almost every other country, CSOs are not allowed to carry out activities in Myanmar without having registered a legal presence in Myanmar. Unregistered CSOs would not be able to receive funding or comply with their obligations under various laws, such as the tax laws. Rather, the activities of an unregistered CSO may be deemed activities of the individuals representing the CSO, which would become liable under the relevant laws in respect of any funding received “on behalf of the CSO”.

CSOs may be registered either as local presences of an overseas organization (e.g. a foreign corporation under the Myanmar Companies Law (2017) or an International Non-Governmental Organization under the Association Registration Law (2014)) or a separate legal presence (e.g. a Company Limited by Guarantee under the Myanmar Companies Law (2017) or a Domestic Association under the Association Registration Law (2014)). Depending on the type of registration, different options for funding may be available.

Under the Association Registration Law (2014), registered organizations shall have the right to receive assistance from the Myanmar Government, accept or receive assistance from other governments, International Non-Governmental Organizations, Domestic Associations or private persons and can establish funds, collect donations, open bank accounts and own movable and immovable property. The wording of the Association Registration Law (2014) leads to the assumption that these benefits shall be exclusive for Domestic Associations (i.e. a non-profit-oriented social organization internal to the country that is formed by five (5) or more Myanmar citizens). According to the Ministry of Home Affairs, a registered International Non-Governmental Organization (i.e. a foreign organization properly registered in another country aiming to carry out social work in Myanmar) may, however, also be granted the above listed benefits, provided that such is permitted under the laws and constitutional documents governing the International Non-Governmental Organization in its jurisdiction of establishment.

For a Company Limited by Guarantee incorporated under the Myanmar Companies Law (2017), the available options of funding may be defined in the constitutional documents. Overseas corporations will be subject to the laws and constitutional documents in its jurisdiction of incorporation.

The most common forms of funding are donations received from private or institutional donors, grants received from international organizations or foreign governments and income from the sale of goods or services. Expenses of International Non-Governmental Organizations overseas corporations may further be covered from the overseas organization's funds generated outside of Myanmar. In addition, a CSO may of course receive loans, provided that such loans would be subject to the restrictions and conditions of Myanmar's financial laws.

### **Donations and Grants**

Under Myanmar's accounting standards, donations and grants received by a CSO generally constitute an income, to be recorded in the CSO's Profit and Loss statement.

### **Sale of Goods and Services**

Similarly, any income from the sale of goods or services by the CSO shall be recorded in the CSO's Profit and Loss statement.

### **Funding of an International Non-Governmental Organization or Overseas Corporation**

Funds received by the Myanmar office of an International Non-Governmental Organization or Overseas Corporation from outside Myanmar should not constitute income of the local office, as such funds are only transferred to cover costs and were already subject to the laws in the country in which they were generated or received by the International Non-Governmental Organization or Overseas Corporation.

## **Loans**

Generally, CSOs may be eligible to receive loans from financial institutions or other lenders. It should be observed, that the provision of loans is governed by Myanmar's strict financial laws, including the Financial Institutions Law (2016) and the Foreign Exchange Management Law (2012).

Most importantly, any loan provided to a CSO registered in Myanmar by a foreign lender would be subject to Central Bank approval.

## **Taxation**

Unless exempted, the funding received by a CSO may be subject to taxation, either in the hands of the receiving CSO (e.g. corporate income tax on service income), or in respect of payments related to the funding (e.g. withholding tax on interest payments for loans received by a CSO). In addition to income tax obligations, activities of a CSO may result in commercial tax obligations, and imports of a CSO may be subject to import tax (commercial tax) and import duties. Finally, contracts entered into by a CSO may be subject to stamp duty.

### **Corporate Income Tax**

The liability of CSOs for payment of income tax is governed by the Income Tax Law (1974), pursuant to which any person, company or other entity is subject to tax, unless exempted under the law.

#### *(a) Taxable Income*

(The law distinguishes between resident and non-resident tax payers.)

International Non-Governmental Organizations and Overseas Corporations, being non-resident tax payers, would be subject only on income received in Myanmar. Companies limited by Guarantee and Domestic Associations as resident tax payers would be subject to tax on their worldwide income.

