

Jurisdictions and Organization of AACC Members

9. Myanmar

Constitutional Tribunal of the Union

Summary

The Constitutional Tribunal of the Union was established in 2011 and consists of 9 members. Its functions and duties include the following: To interpret the provisions of the Constitution, to review the constitutional conformity of laws and executive measures, to resolve competence disputes, to review matters intimated by the President relating to Union territory, and to perform functions and duties conferred by laws enacted by the legislature. The Office of the Tribunal includes organizational units such as the Administrative Division, the Procedural and Research Division and the Judicial Division. The Procedural and Research Division conducts research on whether promulgated laws are in conformity with the Constitution, and sends the decisions of the Tribunal to the respective institutions for publication in the state official gazette. Furthermore, it publishes research papers of the Tribunal's researchers. It also enacts orders, directives and procedures, and conducts research on constitutions, judgements, existing laws and international laws. Subjects of research include the constitutional adjudicatory bodies, political systems, elections, administration, legislation and judicial branches of other countries.

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A. Introduction

A1. History

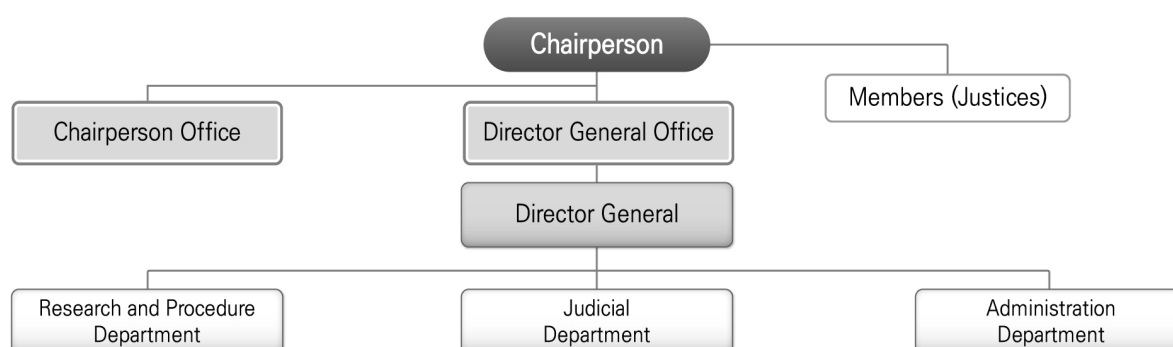
The Constitution of the Union of Myanmar was ratified by referendum on 10th May 2008 and promulgated on 29th May 2008. It entered into force on 31st January 2011, which was the first day of the first meeting of Pyidaungsu Hluttaw (Union Parliament). According to this Constitution, the Constitutional Tribunal of the Union of Myanmar arises on 30th March 2011 that came into being for the first time in the history of Myanmar.

The main objective of the Constitutional Tribunal of the Union of Myanmar is to protect and uphold the Constitution. The key goal of the Constitutional Tribunal is to implement the activities of the State Institutions, or individual or organizations in the State to be in alignment with the Constitution. There are nine members including the Chairperson in the Constitutional Tribunal.

A2. Basic Texts

- ▶ Constitution of the Republic of the Union of Myanmar (enacted 2008, amended 2015): Schedule 2 and 5
- ▶ The Law of the Constitutional Tribunal (enacted 28th October 2010, amended on 21st March 2013 and 5th November 2014)
- ▶ The Rules of the Constitutional Tribunal (enacted on 6th August 2015)

B. Organization



B1. Chairperson

The Chairperson of the Constitutional Tribunal shall be appointed by the President with the approval of the Pyidaungsu Hluttaw (Union Parliament) among its members. He or she represents the Constitutional Tribunal, takes charges of its affairs and directs and supervises all of the staff under his or her authority.

The Chairperson of the Constitutional Tribunal presides over the Full Bench of the Constitutional Tribunal.

B2. Members of the Constitutional Tribunal

In respect of the appointment of the chairperson and members of the Tribunal, the qualification, appointment of new members, selection of members, causes for impeachment, term of the Tribunal are provided in Section 327 to Section 335 of this Constitution.

The Constitutional Tribunal of the Union shall consist of nine members appointed by the President with the approval of the Pyidaungsu Hluttaw (Union Parliament). Of these, three shall be chosen by the Speaker of the Pyithu Hluttaw (Lower House), three shall be chosen by the Speaker of the Amyotha Hluttaw (Upper House) and three shall be chosen by the President. The term of the Constitutional Tribunal of the Union is the same as that of the Pyidaungsu Hluttaw (Union Parliament) being five years.

As the Tribunal is formed with 9 members, if the Chairperson or one of the members is not available, we may say that composition of the Tribunal becomes incomplete. It means the adjudication proceedings which need oversight by all members shall not be performed.

