

## ～ 国際研修 ～

### 日本・ミャンマー法制度比較共同研究 ～連邦法務長官・連邦議会（下院）法案委員長外招へい～

国際協力部教官  
國井弘樹

ミャンマー連邦共和国は、2011年3月の民政移管以降、民主化された近代国家を築くためには、グッド・ガバナンスとクリーン・ガバメントの確立が最重要であるとして、法の支配の徹底を課題に挙げ、以後、着実に民主化への道を歩んでいる。

これに対し、日本政府も、ミャンマーの民主化、国民和解及び持続的発展に向けて、急速に進む同国の幅広い分野における改革努力を後押しするため、引き続き改革努力の進捗を見守りつつ、民主化と国民和解、経済改革の配当を広範な国民が実感できるようにするという目的で、経協インフラ戦略会議の下に、ミャンマーに関する官民合同タスクフォースを創設するなど、官民を挙げて、同国を積極的に支援していく方針を公表している。

さらに、2013年1月には、現政権で初の閣僚外遊として、麻生太郎副総理がミャンマーを訪問し、同年4月には、ミャンマーから、国民民主連盟（NLD）議長であり、連邦議会「法の支配・平和安定委員会」委員長であるアウン・サン・スー・チー女史を日本に招へいして、安倍晋三内閣総理大臣<sup>1</sup>や谷垣禎一法務大臣<sup>2</sup>などと協議の場を持った。そして、同年5月

下旬には、安倍総理がテイン・セイン大統領の招待により、日本国総理大臣として36年ぶりにミャンマーを訪問し、「日ミャンマー共同声明～新しい友情の礎～」と題する共同声明が発表された。同声明では、「ミャンマー国民の生活向上、豊かな国作りには、インフラを含む経済・社会資本の整備、制度整備、人材育成、農村部及び少数民族地域の発展などが鍵」であるとされ、両首脳の間で、「ミャンマー政府の制度整備や人材育成のための日本からの技術協力の重要性を共有し、更に発展させていくこと」が確認された<sup>3</sup>。

このように、日本とミャンマーとの関係強化が進む中、法務省法務総合研究所においても、独立行政法人国際協力機構（JICA）と共にミャンマー側と協議を重ね、2013年度中にも、連邦法務長官府及び連邦最高裁判所をカウンターパートとして、ミャンマーの社会経済及び国際標準に適合した法の整備及び運用によって、「法の支配」、「民主主義」、「持続可能な経済成長」を促進するため、①ミャンマーが直面する喫緊の立法課題への対応能力の強化（立法起草能力向上支援）、②両機関の人材育成の基盤整備という2本柱を内容とする「ミャンマー法整備支援プロジェクト」を正式に開始させる予定である。

<sup>1</sup> 安倍総理との会談の詳細については、首相官邸ウェブサイト

[http://www.kantei.go.jp/jp/96\\_abe/actions/201304/18myanmar.html](http://www.kantei.go.jp/jp/96_abe/actions/201304/18myanmar.html) を参照されたい。

<sup>2</sup> 谷垣大臣との会談の詳細については、法務省ウェブサイト [http://www.moj.go.jp/hisho/kouhou/hisho06\\_00196.html](http://www.moj.go.jp/hisho/kouhou/hisho06_00196.html) を参照されたい。

<sup>3</sup> 安倍総理によるミャンマー訪問の詳細については、外務省ウェブサイト

[http://www.mofa.go.jp/mofaj/kaidan/page3\\_000186.html](http://www.mofa.go.jp/mofaj/kaidan/page3_000186.html) を参照されたい。

そこで、同プロジェクトのカウンターパートであり、我が国の法務省、検察庁及び内閣法制局の権能を合わせ有する連邦法務長官府から、法務長官外現役検察官4名に加え、ミャンマー連邦議会（下院）法案委員会委員長の合計6名を招へいして、日本とミャンマーの法制度を比較研究することで、日本側のミャンマー法制度等に対する理解を深めると同時に、ミャンマー側にも日本の法制度や法曹養成の現状等について理解してもらった上、正式始動が間近に迫っている法整備支援プロジェクトのプログラム策定や今後の協力関係について、具体的かつ建設的な意見交換を行うため、本共同研究を実施するに至ったものである。

なお、本共同研究は、法務総合研究所に加え、JICA及び公益財団法人国際民商事法センター（ICCLC）との共催で実施したものである。

## 1 共同研究の日程等

日 程 2013年6月10日（月）から同月14日（金）まで

招へい者 トウン・シン氏（連邦法務長官）  
ティー・クン・ミヤツ氏（連邦議会（下院）法案委員会委員長）  
チョー・モー・ナイン氏（ヤンゴン管区法務長官）  
外3名

## 2 共同研究の概要等

本共同研究は、昨年（2012年）11月のトウン・トウン・ウー連邦最高裁判所長官の招へいに続き、ミャンマー法曹界の重鎮であるトウン・シン長官外を招へいして実施したものであり、ミャンマー司法の現状等について、広く関係者と情報共有を図るといふ目的から、以下、本共同研究において特筆すべき事項について記載する。

### （1）表敬訪問

本共同研究では、連邦法務長官として初来日を果たしたトウン・シン長官と我が国関係者との交流を促進するため、法務大臣、検事総長、最高裁判所裁判官、東京高等検察庁検事長、東京高等裁判所長官、東京地方検察庁検事正及び東京地方裁判所長官などの法曹関係者に加え、財務大臣、外務副大臣<sup>4</sup>、JICA理事長及び内閣法制局長官など、多数の表敬訪問を実施した。トウン・シン長官は、その豊富な法律知識や国際経験から、本国において、連邦法務長官を務めながら、外国投資に関する委員や法整備の方針策定委員会の委員長などの要職を兼務しており、谷垣法務大臣及び田中JICA理事長への表敬訪問では、本招へいに関して謝意を述べられた上、近く正式始動予定の「ミャンマー法整備支援プロジェクト」及び今後の両国関係について、ミャンマー政府を代表して、強い期待を表明された<sup>5</sup>。また、現在、財務省財務総合政策研究所において、ミャンマー中央銀行をカウンターパートとして、証券取引法の制定支援を含む「ミャンマー資本市場発展育成支援プロジェクト」を実施中であるが、トウン・シン長官は、麻生財務大臣への表敬訪問において、同プロジェクトを通じたミャンマー資本市場の育成支援に加え、安倍総理の訪緬及び円借款など、我が国のミャンマーに対する取組についても、深い謝意を述べられた。

### （2）シンポジウム

6月12日（水）には、JICA竹橋合同ビル講堂において、外務省、財務省財務総合政策研究所、日本弁護士連合会及び独立行政法人日本貿易振興機構（JETRO）から後援を頂き、「ミャンマーの発展と課題～法的側面を中心として～」と題するシンポジウム

<sup>4</sup> 鈴木外務副大臣との会談の詳細については、外務省ウェブサイト

[http://www.mofa.go.jp/mofaj/annai/page3\\_000236.html](http://www.mofa.go.jp/mofaj/annai/page3_000236.html) を参照されたい。

<sup>5</sup> 谷垣大臣との会談の詳細については、法務省ウェブサイト [http://www.moj.go.jp/hisho/kouhou/hisho06\\_00206.html](http://www.moj.go.jp/hisho/kouhou/hisho06_00206.html) を参照されたい。

ムを開催した。直前の広報となったにもかかわらず、同シンポジウムには、政府関係者、法曹関係者、大学関係者及び民間企業関係者など、150名を越える方々の参加を得て、トゥン・シン長官、ティー・クン・ミャツ連邦議会（下院）法案委員会委員長及びチョー・モー・ナイン・ヤンゴン管区法務長官から、それぞれ講演いただいた上、質疑応答では、トゥン・シン長官が、予定された時間を超過してまで、フロアからの質問に対して丁寧にお応えいただくなど、会場は熱気に包まれた。

同シンポジウムの様子は、現地新聞「New Light of Myanmar」（6月20日付）にも取り上げられるなど、ミャンマーでも大きく報道された。

同シンポジウムにおける講演録及び講演資料（英語・日本語）等の詳細については、後日、JICA ウェブサイトで掲載予定であり、本稿では、以下のとおり、プログラムや講演資料（英語）についてのみ掲載する。

資料1 プログラム

資料2 トゥン・シン長官「ミャンマーの法制度及びビジネス法に関する最新情報」

資料3 ティー・クン・ミャツ連邦議会（下院）法案委員会委員長「ミャンマー連邦議会の構成と法律制定過程」

資料4 チョー・モー・ナイン・ヤンゴン管区法務長官「ミャンマー連邦法務長官府の役割」

資料5 New Light of Myanmar（2013年6月20日付、抜粋）

なお、法務総合研究所では、昨年（2011年）11月に、慶應義塾大学との共催で、トゥン・トゥン・ウー連邦最高裁判所長官を招へいし、その際にも、公開シンポジウムを実施したところである（ICD NEWS 第54号 p142 以下参照）が、同長官の講演録

が、後日、現地ロー・ジャーナルに掲載される<sup>6</sup>など、ミャンマー現地でも注目を集めているところである。

### （3）裁判傍聴

我が国の司法の現状を認識していただくため、東京地方裁判所において、刑事裁判の傍聴を実施したほか、刑事部所属の裁判官から説明していただきながら、裁判員裁判法廷の見学も行った。トゥン・シン長官は、英米法に由来するミャンマー刑事裁判手続と比較しながら、我が国の起訴状一本主義について、厳格に予断排除を貫く体系に興味を示されたほか、我が国の裁判員裁判に対しても強い関心を示された。長官は、「司法に対する国民の信頼確保は、ミャンマーにおいても重要な課題となっている。日本では、ミャンマーにはない裁判員裁判を導入し、国民を直接刑事司法に関与させることで、司法の透明性を維持しながら、国民の信頼を確保しようとしているものと理解している。そういった日本における取組は、非常に興味深い。」旨述べられ、裁判員の選任方法、合議体での意思決定方法など、詳細な質問をされた。

また、我が国では、裁判員や傍聴人に分かりやすい裁判を実現するため、法曹三者が協議を重ね、また施設面においても、法廷内にワイドスクリーンを設置して、証人に提示する図面を拡大映写したり、証人尋問の様子を録画して、評議の場で参考にしたりする設備を設けているが、長官は、そうした法曹全体での取組に対しても関心を示された。