*(b) Exempt CSOs*

The most notable exemption is available for income received by a religious or charitable institution and applied solely for religious or charitable purposes. Tax exemptions may further be granted to international organizations under an agreement published in the official Gazette. While this has been common practice in the past, the MoPF has become reluctant to approve any agreements with international CSOs for the exemption from tax obligations.

*(c) Exempt Income*

A CSO not granted a general exemption from income tax may still be granted exemption on specific types of income. Pursuant to the Income Tax Law (1974), the Union Government has the right to grant exemptions or relief from income tax or grant other benefits related to tax on the receipt of donations from domestic or foreign donors, or international organizations towards social, religious, health and educational matters in Myanmar or natural disaster assistance in cash or kind from domestic or foreign organizations.

Further, the Union Tax Law (2018) allows for tax exemptions for income from aid provided by domestic or foreign organizations and interest payments on low-interest loans or loans of official development aid granted to the Myanmar Union. In this respect, the MoPF issued Notification No. 38/2018 with the intention to support national development projects, providing that implementation partners of national development projects carried out with Grant Aid and/or Official Assistant Loans (ODA Loans) may be entitled to enjoy certain tax exemptions. CSOs participating as primary contractors or sub-contractors in projects being implemented with Grant Aid may be granted corporate income tax exemptions and other reliefs, provided that such exemptions shall only be available if the grant is provided to the Myanmar state, rather than directly to the implementation partner. Projects carried out not with Grant Aid or ODA Loans (of the Union), but by foreign/domestic organizations or INGOs would usually not be eligible under this Notification.

*(d) Conclusion*

Any CSO that can establish to the satisfaction of the IRD that it is a charitable organization and its income is applied solely for charitable purposes may be eligible for a general ex-emption from income tax, which should be applied for with the IRD.

Should a CSO not be eligible for a general tax exemption, any income from donations or grants may still be eligible for tax exemption, if IRD is satisfied that such income is used towards social, religious, health and educational matters or natural disaster assistance in Myanmar.

**Withholding Tax**

Withholding tax is a pre-payment of income tax deducted “at source” by the person making payment to the tax payer.

Most notably, interest payments to a lender of a loan may be subject to withholding tax, which shall be deducted, filed and paid by the borrower at the time of payment of the interest. Since it is a tax levied on the lender, withholding tax obligations would have to be observed by CSOs making interest payments on loans received by them.

Withholding tax obligations may further apply on payments for the purchase of goods or services provided by non-resident suppliers within Myanmar.

**Commercial Tax**

Commercial tax is a turnover tax imposed on the sale of goods and services rendered within Myanmar as well as the import of goods into Myanmar.

**(a) *Obligations of CSOs in respect of the Purchase of Goods or Services***

Commercial tax, while filed and paid by the supplier of goods or services, is charged to and borne by the recipient of such goods and services. Any CSO purchasing goods and services is thus generally liable to pay commercial tax charged by the supplier on such supplies. This includes commercial tax levied by the customs authorities on the import of goods into Myanmar.

Relief or exemption from commercial tax may be granted in respect of activities carried out with donations, assistance or loans from domestic or foreign organizations to the Myanmar Union. Pursuant to Notification 38/2018, exemption from commercial tax may thus be granted on payments for goods, machinery and auxiliary materials imported for use on projects financed by Grant Aid or ODA Loan provided to the Myanmar Union. This exemption does however not apply to domestic purchase of goods and raw materials, expenses of staff in hotels and restaurants, electricity meter bills, and purchases at departmental stores for food-stuff, utilities and for services such as phone calls.

**(b) *Obligation of CSOs in respect of the Supply of Goods or Services***

Unless exempted, any commercial enterprise must register for commercial tax with the relevant Township Revenue Officer one month prior to the commencement of business, and make payment and filing of commercial tax in accordance with the provisions of the Commercial Tax Law (1990).

This obligation would apply for any CSO receiving income in excess of MMK 50,000,000 per financial year from the sale of goods or provision of services.