B3. Structure of the Office

The Constitutional Tribunal is composed of 64 officers which include the Director General and 134 staff members working in related departments. Among them, 33 personnel are assigned to the Chairperson's Office and 165 personnel are assigned to the Director General Office.

B3-1. Chairperson Office

The duties and functions of the Chairperson's Office are to perform all administrative matters of the Justices including arrangement of deliberation meeting, meeting with domestic and foreign dignitaries, local and foreign trips and to support the judicial administration of Justices.

B3-2. Director General Office

The Director General manages and instructs all administrative matters. He supports judicial administrative matters for judicial proceedings. There are 3 Departments in the Director General Office which are respectively led by each Director. They are as follows;

- ▶ **Judicial Department:** Judicial Department is assigned to prepare necessary judicial work for court hearing procedures, receiving submissions and assist logistic and technical matters to Justices.
- ▶ **Procedural and Research Department:** Procedure and Research Department has the tasks of research, publishing the research papers and final decisions of the Tribunal, library management, conducting the information and technology matters and arranging the international and local training courses for the staff.
- ▶ **Administrative Department:** Administrative Department performs the general administration of all staff, supervising all financial and budget matters and administering the internal security measures for the Constitutional Tribunal.

C. Jurisdictions

The functions and the duties of the Tribunal are to interpret the provisions under the Constitution; to vet whether the laws promulgated by the Pyidaungsu Hluttaw, the Region Hluttaw, the State Hluttaw or the Self-Administered Division Leading Body and the Self-Administered Zone Leading Body are in conformity with the Constitution or not; to vet whether the measures of the executive authorities of the Union, the Regions, the States, and the Self-Administered Areas are in conformity with the Constitution or not; to decide Constitutional disputes between the Union and a Region, between the Union and a State, between a Region and a State, among the Regions, among the States, between a Region or a State and a Self-Administered Area and among the Self-Administered Areas; to decide 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; to vet and deciding matters intimated by the President relating to the Union Territory; to perform the functions and duties conferred by laws enacted by the Pyidaungsu Hluttaw (Union Parliament).

C1. Submission to obtain the interpretation, resolution and opinion of the Constitutional Tribunal of the Union

The persons entitled to present the submission to the Tribunal are the President, Speaker of the Pyidaungsu Hluttaw (Union Parliament), Speaker of the Pyithu Hluttaw (Lower House), Speaker of the Amyotha Hluttaw (Upper House), the Chief Justice of the Union Supreme Court, the Chairperson of the Union Election Commission, Chief Minister of the Region or State and Speaker of the Region Parliament or State Parliament, the Chairperson of the Self-Administered Division Leading Body or the Self-Administered Zone Leading Body, representatives numbering at least ten percent of all the representatives of the Pyithu Hluttaw (Lower House) or the Amyotha Hluttaw (Upper House), in a prescribed means.

According to the above mentioned provision, the Tribunal shall admit a submission and make a decision only as and when the submission is presented by those who are entitled to make submission through proper channels.

C2. The Decision of the Tribunal

All members of the Tribunal including the Chairperson have the right as well as the obligation to be present and attend hearings. However, if a member is unable to attend and the cause of absence is acceptable, it shall be permitted that the remaining 5 members and the Chairperson, a total of 6 persons shall be present at the hearing. However, the case cannot be heard if the said quorum is not obtained.

The Tribunal shall pass the final verdict only with the consent of 6 members including the Chairperson. The decision of the Tribunal shall not be affected if the quorum is not fulfilled. The members may express their dissenting opinion during deliberations but it may not be reflected in the decision. It shall be kept in record.

According to Section 324 of the Constitution and Section 24 of the Tribunal Law, the decision of the Tribunal shall be final and conclusive. The decision upon the submission presented by a Court under Section 12, Sub-Section (g) of the Tribunal Law shall be effected in all similar cases as stipulated in Section 23 of the Tribunal Law. It signifies that the right to appeal or the right to revision by the parties is not allowed. In

adjudicating the submission, the Tribunal has to apply the procedures set out in Section 22 of the Tribunal Law and other existing Procedural Laws. Section 35 of the Tribunal Law provides that the judgment passed by the Tribunal shall be declared in the State Gazette. Judgments shall be bound and published for reference and kept as precedent cases.

The Tribunal is bound only to the cases such as the interpretation of the Constitution, decision on the constitutional dispute, constitutionality of the dispute and conflict of rights and duties of the Union. In other words, the decisions of the Tribunal are effected only to the points, namely, which parties are right or wrong or what rights and liabilities are imposed on which of the disputing parties. The Tribunal has no power to enforce its decision on the disputing parties, persons concerned or relevant organizations. Since the decision of the Tribunal is based on the Constitution, the concerned parties, persons, organizations are committed to apply and obligated to comply with the Constitution as dutiful citizens. Those parties, organizations who are not in compliance with the Constitution, shall face lawful action under Institutional Law of the organizations concerned.