ミャンマーでは、法廷設備が不十分であり、その改善は、トゥン・トゥン・ウー連邦最高裁判所長官からも課題として述べられていた点であり、次期プロジェクトにおいても、その点が議論されることになるであろう。

<sup>6</sup> ミャンマー連邦最高裁判所ホームページ（<http://www.unionsupremecourt.gov.mm/?q=content/journals>）からダウンロード可能

#### (4) 法務省浦安総合センター視察

法務省浦安総合センターは、各種犯罪統計の収集・分析及び犯罪白書の製作などの業務を行っている法務総合研究所研究部が在所しているほか、検察官や検察事務官をはじめとした法務省職員の研修施設である。次期プロジェクトでは、検察官の人材育成が2本柱の一つとなっていることから、我が国の検察官及び検察事務官に対する研修の実態について理解いただき、プロジェクト始動後の人材育成プランや研修について、具体的なイメージを醸成するため、同センターを視察していただいた。

視察では、当研究所から、検察官及び検察事務官を対象とした、キャリアや目的に応じて細分化された研修カリキュラムについて説明差し上げたほか、科学捜査研究所技官と検察官との「科学捜査の捜査手法」をテーマとした協議の傍聴、模擬法廷教室及び図書室等の施設視察を実施した。ミャンマー連邦法務長官府では、講堂に机を並べるなどして、模擬法廷を作成し、若手検察官を対象とした実務訓練を行っているとのことであったが、トゥン・シン長官は、録画設備を備えた模擬法廷教室に強い関心を示され、その使用方法等について詳細な質問があった。また、司法妨害の罪、特に偽証への対応など、極めて実務的な問題に関しても、活発な質疑応答が行われた。

さらに、研究部との意見交換では、チョー・モー・ナイン・ヤンゴン管区法務長官の問題意識に基づき、我が国とヤンゴン管区における犯罪傾向の比較や、ミャンマーで増加傾向にある少年犯罪への対処、成人受刑者の再犯及び国民への啓蒙活動等に関し、活発な意見交換が行われた。

#### (5) 内閣法制局視察

ミャンマー連邦法務長官府は、他省が所管する法律を含め、いわゆる政府提出法案の全てについて、その審査を行っており、我が国の内閣法制局類似の権能を有していることから、本共同研究において、

我が国における法令審査システムの現状を理解していただくため、同局視察を実施した。

同局では、2006年から、「法令審査支援システム」を導入しているが、同システムは、公布済みの全法令及び立案中の法令案を施行日別に管理するデータベースを構築することによって、法令案の誤記だけでなく、関連する他の法令との齟齬等を確実にかつ効率的に点検し得るようにする目的で開発されたシステムである。

視察では、同システムのデモ操作を体験していただき、トゥン・シン長官をはじめ、各招へい者にその有益性を実感していただいた。ミャンマー連邦法務長官府では、昨今の新規立法ラッシュに伴い、法案審査部門に過重な業務負担がかかっており、その軽減が、次期プロジェクトでも課題となっている。長官は、内閣法制局における「法令審査システム」に強い関心を示されていたが、今後、更に負担が増大すると見込まれる法令審査部門への積極的な支援について検討していく必要がある。

### 3 所感

次期プロジェクトの正式始動を間近に控えたこの時期に、同プロジェクトのカウンターパートの一つであるミャンマー連邦法務長官府から、長官をはじめとした方々を日本に招へいし、我が国の司法の現状を直接視察していただいたことに加え、プロジェクトの詳細について、じっくりと議論できたことは有意義であった。また、先方には、検察官及び検察事務官の養成制度の実態を理解していただき、プロジェクト活動についての具体的なイメージを共有できたことも大きな成果であったと言える。

安倍総理の訪緬によって、日緬両国の関係が強化された中、連邦法務長官を日本に招へいして、法務大臣をはじめ、我が国の多数の司法関係者との協議を実施し、人的関係をより強固なものに高めた上、互いの信頼関係を醸成でき、本共同研究は、今後の

両国関係を考える上でも、極めて有意義であった。

今後、こうして地道に築き上げた信頼関係を基本にして、当部では、更にミャンマーの発展のため、法整備の分野で協力を続けていく決意を新たにしたい次第である。

#### 4 おわりに

本稿では字数の関係で紹介しきれなかったが、本共同研究では、財務省、外務省、最高裁判所、日本弁護士連合会、内閣法制局、JETRO、名古屋大学など、多数の関係機関に御協力賜り、充実したプログラムを実施することができた。改めて、各機関の担当者に御礼申し上げたい。

また、ミャンマー最高裁長官招へいに引き続き、駐日ミャンマー大使館には、多忙を極める中、キン・マウン・ティン大使をはじめ、全日程に御同行いただくなど、多大な御協力を賜った。この場を借りて感謝申し上げるとともに、今後、ミャンマーの発展のため尽力することで、その御高配に報いたいと思う。

以上



# 「ミャンマーの発展と課題」

## ～法的側面を中心として～

2013年6月12日（水） 11：00～17：10

JICA竹橋合同ビル9階講堂

日・ASEAN友好協力40周年



Thoughts connected. Future connected

つながる想い つながる未来

主催：

法務省法務総合研究所

独立行政法人国際協力機構（JICA）

公益財団法人国際民商事法センター  
（ICCLC）



急速に発展が進むミャンマーにおいて、国際標準に則した法令の整備及び適切な運用により、法の支配、民主化、持続的な経済成長が更に推進されることを目指し、我が国は、ミャンマーの法・司法関係機関の組織的・人的能力を向上させるための法整備支援プロジェクトを今後実施する予定です。

そこで今回、ミャンマー連邦法務長官府の関係者と「日・ミャンマー法制度比較共同研究」を行い、両国の法制度を比較することを通じ、法・司法分野における二国間の協力のあり方・方向性に関する認識を再確認することといたしました。その一環として実施される本研究では、ミャンマーの法制度やビジネス法、連邦法務長官府の役割などに関する情報共有を行うとともに、ミャンマーにおける法整備に関する取組みと今後の展望について意見交換を行います。

## PROGRAM ●●

日時：2013年6月12日（水） 11:00～17:10（受付開始：10:30～）

場所：JICA竹橋合同ビル9階講堂（東京都千代田区大手町1-4-1）

主催：法務省法務総合研究所，独立行政法人国際協力機構（JICA）

公益財団法人国際民商事法センター（ICCLC）

後援：外務省，財務省財務総合政策研究所，

日本弁護士連合会，独立行政法人日本貿易振興機構（JETRO）

言語：日本語・英語（英語・日本語の同時通訳がつきます）

## ●● ACCESS

### 電車でお越しの場合

#### ●竹橋駅から

東京メトロ東西線 竹橋駅下車

3b出口直結

#### ●大手町駅から

東京メトロ・都営地下鉄（千代田線、半蔵門線、丸の内線、都営三田線）大手町駅下車

C2b出口を出て、皇居方面へ。内堀通りを右折。気象庁前交差点左手前方。（徒歩5分）



### ミャンマー連邦法務長官府（Union Attorney General's Office）について

ミャンマー連邦法務長官府は、全ての政府提出法案に関する助言・審査、政府の作成する文書の審査、法令の運用に関する助言などを担当する機関。また、刑事事件においては、検察機能を有するほか、政府が当事者となる民事事件においては他の政府機関に代わって訴訟に参加する。いわば日本の法務省、検察庁、内閣法制局の機能を兼ね備えた政府機関である。また、ミャンマー連邦法務長官は、連邦政府の一員であり、大統領の任命ポストでもある。ミャンマー連邦法務長官府は、ミャンマー連邦政府の中で法・司法分野の改革を担う中心的な機関といえる。

## ●● TIME TABLE ●●

### 第一部 (11:00~12:40)

11:00 開会挨拶 市川雅一 JICA理事  
酒井邦彦 法務省法務総合研究所長  
来賓挨拶 キン・マウン・ティン (H. E. Mr. Khin Maung Tin) 駐日ミャンマー大使

11:30~12:10

基調講演 「ミャンマーの法制度及びビジネス法に関する最新情報」  
トゥン・シン (H. E. Dr. Tun Shin) ミャンマー連邦法務長官



州議会議務局法務委員会法務官、法務長官府法律助言副部長、国家計画経済開発省法律顧問兼部長、投資企業管理総局副局長、法務長官府事務局長、法務長官府法務副長官を経て、2011年より現職。2012年にはWunna Kyaw Htin (公務員に与えられる勲章) を受賞している。

12:10~12:40

講演 「ミャンマー連邦議会の構成と法律制定過程」  
ティー・クン・ミャット (H. E. Mr. Ti Khun Myat)  
連邦議会 (下院) 法案委員会委員長

休憩 (12:40~14:00)

### 第二部 (14:00~17:10)

14:00~14:20

講演 「ミャンマー連邦法務長官府の役割」  
チャー・モー・ナイン (H. E. Mr. Kyaw Moe Naing) ヤンゴン管区法務長官

14:20~14:40

報告 「ミャンマー民商事基本法制調査報告」  
小松岳志 森・濱田松本法律事務所シンガポールオフィス 弁護士

14:40~16:10

パネル・ディスカッション「ミャンマー法整備における取組みと今後10年の課題」

モデレーター：野口元郎 法務省法務総合研究所国際協力部 部長

パネリスト：ミャンマー

トゥン・シン (H. E. Dr. Tun Shin) ミャンマー連邦法務長官  
チャー・モー・ナイン (H. E. Mr. Kyaw Moe Naing) ヤンゴン管区法務長官

日本

鮎京正訓 名古屋大学 理事・副総長 博士 (法学)  
佐々山拓也 外務省アジア大洋州局南部アジア部南東アジア第一課長  
小島英太郎 JETRO海外調査部アジア大洋州課課長代理  
(前ヤンゴン事務所長)  
小松岳志 森・濱田松本法律事務所シンガポールオフィス 弁護士  
佐藤直史 JICA国際協力専門員 弁護士

休憩 (16:10~16:25)

