

The Union of Myanmar

The State Peace and Development Council

**The Constitutional Tribunal of the Union Law**

( The State Peace and Development Council Law No. 21 / 2010 )

The 5<sup>th</sup> waning Day of Thadinkyut 1372 M.E.

( 28<sup>th</sup> October, 2010 )

**Preamble**

Since it is provided in Section 443 of the Constitution of the Republic of the Union of Myanmar that the State Peace and Development Council shall carry out the necessary preparatory works to implement the Constitution, it has become necessary to enact the relevant laws to enable performance of the legislative, administrative and judicial functions of the Union smoothly, to enable performance of works that are to be carried out when the various Hluttaws come into existence and to enable performance of the preparatory works in accord with law.

As such, the State Peace and Development Council hereby enacts this Law in accord with section 443 of the Constitution of the Republic of the Union of Myanmar, in order to enable formation of the Constitutional Tribunal, to enable determination of the duties and powers of the Tribunal and the manners to communicate with the Tribunal in accord with the Constitution of the Republic of the Union of Myanmar.

## Chapter I

### Title, Enforcement and Definition

1. (a) This Law shall be called **the Constitutional Tribunal of the Union Law**.
- (b) This Law shall come into force commencing from the day on which the Constitution comes into force.
2. The following expressions contained in this Law shall have the meanings given hereunder:
  - (a) **Constitution** means the Constitution of the Republic of the Union of Myanmar;
  - (b) **Hluttaw Representative** means the Pyithu Hluttaw representative, Amyotha Hluttaw representative and Region or State Hluttaw representative;
  - (c) **Tribunal** means the Constitutional Tribunal of the Union formed under the Constitution;
  - (d) **Chairperson** means the Chairperson of the Constitutional Tribunal of the Union;
  - (e) **Member** means the member of the Constitutional Tribunal of the Union;
  - (f) **Court** means the Supreme Court of the Union, High Courts of the Region or State, Self-Administered Division Courts, Self-

Administered Zone Courts, District Courts, Township Courts and other Courts established by law;

- (g) **Self-Administered Area** means the Self-Administered Division or Self-Administered Zone.

## Chapter II

### Formation ,Appointing and Assigning Duties of the Tribunal

#### Formation of the Tribunal

3. The Tribunal shall be formed with nine members including the Chairperson.
4. (a) The President, the Speaker of the Pyithu Hluttaw and the Speaker of the Amyotha Hluttaw shall elect three members each from among the Hluttaw representatives or from among persons who are not the Hluttaw representatives, who fulfil the following qualifications;
  - (i) person who has attained 50 years of age;
  - (ii) person who fulfils the qualifications prescribed in section 120 of the Constitution for the Pyithu Hluttaw representatives with the exception of the age limit;
  - (iii) person who has not infringed the provisions prescribed in section 121 of the Constitution which disqualify for standing in election as the Pyithu Hluttaw representatives;

(iv) (aa) person who has carried out as a Judge of the High Court of the Region or State for a minimum of five years

or

(bb) person who has served as a Judicial Officer or a Law Officer not lower than that of the Region or State level for a minimum of 10 years

or

(cc) person who has practised as an advocate for a minimum of 20 years;

(v) person who has political, administrative, economic and security outlook;

(vi) person loyal to the Union and its citizens.

(b) among the persons elected by the President, although one is not in conformity with the provisions of clause (4) of sub-section (a), the person who is considered as an eminent jurist may be elected;

(c) since it is provided in the Constitution that the members under sub-section (e) of section 333 shall not be the members of a political party and the members under sub-section (f) shall not be Hluttaw representatives, if a person elected as a member under

section 330 of the Constitution is a member of a political party, he shall not take part in the party activities and if he is a Hluttaw representative, he shall be deemed to have resigned from being the Hluttaw representative. Moreover, if he is a Civil Services personnel, he shall be deemed to have resigned from being the Civil Services personnel.

5. The Speaker of the Pyithu Hluttaw and the Speaker of the Amyotha Hluttaw shall send the list of members elected by them in accord with the provisions of section 4 to the President.

**Appointing and Assigning Duties**

6. The President shall submit the list of total nine members elected in accord with the provision of section 4 and the name of a member from among them to be assigned as the Chairperson to the Pyidaungsu Hluttaw and obtain its approval.

7. The Pyidaungsu Hluttaw shall not have the right to refuse the persons nominated by the President for appointing and assigning duty as the Chairperson or members of the Constitutional Tribunal, if it cannot clearly prove that they do not fulfil the qualification of the member of the Tribunal.

8. If the Pyidaungsu Hluttaw refuse the persons nominated by the President under section 6 by clearly proving that they do not fulfil the qualification contained in section 4, the President is entitled to submit the new nomination list again in place of the said person.

9. When submitting the new nomination list under section 8, if the member who is not approved by the Pyidaungsu Hluttaw, is a member elected by the President, the President; or is a member elected by the Speaker of the Pyithu Hluttaw, the Speaker of the Pyithu Hluttaw; or is a member elected by the Speaker of the Amyotha Hluttaw, the Speaker of the Amyotha Hluttaw is entitled to submit the new nomination list again in accord with the provisions of sections 4,5 and 6.