The role of the Tribunal becomes very important as it protects and safeguards the Constitution. One may realize the importance of the decision of the Tribunal as it is based solely on the Constitution.

Annex

Annex 1. Case Statistics since establishment (2011-2017)

Year	Total	Interpretation	Resolution	Opinion	Review case	Withdraw case
2011	3	1	1	1		1
2012	3	2	-	-	1	-
2013	-	-	-	-	-	-
2014	5	3	1	1	-	2
2015	1	1	-	-	-	-
2016	1	1	-	-	-	-
2017	1	-	-	1	-	-

Annex 2. Cases

► **Identification**

a) Country, b) Name of the Court, c) Date of decision given, d) Number of the decision, e) Jurisdiction, f) Title of the decision

► **Headnotes**

► **Summary**

Case 1.

► **Identification**

a) Myanmar / b) Constitutional Tribunal / c) 14-7-2011 / d) Submission No.1/2011 / e) Resolution / f) Chief Justice of the Union Supreme Court Vs the Ministry of Home Affairs

► **Headnotes**

The Chief Justice of the Union Supreme Court submitted the submission to the Constitutional Tribunal questioning the legality of conferring the first class judicial power to the sub-township administrative Officers as requested by the Ministry of Home Affairs.

► **Summary**

Criminal jurisdictional power in the Union of Myanmar is varied from time to time. Before independence, judicial functions were jointly carried out by the administrative officers. After the independence in 1948, the High Court and the Supreme Court were established under the Constitution of the Union of Myanmar, 1947. The then judicial system allowed to confer the power of the Criminal jurisdiction to both the Judges and the Staff of General Administration Department as Magistrates. When the Revolutionary

Council took the power in 1962, the new Judiciary System so call People's Court System was established. The powers of the criminal jurisdiction were granted to the People's Courts. During the tenure of the State Law and Restoration Council and the State Peace and Development Council, Supreme Court, State or Divisional Court and Township Court were formed. Sub-township administrative officers were conferred the power of criminal jurisdiction in areas that were needed. Due to these reasons, the Ministry of Home Affairs submitted the Supreme Court to empower the First Class Magistrate power to 27 sub-townships administrative officers as judicial officers.

The Tribunal held that the provisions of the 2008 Constitution clearly stipulate that the legislative power, the executive power and the judicial power of the Union shall be separately exercised. The Judicial power empowered to the Courts and Judges are clearly prescribed in the Constitution. Therefore, the exercise of the judicial power is permitted only to those Judges who are empowered by the Constitution. The conferring of the judicial power to administrative officers of the General Administration Department of the Ministry of Home Affairs is not in conformity with the Constitution.

Case 2.

► Identification

a) Myanmar / b) Constitutional Tribunal / c) 14-12-2011 / d) Submission No.2/2011 / e) Interpretation / f) Dr. Aye Maung and 22 representatives Vs The Republic of the Union of Myanmar

► Headnotes

22 representatives of the National Parliament including Dr. Aye Maung presented the submission questioning whether the status of Ministers of the National Races Affairs is equal to that of the Ministers of the Region or State concerned and whether they are entitled to the emoluments, allowances and insignia of office as the Ministers of the Region or State.

► Summary

Dr. Aye Maung and 22 representatives of the National Parliament presented the submission questioning whether the term "Minister of the National Races Affairs" used in Section 5 of the Law of Emoluments, Allowances and Insignia for Representatives of the Region or State is excluded from the term of the "Ministers of the Region or State". If they are excluded, their claim to the entitlement of emoluments, allowances and insignia as the Ministers of the Region or State are eligible or not. It is also questioning whether Section 2(f), 3(a), 4(c) and 48 of the Region or State Government Law are in conformity with the Constitution or not.

The Tribunal affirms that the current submission falls outside the scope of its competence and decided that the Tribunal is not in the position to intervene upon the submission, questioning the constitutionality of the appointment of Lisu and Rawn national races Ministers in Kachin State and similarly the appointment of Lisu national races Minister in the Shan State.

Case 3.

▶ **Identification**

a) Myanmar / b) Constitutional Tribunal / c) 18-9-2014 / d) Submission No.1/2014 /
e) Interpretation / f) Daw Dwe Bu and other 49 members of the Pyithu Hluttaw Vs The
Republic of The Union of Myanmar

▶ **Headnotes**

The constitutionality of the preliminary objection to the submission made by Attorney-General's Office, Legal Consuls of Rawan, Lisu national races Ministers, Legal Consuls of Chief-Ministers of Kachin and Shan States Government ; Whether to accept or not the objection of the Union Attorney-General that the Tribunal has no competence to pronounce itself on this question.