It should be noted however, that no commercial tax shall be charged on goods produced and sold or services rendered solely for a religious or charitable purpose by any religious or charitable organization, which includes gifts of assistance for the benefit of the public such as in education, health, relief for the poor and people affected by natural disasters.

Most CSOs should therefore be eligible for exemption from the requirements under the Commercial Tax Law (1990).

## **Other Taxes & Duties**

Other taxes relevant for CSOs include customs duties, stamp duties and registration fees with the register of deeds.

### **(a) *Customs Duties***

Customs duties are levied on the import of goods into Myanmar. The law does not provide for a general exemption for CSOs.

### **(b) *Stamp Duty***

Stamp duty is levied on legal instruments executed in or brought into Myanmar (such as lease agreements, service agreements, MOUs, loan agreements, etc.). The law does not provide for any exemption for CSOs.

### **(c) *Registration Fees***

Registration fees will be charged on the registration of registrable documents, such as lease agreements with a term of more than one year. The law does not provide for any exemption for CSOs.

## **Personal Income Tax**

It should further be noted, that the law does not provide for any general exemption of employees of a CSO from personal income tax obligations in respect of salary or other income received by such individuals from the CSO.

In this respect, the CSO has to comply with its obligations as an employer.

*(a) Registration*

CSOs employing staff with a taxable salary have to register their taxable employees with the relevant Township Office of the Internal Revenue Department.

*(b) Taxable Income*

Personal income tax is levied at progressive rates of 0–25%, provided that no tax shall be levied on individuals receiving an income of less than MMK 4,800,000 per income year.

Pursuant to the Income Tax Law (1974), any salary, wages, annuity, bonuses, award and fees or commissions received in lieu of or in addition to any salary and wages are taxable under the header salary. An exemption applies to housing provided as a benefit in kind by the employer (i.e. employee occupies residential premises of the owner or leased by employer).

Employees who are tax residents of Myanmar are eligible to personal relief and other relief, such as co-resident parent relief, spouse relief and child relief, as well as tax reliefs on life insurance contributions and employee contributions towards the Social Security Fund.

*(c) Tax Filing and Payment*

Even though the personal income tax is borne by the employee and not the CSO, the CSO as employer is required to withhold, file and disburse its employees' personal income tax. The tax to be paid must be estimated based on the expected annual income and be withheld in equal installments at the time of salary payment. While the filing and payment should be done monthly pursuant to the law, some offices prefer a quarterly filing and payment. Within three months from the end of the income year, the CSO must further file an annual salary statement for its employees with the IRD.



# Laws and Strategies regarding Management and Ownership of CSOs in Myanmar

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Fabian Lorenz

## Summary

This chapter gives an overview of the laws and subsidiary legislation under which CSOs can register in Myanmar. Its purpose is to provide a better understanding of the different legal forms available for local and foreign CSOs and a description of their management, including potential advantages and disadvantages of the chosen legal form. It will briefly describe the relevant Myanmar authorities as well as their current practices.

## Introduction

The management of a CSO in Myanmar usually depends on the legal registration that has been chosen for its activities in Myanmar. In general, any CSO has to register with a Myanmar government agency to carry out activities in Myanmar. While the relevant legal provisions are currently not strictly enforced by the Myanmar authorities, any organization being active in the country without proper registration is usually unable to comply with the applicable laws. In such a case, the management may be subject to penalties or the CSO ultimately be banned from operating in the country.

Under the current legal framework, different options exist to register a CSO in Myanmar. Both Myanmar as well as foreign-owned CSOs may be incorporated as a Company Limited by Guarantee under the Myanmar Companies Law (2017). International non-profit organizations may further register as an Overseas Organization under the Myanmar Companies Law (2017) or an International Non-Governmental Organization under the Association Registration Law (2014). The same law allows the registration of a Local Association by Myanmar citizens.