16:25~17:00 質疑応答

17:00~17:10 閉会挨拶 小杉丈夫 公益財団法人国際民商事法センター 理事

※プログラム内容は変更する場合があります。



独立行政法人 国際協力機構



●【お問い合わせ】●

独立行政法人国際協力機構（JICA）

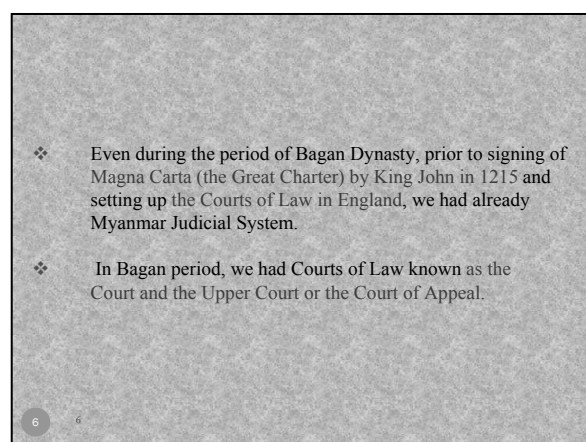
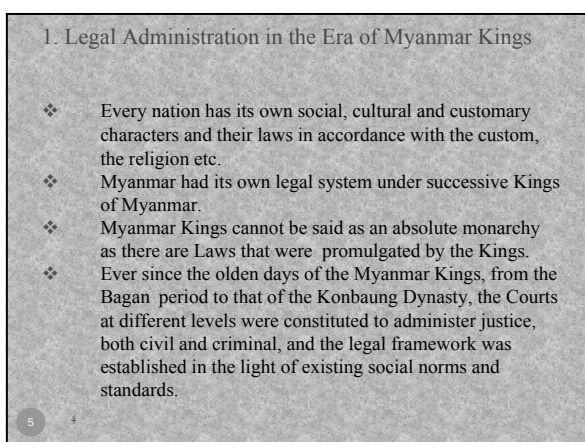
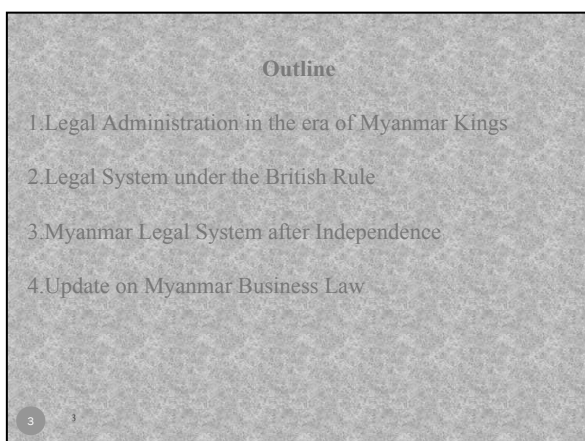
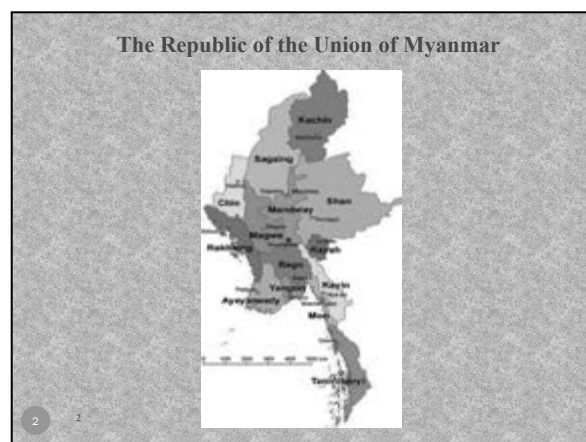
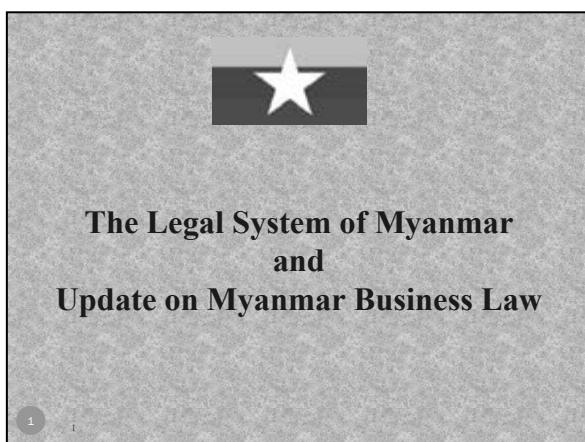
産業開発・公共政策部 ガバナンスグループ 法・司法課

担当：法整備支援ユニット（山田・山口）

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### Taungoo Dynasty



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- ❖ The Second Great Dynasty of Myanmar, the Taungoo Dynasty (A.D.1531-1752), was established by the King Bayintnaug Kyaw Htinnawrahtar (A.D.1551-1581).
- ❖ The *Manusara Dhammathat* was produced in reign of King Sinbyumyashin at Bago (the then Pegu) in 1549 A.D.
- ❖ The *Dhammathat Kyaw* produced by the King Ngazudayaka of Taungoo in 1733 A.D. was one of the nine leading Institutes of Myanmar ( the then Burmese) referred to often in Myanmar (the then Burmese) literature.

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### Konboun Dynasty



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- ❖ The Third or the Last Dynasty, the Konboun Dynasty (A.D. 1753-1885), was built by King Alaungpaya in A.D.1753-1760).
- ❖ During the reigns of King Mindon (A.D.1853-1878), Chief Minister of Justice, Kinwum Mingyi U Kaung's 34 and 36 volumes of consolidated Dhammathats were very popular.

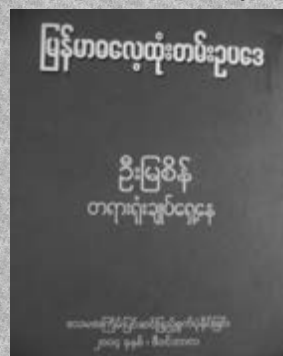
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### Dhammathat



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### The Burmese Customary Law



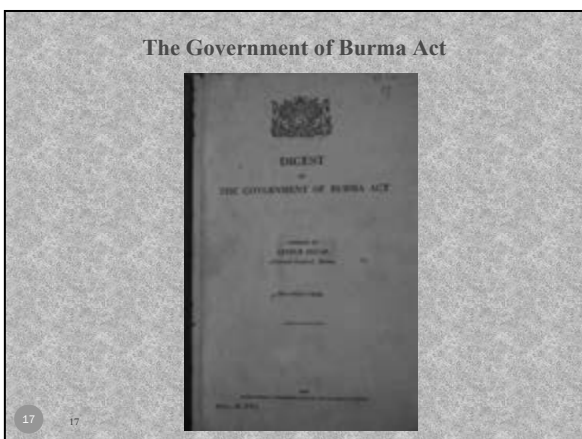
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- ❖ **Dhammavilasa Dhammathat** ruled upon the lawyer to entitle his fees in the Royal Edict of 1607 A.D.
- ❖ In the Edict of 1634 A.D., the King ordained severe penalties for lawyers and in the Edict of 1636 A.D., the King set out the duties and functions of a good legal adviser.
- ❖ In 1645 A.D., **Thalunmintara** issued a roll to be taken and maintained of members of the legal profession.

- ### DHAMMATHATS, YAZATHATS and PHYATTONS
- ❖ The **Dhammathats** are *corpus juris* of Myanmar Customary tradition and convention and *ratio decidendi* of eminent judges and learned personnel.
  - ❖ They are composed of legal rules and legal principles relating to equality under the law founded on egalitarian family rights which are solely based on the rules of natural justice and humanitarian legal principles of Myanmar.
  - ❖ Dhammathat principles are still being applied by the present-day Courts of the Republic of the Union of Myanmar without interruption.

- ❖ **Yazarthats** are the King's Royal Edicts and Ordinances, are composed of the King's Commands and Criminal Laws for prevalence of law and order, security and peace.
- ❖ **Phyattons** are Judicial Precedents passed by Courts, Benches and the King Hluttaw.
- ❖ PHYATTONS were the records of judicial decisions rendered by various monarchs and judges.
- ❖ The **PHYATTON** is a collection of decisions rendered by the judges, arbitrators or persons of royal blood.
- ❖ The **Thudamasari PHYATTON** is a famous one.

- ❖ The operation of Yazathat and statute laws of Myanmar Kings faded annually after the first Anglo-Burmese War (1824-26) and the second Anglo-Burmese War (1852-53), and ceased totally after the Anglo-Burmese War (1885-86).



- ### 2. Legal System under the British Rule
- ❖ When the British annexed Myanmar, as a step in the expansion of colonies, they extended the law originally promulgated in India to Myanmar and hierarchy of Indian Courts was formed in Myanmar.
  - ❖ After the complete annexation of Myanmar, British Government formed Civil Courts and Criminal Courts and introduced the Code of Civil Procedure, the Code of Criminal Procedure, the Indian Penal Code, all other laws and Maxims of Equity.
  - ❖ Since that time, the Myanmar Legal System took its roots in British concept of justice, equity and good conscience.

- ❖ Since the end of the first Anglo-Myanmar War in 1826, the British introduced a legal system for criminal and civil cases in Myanmar.
- ❖ Although Myanmar belongs to the Common Law Legal Family, it is different from the Common Law Legal System practised in England.
- ❖ The genesis of the Codified Laws or Statutes can be found as we all know in the Justinian Code of the Roman era or the Codex Napoleon of the Napoleonic times.
- ❖ Denning and Lord Macaulay, therefore, said that the laws of Myanmar are "peculiar creatures."
- ❖ It has the peculiar features by reflecting the historical background of Myanmar Legal System.

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- ❖ In 1862, the British Government appointed a Chief Commissioner to be jointly responsible for not only administration but also judiciary as a Judicial Commissioner.
- ❖ According to the Burma Recorder's Courts Act 1863, India Act No.1, they established the Recorder's Courts in Yangon (the then Rangoon), Sittway and Mawlamyine (the then Moulmein).

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- ❖ In 1885, after the British had annexed the Upper Myanmar, the whole of Myanmar fell under the Bengal State of India.
- ❖ Just as the establishment of the Courts in India, the British also constituted the Courts in Myanmar in 1886.

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- ❖ Under the Government of India Act 1919, the High Court of Judicature at Yangon was established by Letters Patent in 1922.
- ❖ The Government of Myanmar (the then Burma )Act was enacted in 1935.
- ❖ In this Act, one may explore that there was separation of legislative, executive and judiciary.