10. The President shall appoint and assign duties to the Chairperson and members approved by the Pyidaungsu Hluttaw as the Chairperson and members of the Constitutional Tribunal.

11. If the Chairperson or any member is a member of a political party or an individual being elected or a citizen being specifically appointed and assigned duties, and such person will contest in the forthcoming general election, if it is in conformity with the provisions of sections 120 and 121 of the Constitution, he is entitled to carry out the works of electoral party organization and territorial organization, commencing from the day of the announcement of the Union Election Commission to hold election, in order not to lose the right of being elected given to a citizen under sub-section (a) of section 38 of the Constitution.

**Chapter III**

**Functions and Duties of the Constitutional Tribunal**

12. The functions and duties of the Constitutional Tribunal are as follows:

(a) interpreting the provisions of the Constitution;

- (b) scrutinizing whether or not the laws promulgated by the Pyidaungsu Hluttaw, the Region Hluttaws, the State Hluttaws or Leading Bodies of the Self-Administered Division and Self-Administered Zone are in conformity with the Constitution;
- (c) scrutinizing whether or not the measures of the administrative authorities of the Union, the Regions, the States and the Self-Administered Areas are in conformity with the Constitution;
- (d) deciding on Constitutional disputes arising 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;
- (e) deciding on disputes arising in relation to the rights and duties of the Union and the Region, State or Self-Administered Area, in implementing the Union law by the Region, State or Self-Administered Area;
- (f) scrutinizing and deciding on matters intimated by the President in relation to the Union territory;
- (g) deciding on a dispute submitted under section 323 of the Constitution and section 17 of this Law in relation to a pending trial of the Court;

- (h) performing the functions and duties assigned by laws enacted by the Pyidaungsu Hluttaw.

#### **Chapter IV**

##### **Submission to obtain the interpretation, decision and opinion of the Constitutional Tribunal**

13. The following persons are entitled to submit directly to the Constitutional Tribunal if matters arise to obtain the interpretation, decision and opinion of the Constitutional Tribunal:

- (a) the President;
- (b) the Speaker of the Pyidaungsu Hluttaw;
- (c) the Speaker of the Pyithu Hluttaw;
- (d) the Speaker of the Amyotha Hluttaw;
- (e) the Chief Justice of the Union;
- (f) the Chairperson of the Union Election Commission.

14. The following persons or the organizations are entitled to submit to the Constitutional Tribunal to obtain the interpretation, decision and opinion of the Constitutional Tribunal in accord with the manner contained in section 15:

- (a) the Chief Minister of the Region or State;
- (b) the Speaker of the Region or State Hluttaw;
- (c) the Chairperson of the Leading Body of the Self-Administered Division or the Leading Body of the Self-Administered Zone;

- (d) the number of representatives being at least of 10 percent of all the representatives of the Pyithu Hluttaw or Amyotha Hluttaw.

15. In respect of the matters to obtain the interpretation, decision and opinion of the Constitutional Tribunal:

- (a) if he is a Chief Minister of the Region or State, his submission shall be sent to the Constitutional Tribunal through the President;
- (b) if he is a Speaker of the Region or State, his submission shall be sent to the Constitutional Tribunal through the Speaker of the Pyidaungsu Hluttaw;
- (c) if he is a Chairperson of the Leading Body of the Self-Administered Division or Self-Administered Zone, his submission shall be sent to the Constitutional Tribunal through the relevant Chief Minister of the Region or State and the President;
- (d) if it is a number of representatives being at least 10 percent of all the Pyithu Hluttaw or Amyotha Hluttaw representatives, their submissions shall be sent to the Constitutional Tribunal through the relevant Speaker of the Hluttaw.

16. (a) In submitting matters to obtain the interpretation, decision and opinion of the Constitutional Tribunal by the persons contained in sections 13 or 14 in accord with the stipulated manner valid documents, papers shall be attached clearly and completely.

- (b) In submitting under sub-section (a), the facts that are desired to be decided shall be clearly mentioned.

17. In trying a case by a Court, if a dispute arises as to whether or not the provision contained in any law contradicts or conforms to the Constitution and if no decision has been made by the Constitutional Tribunal on the said dispute, the said Court shall stay the trial and submit the dispute urgently with its own opinion to the Chief Justice of the Union. The Chief Justice of the Union shall submit such submission to the Constitutional Tribunal with his opinion.

## **Chapter V**

### **Scrutiny, Hearing and Passing Final Decision**

#### **Scrutiny**

18. The Chairperson shall form the Scrutiny Body comprising a person from the members elected by the President, a person from the members elected by the Speaker of the Pyithu Hluttaw and a person from the members elected by the Speaker of the Amyotha Hluttaw to scrutinize and submit the submission under sections 16 or 17.

19. In respect of the submission, the Scrutiny Body shall:

- (a) scrutinize as to whether or not the relevant facts and valid documents, papers are clearly and completely attached. In such scrutiny, if it is found not complete, shall cause the requirements to be submitted within the stipulated time.