## **Registration**

### **Foreign CSOs**

Under Myanmar's statutory laws, foreigners and foreign organizations generally require approval in respect of any activities carried out within the territory of Myanmar. This is further stipulated in various laws, such as the Myanmar Investment Law (2016), the Association Registration Law (2014) or the Myanmar Companies Law (2017). A foreign CSO may register itself with the Myanmar authorities to carry out activities within Myanmar, or choose to register a separate entity within the country.

#### *Company Limited by Guarantee under the Myanmar Companies Law (2017)*

A foreign CSO may choose to register a Company Limited by Guarantee (hereafter "CLG") with the Directorate of Investment and Company Administration (hereafter "DICA").

- Separate and independent legal entity with limited liability
- Managed by its board of directors in accordance with its constituent documents

A CLG is a fully-fledged, independent legal entity and may generally carry out any legal business activities in accordance with the laws of Myanmar, provided that a CLG shall not distribute any profits to its members.

The liability of its members is limited by the amount of the guarantee agreed by each member. While a CLG is not required to have share capital, each member guarantees to contribute to the assets of the CLG in the event of its liquidation. This obligation shall continue for up to one (1) year after a guarantor ceases being a member of the CLG.

A CLG must further appoint a minimum of one (1) director.

The business and activities of a CLG are managed by, or under the direction of, the board of directors or, in the case of a single director company, the single director, in accordance with its constituent documents adopted by the members. The board of directors (or single director) may exercise all powers of the CLG, subject to any powers which are required to be exercised by the members as expressly set out in the Myanmar Companies Law (2017) or the CLG's constitution. Subject to the CLG's constitution, the board may confer any of the powers that the directors can exercise on a managing director or delegate such powers to a committee of directors, a single director, an employee or any other person.

While all directors may be foreign, at least one (1) director must be ordinarily resident in Myanmar. The members are responsible for ensuring the appointment of a resident director. Hence, in situations where the sole resident director is leaving Myanmar or no resident director is remaining due to other reasons, the members will be duty-bound to appoint a new resident director.

A CLG may appoint a Company Secretary who shall be responsible for the necessary corporate filings of the company as well as the maintenance of proper records and the requisite registers.

As a subcategory of the CLG, the Myanmar Companies Law (2017) allows the registration of Business Associations (hereafter “BA”). Where it is proved to the satisfaction of DICA that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, or any other economic development objects, and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, DICA may register the BA as a corporation with limited liability, with the addition of the word “Incorporated” to its name, and the association may be registered accordingly.

#### *Overseas Corporation/Organization (Branch Office) under the Myanmar Companies Law (2017)*

Under the Myanmar Companies Law (2017), an overseas corporation shall not carry out any business in Myanmar unless it is properly registered. “Sec. 12 Companies Regulations (2018)” further clarifies that the term “carrying out business” includes activities carried out without a view to any profit.

Consequently, any foreign CSO registered as a corporation overseas shall register a Branch Office (hereafter “BO”) with DICA prior to carrying out any business activities within Myanmar, irrespective of whether such business activity in Myanmar is profit-generating or not.

- No independent legal entity, but merely a local registration of the foreign corporation
- Managed in accordance with the overseas corporation’s constituent documents (e.g. by the overseas board of directors)

While a BO is able to act independently and engage in any legal business activities, it will not be treated as a separate legal entity. Consequently, any and all contracts it enters into and the legal obligations, debts and liabilities arising there from, shall be binding and enforceable against the overseas corporation.

The business and activities of the BO are legally managed by, or under the direction of, the management body of the overseas corporation in accordance with its constituent documents. In practice, it is likely that the overseas management body will delegate and confer certain powers on legal representatives in Myanmar to facilitate the daily management of the BO's activities.

Any overseas corporation must further appoint an authorized officer, a person ordinarily resident in Myanmar who is authorised to accept service of documents in Myanmar on behalf of the overseas corporation.

*International Non-Governmental Organization under the Association Registration Law (2014)*

Another option for registering an international CSO in Myanmar can be found in the Association Registration Law (2014), which outlines the requirements for the registration of an International Non-Governmental Organization (hereafter "INGO").