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High Court (Yangon)



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- ❖ The Bar Council Act was promulgated in 1939 to govern advocates.
- ❖ The Legal Practitioner Act 1879 also promulgated to supervise Higher Grade Pleader and Lower Grade Pleader.
- ❖ Common Law principle of doctrine *stare decisis* or doctrine of precedents is used in Myanmar.
- ❖ In England, it is called case law but in Myanmar, we call ruling. *Obiter dictum* and *ratio decidendi* are also used in leading cases.

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### 1947, 1974 and 2008 Constitutions



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### 3. Myanmar Legal System after Independence

- ❖ The first Constitution of the Union of Myanmar was adopted in 1947.
- ❖ The second Constitution called the Socialist Republic of the Union of Myanmar was the 1974 Constitution.
- ❖ In 2008, the Constitution of the Republic of the Union of Myanmar was adopted.
- ❖ Legal System of Myanmar developed step by step but its basic also changed although the *modus operandi* has changed.

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### Update on Myanmar Business Law

- ❖ Basing on the traditional aspect of contemporary legal history, Corporate Laws and Commercial Laws also belong to the same fundamentals or modalities of the principles of the Myanmar Legal System.
- ❖ Today, Corporate Laws, Commercial Laws and Economic Laws are pillars of our market economy system.
- ❖ Historically, these laws which have the principles of Common Law are kept intact during the past twenty-five years before 1988.
- ❖ In 1988, when our country adopted the market economy system, a new legal injection has been given to these laws and they came into life once again.

28 28

- ❖ Commencing with the State Law and Order Restoration Council and later taken over by the State Peace and Development Council those legislative organs not only put life onto these laws but promulgated new laws for investment, introduced privatization and developed the market economy system that there will be a promotion of foreign investment, citizens taking active part in the economy, the developing of the market economy and the achieving of better quality of life for our people.

29 29

- ❖ After taking office the new Government under the 2008 Constitution, it has been carrying out political reforms and economic reforms simultaneously, with special emphasis on Good Governance and Clean Government, Transparency and Accountability is the intention of enhancing the rule of law not only in the economic sector but also in the other sectors.

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❖ Corporate Laws and Commercial Laws dividing them into following sectors: -

1. Basic Legislative Framework;
2. Investment in Myanmar;
3. The Transport Laws Framework of Myanmar;
4. *Locus Standi* of the Enterprises, Companies and the Laws governing them;
5. The Hierarchy of Statutes and other related Laws;
6. The Legal Framework of the Settlement of Disputes in corporate and commercial cases;
7. Economy-Related Laws.

31 31

### Basic Legislative Framework

- ❖ Basically, foreign lawyers will find that there are three types of laws. One is the older laws promulgated before the country started to adopt the market economy system in 1988 and next laws promulgated after 1988.
- ❖ With the coming into legal effect of the Constitution of the Republic of the Union of Myanmar, 2008, these new laws are given new dimensions by the Constitution, which endorses the market economy system providing basic principles of fair business.
- ❖ Laws promulgated in this period of time can be classed as the third type of laws.

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❖ The Constitution also gives birth to new modern laws that are designed to provide an investor friendly climate with fair deals for all.

❖ In 2012, the Foreign Investment Law, *Pyidaungsu Hluttaw* Law No. 21/2012, has been promulgated.

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❖ Moreover, the State-Owned Economic Enterprises Law (1989) that gives the right for the formation of Enterprises and Joint Ventures plays the role of basic legislative framework.

❖ As we all know, Public International Law gives a State absolute sovereignty over its territory of land, sea and air.

❖ This absolute sovereignty gives a State an inalienable right over its natural resources.

❖ Section 3 gives the Government this right to perform certain activities through the law.

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❖ Though Section 3 empowers only the State-Owned Economic Enterprises to undertake the twelve activities, exemption, or rather escape section to non-jurist, is made through Section 4.

❖ Under this Section, these activities can be given to Joint Ventures between the Government and any person or economic organizations subject to conditions.

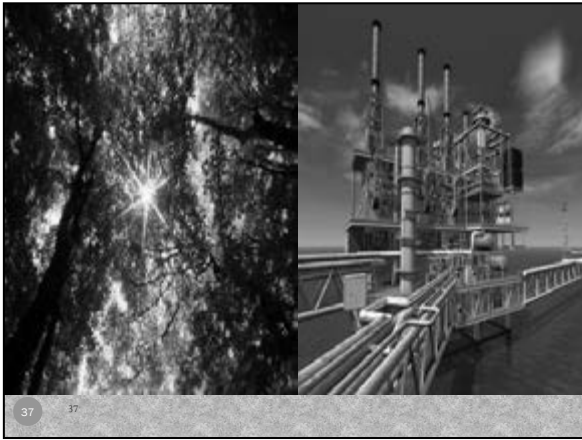
❖ The *modus operandi* for such permission is made through a Notification by the Government.

❖ Section 4 also serves as a vehicle for privatization.

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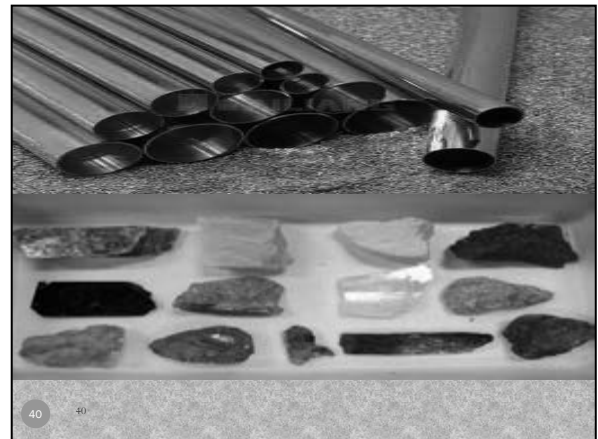
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### Investment in Myanmar

- ❖ Myanmar is a vast country with great potential in rich natural resources.
- ❖ It is the largest country in the mainland of South-East Asia with a total area of 676, 577 sq. km. (167.2 million acres).
- ❖ It also has vast potential resources for cultivation and other agricultural products.
- ❖ The total land area is vast. There is a long coastline of 2832 Kilometers.
- ❖ There are swamps, which are ideal for prawn culture.
- ❖ A vast continental shelf with a big economic zone exists.

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- ❖ In the forestry area, Myanmar is also rich.
- ❖ Expansive forest, which covers half of total area of the country, exports 80% of world teak supply.
- ❖ In the oil and gas sector since the day before War World II, she is renowned for discovery of oil.
- ❖ Now oil and gas both off shore and on shore are discovered in quantities of worthwhile exploration, development and production, which is a 10<sup>th</sup> largest resource of natural gas in the world with storing over 90 trillion cubic feet.
- ❖ She is also endowed with mineral resources.

42 42



- ❖ The manufacturing sector offers good opportunities as in other areas like tourism, hotel, industrial estates, real estates, transportation estates and others.
- ❖ In the seas and in land waters, there are opportunities for good fishing and breeding.
- ❖ One investor sums up the opportunities that “Myanmar is the only place in the world where the fish die of old age!”

43 43

- ❖ The State also encourages domestic investors.
- ❖ This has led to the promulgation of the Myanmar Citizens Investment Law (State Law and Order Restoration Council Law No.4 of 1994). Citizens are entitled to the same exemptions and privileges as foreigners who are entitled under Foreign Investment Law.

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- ❖ To give an investor an bird’s eye view, extracts of the law will be provided in this talk.
- ❖ It is hoped that the Foreign Investment Law will be helpful to the investor.
- ❖ As regards forms of investment, Section 9 of this law states that the investment may be carried out by a foreigner with one hundred per cent foreign capital on the businesses permitted by the Commission; or by a joint venture between a foreigner and a citizen or the relevant government department and organization; or by any system contained in the contract which approved by both parties.

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- ❖ Section 13 of the said law empowers Myanmar Investment Commission to accept the proposal.
- ❖ Moreover, the Commission shall grant the investor the tax exemption or tax reliefs under Section 27 of this law.
- ❖ It is remarkable that the Union Government guarantees a business formed under the permit shall not be nationalized in accordance with Section.
- ❖ Rules for implementation of the Foreign Investment Law has also been released on 31<sup>st</sup> January 2013.

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### The Transport Laws Framework of Myanmar

- ❖ Transport law sector can be divided into three specific areas.
- ❖ They are, namely, the areas of sea commerce or shipping law, of air transport and land transport.
- ❖ Firstly, regarding in the area of Charter Parties in Shipping Law, it is found that the classic Lloyds forms for Time Charters, Voyage Charters and Demise Charters are used.
- ❖ As these forms use the principles of Common Law and they apply to transactions under these charters, the textbooks such as Carver’s Carriage by Sea, Scrutton on Charter Parties and Payne and Ivarmy’s Carriage of Goods by Sea are used in Myanmar.

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- ❖ We also have the Carriage of Goods by Sea Act (1925), which is enacted to give the force of law to the Hague Rules or the Convention for Unification of Certain Rules of Bill of Lading made in Brussels in 1923.
- ❖ Shipping lawyers know the importance of the Bill of Lading Act (1862), which gives the consignee cause of action direct to the shipowner.
- ❖ We find this Act enacted as the Bill of Lading Act 1856 with the original in the India Act IX of 1856.
- ❖ It is almost a replica of the English Bill of Lading Act (1855).

48 48

- ❖ We also have the Myanmar Merchant Shipping Act(1923).
- ❖ The registration of ships in Myanmar is governed by the Myanmar Registration of Ships Act (1841).
- ❖ Originally, this Act was designed for registration of ships in the Myanmar Registry for ships owned by Myanmar citizens.
- ❖ Then in 1986, an amendment law was made to give registration to ships that are made on Charter by Demise or Bare-Boat Charter to Myanmar citizens or authorized organizations.
- ❖ Regarding collisions, we have the Sea-going Vessels Navigation Convention Act (1952).
- ❖ This gives effect to the Brussels Convention on Collision of Ships or Salvage of 1910.

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- ❖ Secondly, in the Air Transport sector, Myanmar ratified the Chicago Convention (1944) or the Convention for International Civil Aviation Organization in April 1948.
- ❖ Our Air Services Agreements are based on the Bermuda pattern.
- ❖ The Chicago Convention and these agreements are strictly observed.
- ❖ In the commercial sector, we have the Aircraft Act of 1934 and Aircraft Rules of 1937 which give effect to the navigation of aircraft with the development of the market economic system.
- ❖ The Aircraft Rules were amended by the State Law and Order Restoration Council Rules No. 1/94 to issue Air Operator's Certificates to Joint Venture airlines that are incorporated in Myanmar.
- ❖ We now have Joint Venture airlines.