- (b) if there is a person or department, organization to re-explain, shall inform the same with a copy of the submission, and shall give the right to submit the relevant facts and valid documents, papers within the stipulated time.
- (c) submit to the Constitutional Tribunal for hearing, when the requirements are completed.

#### **Hearing**

20. All the members including the Chairperson shall hear and decide in relation to the submission. In doing so, if all the members cannot attend due to any duty or any other cause, the submission shall be heard by at least six members including the Chairperson.

21. In hearing at the Constitutional Tribunal:

- (a) the hearing date shall be announced in advance;
- (b) the Chairperson or a member assigned by the Chairperson shall read out the matter of hearing in brief;
- (c) may hear the argument of the relevant persons relating to the submission;
- (d) shall hear in public, except a matter that may be detrimental to the secret of the Union or the security of the Union;
- (e) may invite the technical expert and obtain his opinion and advice;

- (f) may apply relevant provisions from the Code of Civil Procedure, the Code of Criminal Procedure and the Evidence Act as may be appropriate and carry out.
- (g) shall carry out to complete the hearing on submission as quickly as possible;
- (h) shall record the daily performance of the Constitutional Tribunal relating to the submission and keep it signed by the Chairperson or any member.

#### **Passing Final Decision**

22. The Constitutional Tribunal:
- (a) shall arrange and carry out in order to pass the final decision after hearing as quickly as possible.
  - (b) shall announce the day of final decision in advance.
  - (c) shall pass the final decision of the Constitutional Tribunal by the consent of more than half of the members including the Chairperson. Such decision shall be signed by the Chairperson on behalf of the Constitutional Tribunal and read out in public by the Chairperson or a member assigned by the Chairperson.

#### **Chapter VI**

##### **Effect of the Decision of the Constitutional Tribunal**

23. The decision of the Constitutional Tribunal is final and conclusive.

24. The decision passed by the Constitutional Tribunal relating to the matter submitted by a Court under sub-section (g) of section 12 shall be applied to all cases.

25. The decisions of the Constitutional Tribunal shall have effect on the relevant Government departments, organizations and persons or on the respective region.

#### **Chapter VII**

##### **Impeachment, Term of Office, Resignation from Office, Termination from Duty and Filling and Appointing at the Vacant Office**

26. In respect of the impeachment against the Chairperson and any member, it shall be carried out in accord with the provisions of section 334 of the Constitution.

27. The term of the Constitutional Tribunal shall be five years, the same as that of the Pyidaungsu Hluttaw. However, although its term has expired, the Constitutional Tribunal currently carrying out duties shall continue to carry out its functions and duties till the President forms a new Constitutional Tribunal.

28. (a) If the Chairperson desires to resign from office on his own volition, due to any cause before the expiry of the term, he may resign from office after submitting his resignation in writing to the President.

(b) If any member desires to resign from office as contained in sub-section (a), he may resign from office after submitting his resignation in writing to the President through the Chairperson.

29. When the Chairperson or a member is impeached for any cause contained in section 334 of the Constitution, after carrying out in accord with sub-section (b) or (c) of section 302 of the Constitution by the relevant person and if the Pyidaungsu Hluttaw decides that it is unfit to continue to serve at the present office, the President shall terminate the alleged Chairperson or a member from office.

30. If the office of the Chairperson or member becomes vacant due to any cause, the President may, in accord with the Constitution and the provisions of this Law, appoint and assign duties to the new Chairperson or member who fulfils the qualifications contained in section 4.

### **Chapter VIII**

#### **Miscellaneous**

31. The preparatory measures carried out by the State Peace and Development Council for the implementation of this Law before this Law comes into force shall be deemed to have been carried out in accord with the Constitution.

32. The venue of the Constitutional Tribunal is Nay Pyi Taw. If it is necessary, the Chairperson may cause the Tribunal to sit at any other suitable place.

33. No civil or criminal proceeding shall be instituted or action taken against the Chairperson or any member in respect of measures done on duty in good faith.

34. If it is necessary, the Constitutional Tribunal may invite the Attorney-General of the Union as the amicus curiae. If the Attorney-General cannot attend in person, he may cause to send a suitable person who is not lower than that of the Director of the Office of the Attorney General of the Union to carry out on his behalf.

35. The decisions passed by the Constitutional Tribunal shall be published in the Union Gazette. They shall be compiled and published to enable to quote and apply them as the ruling.

36. The Chairperson shall, with the approval of the Union Government, form the staff office to be responsible and implement various office works of the Tribunal.

37. This Law may be amended, inserted or repealed by the Pyidaungsu Hluttaw formed in accord with the Constitution of the Republic of the Union of Myanmar. This Law shall remain in force in so far as it is not repealed by the Pyidaungsu Hluttaw.

38. In implementing the provisions of this Law, the Constitutional Tribunal may issue necessary rules, notifications, orders, directives and procedures.

(Sd) Than Shwe

Senior General

Chairman

The State Peace and Development Council