- No independent legal entity, but merely a local registration of the foreign association
- Managed in accordance with the overseas association's by-laws

The registration of an INGO with the Union-level registration board of the Ministry of Home Affairs (hereafter "MoHA") is available for non-profit-oriented associations instituted in a foreign country and aiming to carry out social work within Myanmar.

The legal nature of an INGO is similar to that of a BO. It is able to act independently, but will not be treated as a separate legal entity from the foreign association. Consequently, any and all contracts entered into by an INGO and the legal obligations, debts and liabilities arising there from shall be binding and enforceable against the foreign association.

Before commencing the registration process, an INGO must sign a Memorandum of Understanding (hereafter “MoU”) with a Myanmar Ministry/Organization. As the Association Registration Law (2014) and its subsidiary legislation lack specific provisions concerning the approval of such MOUs, the process may vary considerably depending on the relevant Myanmar Ministry/Organization involved, areas of operation and types of activities proposed or implemented. Based on our experience, the negotiation of an MoU can take anywhere from a few months to several years. While it may be possible to obtain an interim ‘letter of authorization’, granting permission to start programmes while awaiting formal approval, this seems to be at the discretion of the relevant Myanmar Ministry/Organization.

Further, an INGO may be required to obtain recommendation letters from the relevant Ministry/Ministries/Organizations associated with its activities, the Ministry of Planning and Finance or the relevant State/Regional Government or Nay Pyi Daw Council where the INGO will operate.

While the legal management of the INGO will be in accordance with the applicable laws and by-laws in its country of registration, an INGO may further appoint and authorize a management team in Myanmar. While such management team may be foreign, it is often advisable (and sometimes even requested by the authorities) that at least one executive within the country shall be a Myanmar citizen.

### **Local CSOs**

In addition to the option to incorporate a CLG, Myanmar citizens may further register a Domestic Association (hereafter “DA”) with the relevant administration body under the Association Registration Law (2014).

- Separate and independent legal registration
- Managed in accordance with its by-laws

A DA is a non-profit-oriented social association that is formed by five (5) or more Myanmar citizens, either in their common interest or for the benefit of Myanmar and its citizens.

Depending on its planned activities, the chairperson, secretary or responsible person of a DA shall apply for registration with the relevant registration board on the Union-level, Region/State-level, Nay Pyi Daw Council-level, Self-Administered Division/Zone-level, District-level or Township-level.

The Association Registration Law (2014) is mostly silent on the legal status of a DA. While the law expressly provides for certain legal rights, such as owning property, opening bank accounts or being able to sue or to be sued, no limitation of liability is stipulated.

The Association Registration Law (2014) does not provide any further details on the officers of a DA. Its subsidiary legislation simply states that they must be Myanmar citizens and shall comply with the following terms and conditions: have attained 18 years of age; not be clergy; not be imprisoned; be of sound mind; and not be a member of any organization proscribed by the State as a terrorist or a member of any organization declared as unlawful, or of any organization aiding or abetting such organizations. The management would usually be governed by a set of by-laws adopted by the DA.

### **Management of a CSO**

Depending on the legal registration form, the legal management of a CSO will be carried out by its legal representatives in accordance with its constituent documents or by-laws.

## **Company Limited by Guarantee**

The Myanmar Companies Law (2017) and the Myanmar Companies Rules (2018) contain a set of provisions concerning the management of companies, which can be further specified in the constitution of a CLG.

The business and activities of a CLG shall be managed by, or under the direction of, the board of directors or, in the case of a single director company, the sole director.

In managing the business of a company, the directors have to observe their fiduciary duties, duties of care, skill and diligence, and statutory duties and shall exercise all the powers of the company and make decisions which provide the maximum benefit to the members and the company's objectives, subject to any powers which are required to be exercised by guarantors as expressly set out in the Myanmar Companies Law (2017) or the CLG's constitution.

The general directors' duties under common law have been further specified in the Myanmar Companies Law (2017), particularly sections 165 – 172 addressing the duty to act with care and diligence, the duty to act in good faith and the company's best interest, the duty regarding the use of position and information, the duty to comply with the law and constitution, to avoid reckless trading and the incurring of obligations, as well as the duty to disclose certain interests. Additional duties can be found in the Myanmar Investment Law (2016), particularly Chapter XVI stipulating obligations such as respect and compliance with the customs, traditions and traditional culture of the ethnic groups in the Union and compliance with the statutory laws.