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- ❖ For Private Air Law regarding the loss of life or damages or loss of cargo, baggage, and luggage we have the Carriage by Air Act of 1935. Its origin lies in the India Act XX, 1934.
- ❖ This Act gives domestic legal effect to the Convention for the Unification of Rules relating to International Convention for Carriage by Air or popularly known to aviation lawyers as the Warsaw Convention of 1929.
- ❖ The textbooks on Air Law, which one is familiar with such as Bin Cheng's the Law of International Air Transport, Shawcross and Beaumont on Air Law, McNair's the Law of the Air and others, are used very widely in Myanmar.

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- ❖ Thirdly, the Law of Carriage by Land is the product of enacting the principles of Common Law.
- ❖ Thus, we find in the Carriers Act, 1865 and the Railways Act of 1890.
- ❖ All principles of Common Law can be found in these Acts.

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- Locus Standii* of the Enterprises, Companies and the Laws governing them**
- ❖ Whenever an investor wishes to invest he ask himself the nagging question, if I were to invest where do I legally stand?
  - ❖ This is the factor lawyers say in Latin *Locus Standii* or legal standing.

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- ❖ Also, it is often asked in contract negotiations and international workshops and seminars and seen in contracts drawn by overseas lawyer that certain clauses mentioning that the State-Owned Economic Enterprises of Myanmar when they are one of the parties to the contract, will not invoke sovereign immunity when they are parties to a contract .
- ❖ As we all know, sovereign immunity is a concept in Public International Law where it gives immunity to a State from claims or commercial jurisdiction of Courts of Law.

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- ❖ This question whether a State-Owned Economic Enterprise can invoke sovereign immunity can best be understood if we study how these enterprises are formed in Myanmar.
- ❖ The State-Owned Economic Enterprises are formed as corporate bodies that have complete legal personality or legal person in the Myanmar Legal System.
- ❖ They are not the State itself nor can they invoke sovereign immunity, as they are mere commercial enterprises.
- ❖ They have the right to sue or be sued as a company.
- ❖ There are many cases, which form as an example where arbitrations between the enterprises and other parties have taken place.

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- ❖ It is interesting to note the question of how these enterprises are formed.
- ❖ There are two types of documents that give *locus standi* to these enterprises.
- ❖ The first type is called "the Law" where the enterprise has been formed thereunder.
- ❖ A good example is the Union of Myanmar Air Transport Board Act (Law establishing the Myanmar Airways).
- ❖ It was promulgated as an Act in 1953 by Act No.39 of 1952. This Act formed the current Myanmar Airways, which is an enterprise under the Ministry of Transport.

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- ❖ Under these Acts or Laws, the enterprise concerned is given the *locus standi* to be a legal person that has a right to sue or be sued.
- ❖ Another category of enterprises is formed under Notifications by various Ministries.
- ❖ The Ministry concerned issues a Notification for the formation of an Enterprise or Directorate.
- ❖ An example of such formation is the Notification issued by the Ministry of Hotels and Tourism for the formation of Myanmar Hotels and Tourism Service.
- ❖ The Ministry of National Planning and Economic Development also issued the Notification for the formation of the Directorate of Investment and Company Administration under which the Department of Companies and Company Registrar is one of the departments.

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- ❖ Besides State-Owned Economic Enterprises, the formation of Joint Ventures, Foreign Companies operating in Myanmar and Partnership are also seen as products of our market economy system.
- ❖ The formation of Joint Ventures are two kinds; viz., those that fall within the ambit of Foreign Investment Law and those that are formed outside the scope of this law.
- ❖ Joint Ventures where the State is a party are formed under Special Company Act of 1950.

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- ❖ The Myanmar Companies Act (1914) is the procedural law that covers the procedure aspect of company formation for all types of companies of private citizens and Joint Ventures between State Enterprises and Foreign Partners.
- ❖ The Myanmar Companies Act is based on the India Act VII of 1913.
- ❖ There is also Myanmar Companies Rules which was enacted in 1940.

59 59

- ❖ Partnerships can be formed with two to the maximum of twenty persons.
- ❖ A Partnership is not a corporate body.
- ❖ It is governed by the Partnership Act of 1932. Its registration is optional.
- ❖ There is also the sole proprietorship in Myanmar and they need no registration.
- ❖ For foreign companies, the permit has to be obtained from the Ministry of National Planning and Economic Development.

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## The Hierarchy of Statutes and other related Laws

- ❖ These are Statutes passed by the legislature.
- ❖ After 1962, till date, the Statutes are given the name "Law".
- ❖ This term has the same legal effect as acts predecessor, the "Acts". Acts or Laws are Statutes in the Common Law sense.
- ❖ Below these Statutes, we have something that we call Rules or Procedures.
- ❖ They are Rules that are made out of Acts or Laws as are empowered.

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- ❖ Next, for detail enforcement of Laws or Acts and Rules, we have Regulations.
- ❖ Finally, we have Notifications. Notifications are normally issued by the Ministries concerned and they are normally at the bottom of the ladder.
- ❖ However, in certain exceptional cases, legislature makes a certain notification that has the force of law.

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## The Legal Framework of the Settlement of Disputes in Corporate and Commercial Cases

- ❖ As corporate lawyers know, all commercial contracts have a Settlement of Dispute Clause.
- ❖ This Clause serves the contracts as a *modus vivendi* which is a mode of settlement when disputes arise.
- ❖ In the same way, we do find the *modus vivendi* in the laws of Myanmar.
- ❖ In this section, we shall be presenting the laws that concern the *modus vivendi* of dispute resolutions in Myanmar will be discussed.

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- ❖ The Arbitration Act, 1944 was promulgated on 1st March, 1944 as Myanmar Act IV, 1944 which is applied domestically.
- ❖ It is the main Procedural Law for Arbitration in Myanmar.
- ❖ This Law is based on the principles that are found in the English Arbitration Act of 1950.

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- ❖ Though it is promulgated in 1944, we find the principles the same as the English Act.
- ❖ The Arbitration Act, 1944 is designed as an Act similar to those in other Common Law countries.
- ❖ The appointment of arbitrators, the supervision by the Court for their removal, the award, the enforcement of award in the civil court, appeal from an award to the Supreme Court are all mentioned in this Act.
- ❖ At this moment, the Arbitration Act (1944) is under review.

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- ❖ Besides the Arbitration Act of 1944, we also have the Arbitration (Protocol & Convention) Act of 1939. Its origin is the India Act VI of 1937.
- ❖ This Act gives the domestic legal effect to the Protocol on Arbitration Clauses (The Geneva Protocol of 1923).
- ❖ This Protocol is made an integral part of the Act in the First Schedule.

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- ❖ In the same way, the Convention on the Execution of Foreign Arbitral Awards has been given the legal effect in the Second Schedule of this Act.
- ❖ This Protocol, as we all know is called the Geneva Protocol, 1923 and the Convention is known as Geneva Convention of 1927.

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- ❖ As regards dispute settlements, Section 43 of the Foreign Investment Law 2012 provides as follows:
- ❖ If any dispute arises in respect of the investment business:
  - (a) dispute arisen between persons of dispute shall be settled amicably;
  - (b) if such dispute cannot be settled under sub-section (a):
    - (i) it shall be complied and carried out in accord with the existing laws of the Union if the dispute settlement mechanism is not stipulated in the relevant agreement;
    - (ii) it shall be complied and carried out in accord with the dispute settlement mechanism if it is stipulated in the relevant agreement.

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- ❖ Note is to be made that UNCITRAL Rules (United Nations Commission on International Trade Arbitration Rules) are now used for contracts with foreign investors.
- ❖ On 5<sup>th</sup> March 2013, the Seventeenth day Six Regular Session of the *Pyidaungsu Hluttaw*, it approved to accede the New York Convention and to use the UNCITRAL rules.
- ❖ It is obvious that the UN Convention on Enforcement of Arbitral Awards (1958, New York Convention) is to be given the domestic legal effect by legislation in the near future.

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- ❖ Likewise, as promulgating the domestic law to implement the New York Convention, the Arbitration Law (Draft) is scrutinized by my office.
- ❖ It is apparent that it will create a better environment for investors and reforming the Myanmar arbitration infrastructure to keep up with the international standards obtaining confidence from investors.

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### Economy-Related Laws

- ❖ There is also the Contract Act of 1872. Its origin lies in India Act IX of 1972.
- ❖ This Act have the same principles that one finds in the Law of Contract of the English Common Law System.
- ❖ Its principles include the promise, proposal, the acceptance, consideration, and factors, tendering to defeat contractual liability, such as incapacity, misrepresentation, duress and undue influence, illegality, discharge, remedies, contingent contract and agency.

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- ❖ Again, for this, we have the Myanmar the Registration Act of 1909, which has been mentioned above.
- ❖ This Act is followed by the Registration Manual of 1946.
- ❖ In this Manual there is an article called 18 (f) which specifies the registration of the trademark to give it a legal effect.
- ❖ In practice, after registration the legal effect starts.
- ❖ Next, regarding copyrights we do have the Copyright Act of 1914, India Act III 1914 and the Patents and Designs Act of 1945, the Patents and Designs (Emergency Provisions) Act of 1946 and the Myanmar Merchandise Marks Act 1889.
- ❖ These Acts are designed to protect copyrights and patents.

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- ❖ The basic principle for protection of Copyrights, Trademarks and Designs are similar to the laws of other Common Law Legal Family.
- ❖ In the area of Intellectual Property, the four new laws namely Patent Law, Industrial Design Law, Trade Marks and Service Marks Law, and Copyright Law are being drafted.
- ❖ Myanmar is a founding member of the World Trade Organization and thus a Party to the Marrakesh Treaty that establishes the World Trade Organization 1994 (WTO Agreement).
- ❖ It is also a Party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
- ❖ Four modern laws have been finally drafted by the Ministry of Science and Technology and will be submitted to the Hluttaw for adoption soon.

