

Workshop on the “Emergence and Features of the Constitutional Review Bodies in Asia:
A Comparative Analysis of Transitional Countries’ Development”
(Pre - Centenary Celebration of University of Yangon)

Place: Myanmar- Japan Legal Research Center, University of Yangon, Myanmar.
Date: October 22, 2019 (Tuesday)
Organized by: Center for Asian Legal Exchange (CALE), Nagoya University
Department of Law, University of Yangon
Funded by: - JSPS Core-to-Core Program: Asia-Africa Science Platforms “*Advancing Research in Asian Constitutionalism – Establishing a Transnational Research Network to Promote Human Rights and Legal System*”
- JSPS Grant-in-Aid for Scientific Research –KAKENHI-(B) “*Commencement of the ASEAN Community and the Emergence of Heterologous Constitutional Profiles in the Region*”

Myanmar established the Constitutional Tribunal (the Tribunal) in 2011 under the auspices of the 2008 Constitution. Many intended to refer to this achievement as a product of peaceful transition from military to civilian rule and a process of a state-controlled democracy launched in Myanmar aftermath the 2011 ‘democratic’ parliamentary elections. Notably, up to this moment, the constitutional history of Myanmar demonstrated not even a single precedent when policymakers would create an independent agency and vest it with the authority of constitutional review.

Presently, the primary functions of the Tribunal include the constitutional interpretation and examination of the constitutionality of statutes promulgated by the union and local level parliaments. The Tribunal also has an authority to examine the actions of the union and local level executive authorities. Whenever constitutional disputes occur, including those related to the rights between the union and local authorities, the Tribunal is *de jure* competent to involve and issue a decision. In its work, the Tribunal only deals with the enacted statutes and does not examine bills before enactment. The Tribunal is authorized to conduct abstract and concrete review.

Between 2011-2019, the Tribunal has produced about 15 cases. A closer look at the legal analysis, argumentation and justification of reasons in these cases demonstrate certain structural issues in the constitutional review system of Myanmar. Whereas a handful of cases had demonstrated that the Tribunal could act as an independent adjudicator in the past, recent activities make it evident that the Tribunal’s role in the political deliberations is unequivocal.

The general philosophy of constitutional review presupposes that constitutional courts are established to limit or balance the activities of executive and legislative branches. In such circumstances, scholars and practitioners expect that constitutional courts would work as neutral arbitrators among the two branches. Simultaneously, the vital role of the constitutional court is to protect fundamental rights.

The primary aim of the present seminar is to analyze the theoretical background and practical experience of the Tribunal in comparative aspect with foreign constitutional review bodies. In addition, it will seek to understand the concept and ideas on the constitutionalism in Myanmar and the tribunal’s place in it. This seminar will involve both; the domestic and researchers from, Japan, Korea, Singapore and other jurisdictions. The participants will have an opportunity to share own views with fellow colleagues and learn from each other in terms of historical features, duties and functions, and selected

cases of constitutional courts in different countries including; Korea, Singapore, Russia, and Uzbekistan. This seminar aims to strengthen the relations between involved scholars and contribute to the creation of the international research network on the Constitutionalism in Asia.

Program:

10:00-10:10 Opening

Opening Remarks: Kaoru Obata (Professor of Graduate School of Law, Nagoya University)

10:10-12:00

Session I. The Characteristics of the Constitutional Review in Myanmar.

Moderator: Khin Mar Yee (Part-time Professor of Department of Law, University of Yangon)

10:10-10:30

1) Keynote Speech “Future Perspective of the Constitutional Tribunal of Myanmar”

Justice. Hla Myo Nwe (Member of the Constitutional Tribunal of Myanmar)

10:30-10:50

2) “The Duties and Functions of the Constitutional Tribunal of Myanmar”

Khin Phone Myint Kyu (Professor of Department of Law, University of Yangon)

10:50-11:10

3) “Case Analysis of the Constitutional Tribunal of Myanmar”

Khin Khin Oo (Professor of Department of Law, University of Yangon)

11:10-12:00 Q&A/ Discussion

12:00-13:30 Lunch break

13:30-16:00

Session II. The Constitutional Review Models from other Asian Jurisdictions

Moderator: Kaoru Obata (Professor of Graduate School of Law, Nagoya University)

13:30-13:50

1) “A Case of Korea”

Hyowon Lee (Professor of School of Law, Seoul National University)

13:50-14:10

2) “A Case of Singapore”

Jaelyn Neo (Associate Professor of Faculty of Law, National University of Singapore)

Marcus Teo (Teaching Assistant of Faculty of Law, National University of Singapore)

14:10-14:30

3) “A Case of Russia”

Fumito Sato (Vice-Director/ Professor of CALE, Nagoya University)

14:30-14:50

4) “A Case of Uzbekistan”

Aziz Ismatov (Assistant Professor of CALE, Nagoya University)

14:50-15:05 Tea Break

15:05-16:00 Q&A/ Discussion