### **Overseas Corporation/Organization (Branch Office)**

The business of a BO is legally managed by the management body of the overseas corporation in accordance with its constituent documents, which will be governed by the laws in the country of registration. Additional duties and obligations concerning the management of a BO can be found in the Myanmar Companies Law (2017) and the Myanmar Investment Law (2016).

### **International Non-Governmental Organization (INGO)**

Similar to the BO, the INGO is legally managed by the management body of the foreign association in accordance with its bylaws, which will be governed by the laws in the country of registration. In practice, the activities of an INGO will further be governed by the respective MoU signed with the Myanmar authorities as well as the relevant statutory laws and subsidiary legislation. The Government is presently working on a new INGO Law (which would provide further details on management) but no such law has been enacted yet.

### **Domestic Association**

The Association Registration Law (2014) is mostly silent on the management of a DA. While this offers a certain amount of autonomy to adopt bylaws concerning its management, it also creates much uncertainty.

### **General Compliance Requirements**

In addition to the above, the general laws apply to any CSOs active in Myanmar (e.g. employment, environmental and tax laws). It is the duty of the authorized representatives of a CSO to ensure compliance with its statutory requirements. Any non-compliance may be prosecuted under the respective laws and may have adverse consequences for the CSO, its authorized representatives (and depending on the legal form, even its founders), including penalties, fines and even imprisonment.

A non-exhaustive list of the most relevant obligations is set out below.

### **Registered Office Address**

A CSO shall maintain a registered office within Myanmar to which all communications and notices may be addressed. In practice, this can be someone's house/apartment or a mailbox. Leasing of an office is fine or using a service provider who offers the provision of a registered office address. In case of any change, it shall notify the respective authorities e.g. DICA or the relevant Registration Board.

### **Financial Records**

Every CSO shall maintain written financial records to enable the preparation of financial statements in Myanmar language or English language in accordance with the applicable laws.

Accounting (and audit) requirements concerning CLGs and BOs are stipulated in the Myanmar Companies Law (2017). For Domestic Associations (DAs) and INGOs, the Association Registration Rules (2014) provide for the requirement to maintain systematic records in account books compiling income and expenditures, funds, receivables, bonds, stocks, shares and debentures and movable or immovable properties acquired using funds or received through donation.

### **Anti-Corruption**

Pursuant to Notification 14/2018 issued by the Anti-Corruption Commission under the Anti-Corruption Law (2013), any organization shall formulate and implement a code of conduct having fundamentally sound anti-corruption principles in relation to its activities. This does not have to be submitted to the authorities. The Anti-Corruption Commission may conduct an inspection. The following criteria have been stipulated to formulate and implement codes of conduct having fundamentally sound anti-corruption principles, as well as appropriate control mechanisms:

- To define a sound and effective anti-corruption policy, and such policy to have the support of the highest level of management;
- To effectively identify, analyse and assess risks of corruption;
- To maintain stricter, more detailed actions for sensitive areas with high risk of corruption;
- To apply anti-corruption measures not only to one's own entity but also to the entire chain of relationships with other entities;
- To maintain accurate and systematic accounts and records;
- To maintain HR Management policies supportive of anti-corruption;
- To maintain trustworthy mechanisms for reporting suspicions of corruption;
- To maintain regular assessment of anti-corruption measures.

## **Labour Law**

Any CSO employing staff shall enter into written employment contracts with its employees within 30 days of employment. The employment contract shall then be submitted to the relevant Township Labour Office (hereafter “TLO”) for registration. In general, employers are required to use the official template contract published by the Ministry of Labour.