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#### The Area of I.C.T or E- Commerce

- ❖ There have been developments to have Myanmar Cyber Laws.
- ❖ This is a collection of laws such as the Myanmar Telegraph Act (1885), Myanmar Wireless Telegraphy Act (1933), the Electronic Transactions Law (2004), the Computer Science Development Law (1996) and the Telecommunications Law (Draft).
- ❖ The Telecommunications Law is at our Hluttaw, and when promulgated, will be known as Myanmar Cyber Law.
- ❖ It will place Myanmar I.C.T at par with other advanced ASEAN countries in the area of I.C.T.

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#### The Area of Foreign Currency Management

- ❖ The Foreign Currency Supervision Law was enacted by the Pyidaungsu Hluttaw on 10 August 2012 as Law No.12/2012.
- ❖ It is administered by the Central Bank of Myanmar.

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- ❖ In the area of Competition Law and Competition Policy for preventing monopoly on economy, it is at the stage of drafting.
- ❖ For developing the capital market, the Securities Exchange Law is now in the Hluttaw and is being discussed.

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- ❖ We also have
  - the Negotiable Instruments Act (1881),
  - the Sale of Goods Act(1930),
  - the Transfer of Property Act (1882),
  - the Transfer of Immoveable Property Restriction Law (1987),
  - the Registration Act (1909),
  - the Myanmar Stamp Act (1899) and
  - the Science and Technology Development Law (1994).
- ❖ Recently promulgated laws include
  - the Special Economic Zone Law (2011),
  - the Dawei Economic Zone Law (2011) and
  - the Farm Land Law (2012) and
  - other rules, orders and directives for friendly investment climate.

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- ❖ The formation of companies is governed by the Myanmar Companies Act and Special Company Act as in other countries.
- ❖ Now, the Special Economic Zone Law 2011 is revised to meet the better requirements of foreign investors.
- ❖ Likewise, the Thilawa Economic Zone Law and the Kyaukphyu Economic Zone Law will be drafted.

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### The Area of Taxation

- ❖ We have
  - the Income Tax Law (1976),
  - the Tax Law (1990),
  - the Court Fees Act (1870),
  - the Sea Customs Act (1887),
  - the Land Customs Act (1924),
  - the Tariff Law (1992) and
  - the Land and Revenue Act (1879).

79 79

### The Area of Finance and Banking

- ❖ we have
  - the Central Bank of Myanmar Law (1990),
  - the Financial Institutions of Myanmar Law (1990),
  - the Control of Money Laundering Law (2002),
  - the Savings Bank Law (1992),
  - the Myanmar Agricultural and Rural Development Bank Law (1990) and
  - the Micro Finance Business Law (2011).

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- ❖ As regards the economic enterprises, there are also the related laws such as

- the Promotion of Cottage Industries Law (1991),
- the Private Industry Law (1990),
- the Salt Enterprise Law (1992),
- the Fishing Right of Foreign Fishing Vessels Law (1989),
- Aquacultural Law (1989),
- Myanmar Marine Fisheries Law (1990),
- the Fresh Water Fisheries Law (1991),

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#### Cont:

- the Myanmar Pearl Law (1995),
- the Private Industrial Enterprise Law (1990),
- the Myanmar Hotels and Tourism Law 1993,
- the Myanmar Mines Law (1993),
- the Myanmar Gemstones Law (1995),
- the Myanmar Insurance Law (1993),
- the Insurance Business Law (1996),
- the Television and Video Law (1996),
- the Motion Picture Law (1996),
- the National Drug Law (1992),
- the Indigenous Medicine Law (1996),
- the National Food Law (1997),
- the Blood and Blood Products Law (2003),
- the Forest Law (1992),
- the Cooperative Society Law (1992), so and so forth.

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### Conclusion

- ❖ Myanmar is named the golden business destination.
- ❖ There is ample opportunity for foreign investors to come to invest because of her rich resources.
- ❖ To foster to create the investor friendly environment, Myanmar has already enacted the Foreign Investment Law, 2012.
- ❖ Myanmar has massive work force that would facilitate labour-intensive industries.
- ❖ Other legislations are in legal effect with more modern laws under drafting.

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- ❖ Furthermore, Myanmar Investment Commission meets weekly and decides very important investment matters.
- ❖ We strive for the Rule of Law not only in Civil and Criminal matters but also in economic sectors.
- ❖ Section 35 of the Constitution provides for the implementation of the market economy.
- ❖ We promote fair trade and prohibit monopoly.

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- ❖ There is a saying for work to be done, if we do nothing, nothing will come out. If we do something, something will come out.
- ❖ But in this something, there are advantages and disadvantages, pros and cons.
- ❖ We need to face such challenges. Political reform is progressing well. Economic reform is also in process with high objectives.
- ❖ Furthermore, administrative reform is progressing well.
- ❖ There is a saying that nothing venture, nothing done. Myanmar is venturing into her future.

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- ❖ There are many things to do for the development of our legal system.
- ❖ At this moment, Myanmar has been making its utmost efforts for legal reforms to develop legal environment, which meets the will of investors.
- ❖ To accomplish this heavy task, the Union Attorney General's Office plays as a key player in this process.

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- ❖ In this juncture, Japan is the significant country giving lots of cooperation and technical assistance for the development of our legal system.
- ❖ In order to develop the human resources in Myanmar, Japan has also been training the legal scholars through the scholarship programme since many years.

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- ❖ Recently JICA and the Union Attorney General's Office had jointly held some international seminars such as
  - Seminar on "Commercial Arbitration",
  - Seminar on the "Legal Aspects on the Privatization of State-owned Enterprises" and
  - Seminar of "Reforming Legal Systems of Public Company and the Legal Governance".

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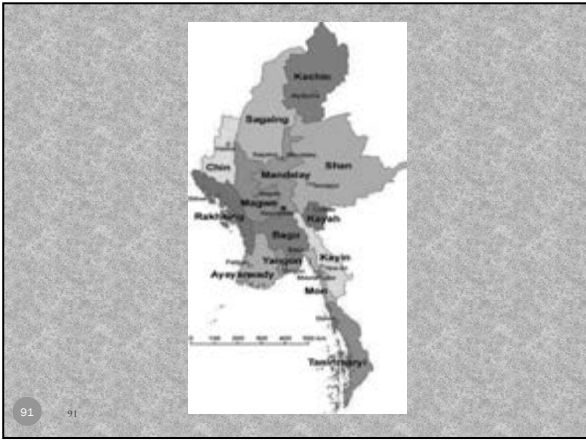
- ❖ These seminars are well received by the international private company.
- ❖ These sorts of programmes are very helpful for legal reform in Myanmar, particularly in economic laws.
- ❖ There are still many programmes for further cooperation between JICA and Myanmar.
- ❖ Obviously, this official visit is a part of our cooperation programmes and could enhance our friendship and relationship, which have been already existing between our two countries.

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- ❖ We are grateful to have friends like Japan.

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## The Formation and Law Making Processes of Hluttaws

The Republic of the Union of Myanmar

## Introduction

- \* The essence and fundamental nature of political change and reform of a country lie with the Constitution. In Myanmar, there has been three State Constitutions.
- \* (1) The Constitution of the Union of Burma, 1947.
- \* (2) The Constitution of the Socialist Republic of Myanmar, 1947.
- \* (3) The Constitution of the Republic of the Union of Myanmar, 2008.

The Constitution of the Republic of the Union of Myanmar, 2008 was promulgated by National Referendum on the 29th May 2008. The multi-party general election was held on 7th November 2010, (3069) candidates from (37) political parties and (82) individual candidates contested for the respective Hluttaws. The emergence of *Pyidaungsu Hluttaw* (The Union Parliament) started on the first regular session of the first *Pyidaungsu Hluttaw* held at Nay Pyi Taw on the 31st January 2011.

## Hluttaw Formation and Sessions

- \* The *Pyidaungsu Hluttaw* (The Union Parliament) is Myanmar's bicameral legislature. It is composed of lower house called *Pyithu Hluttaw* (House of the People's representatives) and an Upper House, called *Amyotha Hluttaw* (House of the Nationalities).
- \* The Speaker and the Deputy Speaker of *Amyotha Hluttaw* shall serve as the Speaker and Deputy Speaker of the *Pyidaungsu Hluttaw* from the day of the *Pyithu Hluttaw* commences up to the end of (30) months and the Speaker and the Deputy Speaker of *Pyithu Hluttaw* shall also serve as the Speaker and the Deputy Speaker of the *Pyidaungsu Hluttaw* for the remaining term. The term of the *Pyidaungsu Hluttaw* is five years from the day of its first session. Our first *Pyidaungsu Hluttaw*, first regular session was held on 31st January 2011. Six regular sessions had been held so far and one special session was held recently from 20th May to 21st May 2013.

## *Pyithu Hluttaw* and *Amyotha Hluttaw*

- \* In the *Pyithu Hluttaw* we have (440) representatives, (330) elected representatives from (330) townships. That is one elected representative from each township. The remaining (110) representatives are Defence Services Personnel nominated by the Commander-In-Chief of the Defence Services in accord with the law.
- \* The *Amyotha Hluttaw* is formed with a total number of (224) representatives, 168 representatives are elected in equal numbers of (12) representatives from each Region or State. Our country is composed of (7) Regions and (7) States. Out of the total (224) representatives (56) are Defence Services Personnel nominated by the Commander-In-Chief of the Defence Services, that is four representative from each Region or State.

## State and Regional Hluttaws

- \* Apart from these mentioned Hluttaws, we have Regional or State Hluttaws in each Region or State. (2) representatives are elected from each Township to form the Region or State Hluttaws. The number of representatives varies according to the number of Townships constituted in the Region or State. In each and every Hluttaw two third of the representatives are elected and one third of the representatives are Defence Services Personnel nominated by the Commander-In Chief of the Defence Services.

## *Pyidaungsu Hluttaw*

- \* The *Pyidaungsu Hluttaw* is the highest law-making organ of the State. In addition to passing laws, the *Pyidaungsu Hluttaw* is formally responsible for selecting the President and two vice Presidents of the State. The *Pyidaungsu Hluttaw* is the combination of *Pyithu Hluttaw* and *Amyotha Hluttaw*. The maximum representative of the *Pyidaungsu* is (664). Although the *Pyithu Hluttaw* definitely has the advantage of its numerical strength, the power and status of both the Hluttaws are coordinate and equal.