▶ **Summary**

Daw Dwe Bu and other 49 members of the Pyithu Hluttaw has presented the submission to the Constitutional Tribunal through Speaker of the Union Parliament. The submission is related to question whether the appointment of National Races Affairs Ministers for Lisu and Rawan races in Kachin State is in conformity with the Constitution or not.

The Tribunal affirms that the current submission falls outside the scope of its competence and decided that the Tribunal is not in the position to intervene upon the submission, questioning the constitutionality of the appointment of Lisu and Rawn national races Ministers in Kachin State and similarly the appointment of Lisu national races Minister in the Shan State.

Case 4.

▶ **Identification**

a) Myanmar / b) Constitutional Tribunal / c) 27-2-2015 / d) Submission No.5/2014 /
e) Interpretation / f) U Aung Kyi Nyunt and other 25 members of the Amyotha (National
Parliament) Hluttaw

▶ **Headnotes**

The question of the constitutionality of the law, which is aimed to be enacted for exercising PR System in the election of Amyotha (National) Hluttaw proposed by Amyotha Hluttaw.

▶ **Summary**

U Aung Kyi Nyunt and other 25 members of Amyotha (National Parliament) Hluttaw has presented the submission on the question of the constitutionality of Proportional Representation System for the election of Amyotha (National) Hluttaw.

The Tribunal determines that the submission is not ripe to seek a decision from the Tribunal. It has, as yet, not covered the scope needed for the jurisdiction of the Tribunal. As a result, the Tribunal has dismissed the submission.

Case 5.

► Identification

a) Myanmar / b) Constitutional Tribunal / c) 11-5-2015 / d) Submission No.1/2015 / e) Interpretation / f) Dr. Aye Maung and other 23 members of the Amyotha (National) Hluttaw

► Headnotes

The constitutionality of Section 11(a) of the Bill of the Referendum Law for amending the Constitution, which allows the right to vote to the holders of Temporary Identity Cards.

► Summary

Dr. Aye Maung and 23 MPs from Amyotha (National) Parliament brought the submission to the Tribunal, requesting to check the constitutionality of the Bill of the Referendum Law for amending the Constitution. They questioned one of the provisions of the Referendum Law most specifically Section 11(a) that provide the holders of Temporary Identity Cards shall have the right to vote in the Referendum.

Under the Presidential Notification, validity of the cast votes under Referendum Law, it is not in accord with the Constitution, particularly with regard to Section 38(a), Section 391(a) and Section 391(b). Therefore, the Tribunal ordered that Section 11(a) of the Bill of the Referendum Law for amending the Constitution (2008) which permits holders of the Temporary Identity Cards are not in accordance with the Constitution.

Case 6.

► Identification

a) Myanmar / b) Constitutional Tribunal / c) 19-1-2017 / d) Submission No.01/2016 / e) Interpretation, f) U Sai Than Naing and other 23 members of the Amyotha (National) Hluttaw Vs The Pyidaungsu Hluttaw

► Headnotes

To interpret Article 333(d)(4) "person who is, in the opinion of the President, an eminent jurist."

► Summary

U Sai Than Naing and other 22 members of the Amyotha (National) Hluttaw has presented the submission to the Tribunal, requesting to interpret Article 333(d)(4) of the Constitution (2008) "person who is, in the opinion of the President, an eminent jurist."

An issue in the submission is not to interpret a provision included in the Constitution (2008). This submission is not concerned with the provision of Section 322(a) of the Constitution (2008), as it is a matter of the contradiction between the Constitution and the existing Law.

The Tribunal determines that this submission is not in accordance with Section 322(a) of the Constitution (2008). As a result, the Tribunal has dismissed the submission.

Case 7.

▸ **Identification**

a) Myanmar / b) Constitutional Tribunal / c) 21-9-2017 / d) Submission No.1/2017 / e) Opinion / f) Brigadier General Maung Maung and other 49 of the Pyithu Hluttaw (Lower House) Representatives who are the Defence Services personnel Vs The Pyidaungsu Hluttaw (Union Parliament)

▸ **Headnotes**

The constitutionality of the opinion which includes the provision and composition of the commissions by Pyidaungsu Hluttaw in the Law Amending the Law Relating to the Pyidaungsu Hluttaw (2014) and other related sections.

▸ **Summary**

Brigadier General Maung Maung and other 49 of the Pyithu Hluttaw Representatives who are the Defence Services personnel have presented the submission on the question of the constitutionality of the opinion which is included in the provision and composition of the commissions by Pyidaungsu Hluttaw in the Law Amending the Law Relating to the Pyidaungsu Hluttaw (2014) and in other related sections.

The Tribunal determines that the Law Amending the Law Relating to the Pyidaungsu Hluttaw (2014) is not contrary to the Constitution (2008). As a result, the Tribunal has dismissed the submission.