Excuse: Generally, it is also possible to engage Myanmar citizens as independent contractors. Under Myanmar law, it is not expressly required for independent Myanmar citizen contractors to register a sole proprietorship or business. Contractors are merely required to register for commercial tax, if and when their taxable turnover exceeds MMK 50,000,000 per financial year. Lacking clear rules or policies on the distinction of employees and contractors, there is a risk of any such engagement in practice being considered “hidden employment”. It should further be noted that foreign individuals are not allowed to carry out business in Myanmar (as independent contractors, or providing consultancy services) without having registered a business in the country, or being employed in Myanmar.

## **Registration, Filing and Payment of Personal Income Tax**

Any CSO having employees receiving a taxable salary shall register with the relevant Township Office of the Internal Revenue Department. The CSO is further required to deduct, file and pay personal income tax on behalf of its taxable employees (see Chapter 6 of this Handbook).

## **Annual Return/Report**

Every CLG/BO must within two (2) months from its incorporation and thereafter once a year at least (no later than one (1) month after the anniversary of its incorporation) file a return of its particulars with the Registrar in the prescribed form. An overseas corporation must file its annual return as well as a balance sheet, copy of its cash flow statement, and its profits and loss statement for the last financial year with DICA.

Under the Association Registration Law (2014), a DAs shall submit an annual report of operation and financial statements to the relevant registration committee. If a DAs fails to submit an annual report continuously for five (5) years, it shall be deemed no longer active and may be required to re-apply for registration. (Note that no similar provision exists for INGOs.)

## **Annual General Meeting**

Any CLG must hold an Annual General Meeting (hereafter “AGM”) at least once in each calendar year, with the first AGM to be held within 18 months from the date of incorporation, and not more than 15 months after the holding of the last preceding AGM.

## **Filing and Payment of Tax**

Generally, any organization in Myanmar is subject to tax revenue laws, governing the filing, collection and payment of corporate income tax, commercial tax, stamp duties and other taxes.

While the Income Tax Law (1974) and Commercial Tax Law (1990) provide for exemptions for charitable organizations, as well as the possibility to obtain tax exemptions under a treaty or agreement with the government, any such tax exemptions are subject to approval. (See Chapter 6 of this Handbook.)

Tax exemptions are usually not available for other dues, such as stamp duty or registration fees with the authorities.

## **Filing and Payment of the Social Security Fund Contributions**

International organizations and non-profit companies, associations or organizations are exempted from compulsory registration with the Social Security Fund under the Social Security Law (2012).

## **References**

For further information on the various registration processes, including the official application forms, please refer to the websites of DICA (<https://www.dica.gov.mm/>) and of MoFA (<http://www.myanmarmoha.org/>). For links to full text legal documents on Myanmar, please refer to the Online Burma/Myanmar Library (<http://www.burmalibrary.org/>).

Item / Legal Form	Company Limited by Guarantee	Branch Office	International Non-Governmental Organization	Domestic Association
Authority	DICA	DICA	MoHA	Depending on activities, registration with relevant administrative board
Legal Nature	Separate and independent legal entity	No separate / independent legal entity	No separate / independent legal entity	Separate and independent legal entity
Liability	Limited liability	Full liability of overseas organization	Full liability of overseas organization	Not stipulated under the law (members may be liable in practice)
Activities	Any legal business activities in accordance with the laws of Myanmar	Any legal business activities in accordance with the laws of Myanmar	Any legal business activities in accordance with the laws of Myanmar (subject to the MoU)	Any legal business activities in accordance with the laws of Myanmar
Ownership / Membership	Minimum of one (1) guarantor	Overseas organization	Overseas organization	Minimum of five (5) Myanmar Citizen members
Capital Investment Requirements	USD 1	USD 1	N/A	N/A
Directors / Representatives	Minimum of one (1) director ordinarily resident in Myanmar	Minimum of one (1) authorized representative ordinarily resident in Myanmar	Minimum of one (1) authorized representative ordinarily resident in Myanmar	Minimum of one (1) authorized representative ordinarily resident in Myanmar
Capitalization / Funding	By equity, loan or hybrid financing	Contributions of working capital by overseas corporation	Membership fees, donations, grants or loans	Membership fees, donations, grants or loans
Time between Registration to Operation	2 - 4 weeks	1 - 2 weeks	6 - 12 months	6 - 12 months