## Formation of the Hluttaw Committees

The following (4) standing committees are formed respectively with appointed chairmen and secretaries in the *Pyithu Hluttaw* and *Amyotha Hluttaw*.

- a) Bill Committee
- b) Public Account Committee
- c) Hluttaw Rights Committee
- d) Governments' Guarantees, Pledges and Undertaking Vetting Committees

## Hluttaw Joint Committees

*Pyidaungsu Hluttaw* also formed the following joint committees;-

- a) Joint Bill Committee
- b) Joint Public Account Committee

## Extended Committees and Commissions formed at *Pyithu Hluttaw* and *Amyotha Hluttaw*

### PYITHU HLUTTAW

1. Fundamental Rights of Citizens, Democracy and Human Rights Committee
2. Ethnic Races Affairs and Internal Peace Restoration Committee
3. Banks and Monetary Development Committee
4. Planning and Financial Development Committee
5. Peasant Worker and Youth Affairs Committee
6. International Relations Committee
7. Economic and Trade Development Committee
8. Transport, Communication and Construction Development Committee
9. Sports, Culture and Public Relations Development Committee

10. Agriculture and Livestock Breeding Development Committee
11. Investment and Industrial Development Committee
12. Resources and Environmental Conservation Committee
13. Health Development Committee
14. Education Development Committee
15. Judicial and Legal Affairs Committee
16. Public Affairs Management Committee
17. Population and Social Development Committee
18. Reformation and Modernization Scrutiny Committee
19. Maritime Transport Development Committee
20. Rule of law and Tranquility Committee

## Extended Committees and Commissions formed at *Pyithu Hluttaw* and *Amyotha Hluttaw*

### *Amyotha Hluttaw*

1. Hluttaw Representatives Vetting Committee
2. Nationalities Affairs Committee
3. Fundamental Rights of the Citizens, Democracy and Human Rights Committee
4. National Planning Committee
5. Monetary and Taxation Committee
6. Commerce Committee
7. Education, Health and Culture Committee
8. Woman and Child Affairs Committee

9. Public Complaint and Petition Committee
10. International Relations Committee
11. Local and Overseas Workers Affairs Committee
12. International Non-government Organizations and Non-government Organizations Committee
13. Mineral and Natural Resources Committee
14. ASEAN Political-Security Community Committee
15. ASEAN Economic Community Committee
16. ASEAN Socio-Cultural Community Committee
17. Farmers Affairs Committee

## Commissions

- \* *Pyithu Hluttaw* Commission for assessment of Legal Affairs and Special Issues.
- \* *Amyotha Hluttaw* Commission for Finance and Legal Affairs.

## Committee Formation and Functions

\* The above mentioned Hluttaw Committees are formed up with at least (15) members of Hluttaw representatives in each committee. Each Committee is constituted in such manner that it represents a replica of the Hluttaw in miniature. As stated in the provision of the Constitution, there are check and balance and reciprocal control among Legislative bodies, Executive bodies and Judicial bodies. Oversight is one of Hluttaw's core responsibility. Committees are formed essentially to endeavor strong oversight and to maintain balances in the Republic of the Union of Myanmar. These committees have to cooperate, examine and monitor all the undertakings of Ministries. Committees are responsible to scrutinize whether the undertakings are in conformity with the existing laws. Scrutinizing National Projects and Budgets are Hluttaw's most important oversight function, in order to achieve greatest accountability and administrative efficiency for the Union and the people.

## Formation and Functions of Commissions

- \* Unlike the Committees, the two Commissions are formed not only with Hluttaw representatives but also with suitable citizens who are well-known and well experienced in their respective fields. These members are nominated and appointed by the respective Speakers with the approval of the Hluttaw. The number of the members of Commission is not fixed. They play an important role by providing technical assistance and advice to the Committees and the Hluttaws.

## Functions of Hluttaw Joint Committees

- \* The Hluttaw Joint Committees are responsible to *Pyidaungsu Hluttaw*. It is through a Joint Committee of both Hluttaws that efforts are made to resolve and iron out the differences between the two Hluttaws on Bills, failing which the Bills consideration is given up.

## The Legislature

- \* The basic principles of The Republic of the Union of Myanmar is stipulated in chapter one of the Constitution, comprising of (48) sections.
- \* Regarding to the separation of power in section 11 (a) - The three branches of sovereign power namely, legislative power, executive power and judicial power are separated, to the extent possible, and exert reciprocal control, check and balance among themselves.

## The Legislature

- \* The distribution of legislative powers of the Union is shared among the *Pyidaungsu Hluttaw*, Region Hluttaw and State Hluttaw is detailed in the schedules of the Constitution. The schedule one enumerates matters on which *Pyidaungsu Hluttaw* can exclusively legislate, while schedule two thereof specifies matters on which Region or State legislatures alone can make laws. Schedule three is the list of legislation of the leading Body of Self-Administered Division or Self-Administered Area.
- \* The *Pyidaungsu Hluttaw* has the exclusive power of legislation on all matters not enumerated in any of the lists. While a Region or State Hluttaw cannot make a law on matters within the powers of *Pyidaungsu Hluttaw*. *Pyidaungsu Hluttaw* can make a law on matters enumerated in the Region or State list in certain contingencies. This proves the predominance of *Pyidaungsu Hluttaw* over Region or State Hluttaw in the matter of legislation.

## Submission of Bill

- \* All legislative proposals must be brought in the form of Bills before the Hluttaws. Subject to the provision of the Constitution, Bills may be introduced in either *Pyithu Hluttaw* or *Amyotha Hluttaw* of the *Pyidaungsu Hluttaw*. Bills are classified into public Bill and private bill. Public Bills are sponsored by Ministers and private Bills are sponsored by member of Hluttaws or the Committees of the Hluttaws.
- \* Normally, the Bill to be introduced shall be submitted to the *Pyidaungsu Hluttaw* office in accord with the prescribed procedure, (30) days before the session commences. The Speaker may consider the bills submitted beyond the time limitation, if there is a reasonable ground.
- \* Regarding to the submission of a Bill in accord with the law, the restriction of the Constitution should be carefully noted.

## Section 100

- \* Section 100
- (a) - The Union level organizations formed under the Constitution shall have the right to submit the Bills relating to matters they administered among the matters included in the Union legislative list of the *Pyidaungsu Hluttaw* in accord with the prescribed procedures.
- (b) - Bills relating to national plans, annual budget and taxation, which are to be submitted exclusively by the Union Government shall be discussed and resolved at the *Pyidaungsu Hluttaw* in accord with the prescribed procedures.
- \* This section 100 describes that the Ministries have the right to submit the Bills relating to matters they administered except, the (3) kinds of Bill relating to national plans, annual budgets and Taxation.

## Submission of Bill

- \* To initiate a public bill the Ministry concerned has to work out the political as well as administrative, financial, economic and social implications of the proposal. Opinions of the legal and constitutional experts are obtained through the Union Attorney-General's office. After this scrutiny, a memorandum is submitted to the Cabinet for approval. The proposal is then converted into a Bill.
- \* The Bill as drafted, is examined in detail by the Union Attorney-General. Sometimes the Bill may have to be drafted several times before it can meet all the requirements. After the draft of the Bill has been finalized the Ministry concerned forwards the proposal to the Cabinet for consideration and approval. With the decision of the Cabinet the Bill is submitted to the *Pyidaungsu Hluttaw* office.

## Formation and Functions of *Pyithu Hluttaw* Bill Committee

### Formation

- \* The Bill Committee of *Pyithu Hluttaw* was formed on the (1-3-2011) during the first *Pyidaungsu Hluttaw*, first regular session with (13) members, one chairman and one secretary in accord with the law.

## Formation and Functions of *Pyithu Hluttaw* Bill Committee

### Principles

- \* The main task of the Bill Committee is to scrutinize the Bills referred to the committee by the Speaker of *Pyithu Hluttaw*. In scrutinizing any Bill the committee shall abide to the following principles:
  - a) Whether the Bill is in conformity with the policies and objectives of the Republic of the Union of Myanmar.
  - b) Whether the Bill is in conformity with the Constitution and the existing laws.
  - c) Whether the Bill can safeguard the interest of the Union and the people.
  - d) Whether the contents of a Bill may pose threat to the stability and security of the Union.
  - e) Whether the Bill is in accord with the current situations.
  - f) Whether the Bill may harm the security of the people and their properties.

## Formation and Functions of *Pyithu Hluttaw* Bill Committee

### Principles

- g) Whether the terms and vocabularies used in the Bill may damage the unity of the nationalities.
- h) Whether the Bill may conflict the rights of one Ministry to another or the rights of government offices and institutions.
- i) Due to the requirements of international or regional treaties or memorandum of understanding, should there be needed to make a new agreement, whether they are in conformity with the previous agreements or whether they may harm the sovereignty of the Union.
- j) Regarding to the policy matters whether the ingredient of the policy are sufficient.
- k) Whether the provisions are practically applicable.
- l) Whether the Bill have sufficient clauses to implement the purpose.

## Formation and Functions of *Pyithu Hluttaw* Bill Committee

### Procedures

- \* The works of the Bill Committee begins at the time the *Pyithu Hluttaw* receives the Bill from the *Pyidaungsu Hluttaw*. The Bill Committee is responsible to distribute the copies of the Bill to all representative of the *Pyithu Hluttaw* in time. On the fixed date, the Minister or the Deputy Minister concern, shall introduce Bill at the *Pyithu Hluttaw* session.
- \* If such an introduction is accepted for further discussion at the Hluttaw, publication of the Bill in Gazette is done for eliciting public opinion and the Bill is referred to Bill Committee. If the introduction of a Bill is rejected the Speaker shall announce the rejection of the Bill. Within these two and a half years in the *Pyithu Hluttaw*, no public Bill (Government's Bill) has been rejected so far.

## Formation and Functions of *Pyithu Hluttaw* Bill Committee

### Procedures

- \* The Bill Committee, on receipt of the Bill referred by the Speaker shall make a report and send to the Speaker within seven days. Due to the time limitations members of the Committee has to held a meeting without any delay. This 1st meeting within the Committee, the following procedures are carried out:
  - a) Invitation of related Hluttaw Committee to discuss exclusively  
On the Bill
  - b) Invitation of related Ministries and organizations for necessary questioning
  - c) Fixing the date for discussion

## Formation and Functions of *Pyithu Hluttaw* Bill Committee

### Procedures

- \* On the fixed date the above mentioned Committees and Ministries together with members of Bill Committee and members of the Commission for legal affairs and special issues, the Bill is discussed exclusively. Based on discussion in the meeting, the conclusion for scrutinizing is drawn for necessary amendments. The whole discussion is recorded and the report to submit to *Pyithu Hluttaw* is prepared in a prescribed procedure.

## Formation and Functions of *Pyithu Hluttaw* Bill Committee

### Procedures

- \* The report along with the meeting records and how the Bill was scrutinized shall be sent to the Speaker. On the fixed date, the Ministry that initiated the Bill shall submit the original Bill before the Hluttaw. The report of the Bill Committee and the comparison of the two Bills are distributed to members of Hluttaw before the scheduled session convenes. The report of the Bill Committee shall be read out and submitted by one of the Committee members at the session. After the reading, the Speaker shall invite members of Hluttaw to discuss the Bill. Members who seek to scrutinize or amend the bill shall be registered in accord to the rules and procedures of the Hluttaw within the limited time. The Speaker may decide the next session to discuss the matter. On the scheduled session, the Bill shall be discussed clause by clause in detail and the resolutions shall be drawn at *Pyithu Hluttaw*.

## Formation and Functions of *Pyithu Hluttaw* Bill Committee

### Procedures

- \* The Bill passed by the *Pyithu Hluttaw* shall be sent to the *Amyotha Hluttaw* to continue to discuss and resolve. The *Amyotha Hluttaw* may resolve to agree or disagree, or agree with amendments in accord with the resolution of *Pyithu Hluttaw*. The Bill shall be sent back to *Pyithu Hluttaw* together with the resolution of *Amyotha Hluttaw*. If the *Pyithu Hluttaw* accepts the Bill with amendments of the *Amyotha Hluttaw*, it shall send to the Speakers of the *Pyidaungsu Hluttaw* for further process. If the *Pyithu Hluttaw* disagrees, it shall take the resolution of the *Pyidaungsu Hluttaw*.

## Promulgation

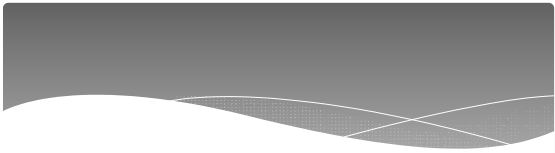
- \* After a Bill has been passed by both Hluttaws or resolution has been made at the *Pyidaungsu Hluttaw*, the Bill obtains the assent of the President. The President shall sign the Bills within (14) days after the day of receipt of the Bill and shall promulgate it as law. Within the prescribed period, the President may also return the Bill to the *Pyidaungsu Hluttaw* with his recommendations for reconsideration. The *Pyidaungsu Hluttaw*, after discussion of the President's comments, may accept his comment and resolve to amend the Bill or may resolve to approve the Bill as it is without accepting the President's comment. After receiving the Bill back, the President shall sign the Bill and promulgate it as law within the period of (7) days. If it is not signed by the President within that prescribed period, it shall become law as if he had signed it on the last day of the prescribed period. This is a brief account of how a Bill has to be passed through many processes to become a law.

## Promulgation

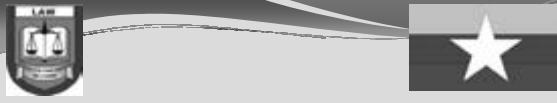
- \* Before the formation of Hluttaws, we have (401) existing laws in our country. Some existing laws are from the British Colonial era, some laws are not inconsistent with the prevailing situations, some laws do not fit the ideal of a democratic society. This outdated laws have to be revoked. The *Pyidaungsu Hluttaw* has repealed (26) laws and promulgated (51) laws so far. The *Pyidaungsu Hluttaw* is also responsible to review all existing laws, and at the same time, necessary laws are to be adopted in time. The functions of *Pyidaungsu Hluttaw* is enormous.

## Conclusion

- \* Our Hluttaw is still very young and our democracy is just at an infant stage. Two years ago, when we just came into the Hluttaw everything was new to us, we understand very little about legislature and we did not know where and how to begin. On the other hand, back in the constituency the people were expecting a lot from us. We were in great difficulties, but with the close guidance of our Speaker and technical support provided by The Union Attorney General's office we have come a long way in the fields of legislation. There is no backtrack possibility, we are determined to push forward. We believe in genuine democracy as crucial foundation to the development of our country.



**Thank you very much for  
your kind attention.**



## The Role of the Union Attorney-General's Office of the Republic of the Union of Myanmar

Presented by  
U Kyaw Moe Naing  
Advocate-General of Yangon Region

1

## Historical Background of UAGO

- Public Prosecutors and Government Advocate were appointed in early British Era
- the Advocate General, Government Advocate were appointed under the Government of Burma Act, 1935
- after regaining Independence in 1948, the President of the Union could appoint an Attorney General with the advice of the Prime Minister under the Constitution of the Union of Myanmar, 1947 & The Office of the Attorney General was formed under the Attorney General of the Union Act, 1948
- an Attorney General was appointed in 1962 under the Regime of Revolutionary Council
- 1972- a new Attorney General's Office was formed
- 1974 Constitution- the Council of People's Attorneys- the Central, State/Divisional, Township Law Office were formed

## Historical Background of UAGO (Continued)

- 1988, SLORC promulgated the Attorney-General Law, 1988
- 2001, SPDC promulgated the Attorney-General Law, 2001
- Subject to the Constitution of the Republic of the Union of Myanmar 2008, the Attorney-General of the Union Law, 2010 was promulgated
- Current Union Attorney General's Office and various levels of Law Offices are constituted in accord with this 2010 Law

3

## Formation of UAGO

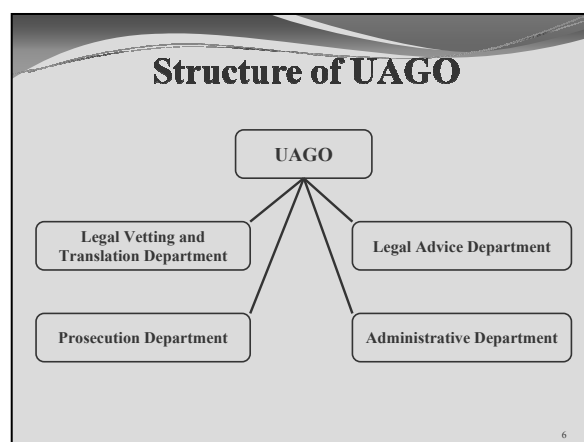
- 2008 Constitution & the Attorney-General of the Union Law, 2010
  - formed the Union Attorney-General's Office, the Advocate-General's Office of the State/Region, the Various Levels of Law Offices
  - the Attorney-General of the Union was appointed by the President with the approval of the Pyidaungsu Hluttaw
  - the AGU is a member of the Union Government and responsible to the President
  - the AGU obliged to submit the unusual situation of legal matter to the three Hluttaws if there arise in these Hluttaws

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## Formation of UAGO (Continued)

- 2008 Constitution & the Attorney-General of the Union Law, 2010
  - Deputy Attorney-General was appointed by the President on his own volition
  - DAG is responsible to the AGU and responsible to the President through AGU
  - the Advocate-General of the State/Region was nominated by the Chief Minister of the State/Region with the approval of the respective State/Region Hluttaw and appointed by the President
  - the AG of State/Region is responsible not only to AGU but also to the Chief Minister of State/Region and to the President through the Chief Minister of State/Region as well

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## Hierarchical Organizational Chart of UAGO and Its Subordinate Offices

Union Attorney General's Office headed by Director General



Offices of Advocate-General of Regions/States headed by S/R LO



District Law Offices headed by the District Law Officer



Township Law Offices headed by Township Law Officer

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## Functions of Legal Vetting and Translation Department

- Vetting and advising the draft laws initially drafted and sent by the relevant ministry
- Vetting the draft laws sent by the relevant ministry to amend, added and substitute in respect of any existing law
- Vetting and advising the draft rules, procedures, notifications, orders and directives
- Translating laws

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## Functions of Legal Advice Department

- Tendering legal advice to the President of the Union, the Speakers of the three Hluttaws (Pyidaungsu Hluttaw, the Pyithu Hluttaw, the Amyotha Hluttaw), any Ministry of the Union, Nay Pyi Taw Council, any Union level organizations on matters relating to:
  - International, regional or bilateral or multilateral treaties;
  - MOU, MOA, local and foreign investment instruments and other instruments;
  - Any other legal issues

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## Functions of Prosecution Department

- Appearing on behalf of the State in original, appeal, revision and special appeal cases
- Appearing on behalf of the State in applications to issue writs to the Supreme Court of the Union (SCU)
- Appearing in criminal cases on behalf of the Union
- Appearing on behalf of the Union in original civil case, civil appeal case, civil revision case and special revision case as the plaintiff or defendant
- Filing appeal or revision if it is necessary to file to the SCU
- Withdrawing the entire case, any charge or any accused
- Making decision to close the criminal cases that cannot be prosecuted at the Court
- Filing appeal against acquittal order to the SCU

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## Functions of Administrative Department

- Carry outs the functions relating to:
  - Civil service personnel affairs;
  - Inspection ;
  - Budget and accounts;
  - Logistic and building;
  - Training and legal research;
  - Compiling and publishing law books;
  - Information technology

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## Motto of UAGO



*“ Considered Noble Est Professionem.”*

The Legal Profession is a Noble Profession

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Union Attorney-General attends "Recent Development of Myanmar and Challenges it Faces- from the Legal and other Perspectives" workshop in Japan

NAY PYI TAW, 19 June- Attorney-General of the Union Dr Tun Shin read out the paper titled the Legal System of Myanmar and updates on Myanmar Business Law, at a workshop on comparison between legal systems in Myanmar and Japan held on 8-15 June in Japan.

The Attorney-General of the Union discussed legal system in Myanmar's successive eras and business laws; Chairman of Pyithu Hluttaw Bill Committee U T Khin Myat, committee's works and Yangon Region Advocate-General U Kyaw Moe Naing, the role of the Office of the Attorney-General of the Union.

During his visit,



Attorney-General of the Union Dr Tun Shin reading out his paper at the workshop.- MNA

the Attorney-General with Japanese officials Myanmar and Japan and of the Union held talks on cooperation between other legal affairs.- MNA