

【Special Features : The Role of Constitutional Review Bodies in the Asian Post- Authoritarian
Democratization Process. A Comparative Perspective】

Evaluation of the Attitudes Between the Constitutional Tribunal and the Parliament in Myanmar

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Abstract

This paper examines the role of the Constitutional Tribunal of the Union, Republic of the Union of Myanmar (hereafter, the Tribunal), primarily focusing on parliamentary interactions and independence in political deliberations. The Tribunal was established in 2011, and it was the first independent organization for constitutional review in Myanmar.

After half a century of the military authoritarian regime and in the circumstances of complicated transition, the newly established Tribunal has been expected to adjust the power among three branches of power; executive, legislative and judicial. A closer look at the Tribunal's recent activities and progress in adjudicating political issues and acting as an independent referee between relevant political actors reveals this body's inability to perform adequately the role it has been assigned.

In 2012, the parliament widely opposed the Tribunal's decision and initiated the impeachment of all nine members. In 2013, the parliament also amended the Constitutional Tribunal Law which limited the effectiveness to apply the decisions of Tribunal only to all cases transferred from ordinary courts. The amendments increasingly weakened the scope of the Tribunal and eventually, questioned whether it might play any positive role in the democratization of Myanmar as stipulated by the 2008 Constitution.

After the impeachment of all members, the Tribunal has been facing the lack of judicial independence and cannot function as a referee among the political actors. The Tribunal could deal with only a limited number of cases since its establishment in 2011, and is apparent that it is highly reluctant to reject initiatives of the current regime. Indeed, there are some incidents when the Tribunal issued unconstitutional judgments, which could prove positive in terms of the regional legislation powers and protection of minority rights. However, the trends of distrust against the Tribunal is widely recognized after the NLD (National League for Democracy) regime came into power. In such circumstances, when the Tribunal acts as a support agent for one political actor against others, the role of the Tribunal in future democratization becomes highly controversial.

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I. History of Constitutional Review

Myanmar established the Tribunal in 2011 under the Constitution of the Republic of the Union of Myanmar (hereafter, the 2008 Constitution) under the slogan of a state-controlled democracy and peaceful transition from a military to civilian rule. It was the first time in the constitutional history of the state when policymakers vested the power of constitutional review to an independent institution.

Until 1948 Myanmar remained as a British colony. After gaining independence in January 1948, it adopted the parliamentary democratic system stipulated by the Constitution of the Union of Burma (hereafter, the 1947 Constitution). The 1947 Constitution authorized the Supreme Court to exercise the highest judicial power¹, and the Supreme Court could declare opinions on constitutional questions by the requests of the President². From 1948 to 1964, 41 cases have been dealt with at the Supreme Court regarding constitutionality³.

After the *Coup d’etat* by the General Ne Win in 1962, Myanmar set up the government with a strong military component at the top of its political system.

¹ Section 136(1) of the 1947 Constitution.

² Section 151(1) of the 1947 Constitution.

³ This information is based on the author’s interview with the Tribunal officials in April 2019 (Nay Pyi Taw, Myanmar).

Furthermore, this government adhered closely to the socialist ideology. The Constitution of the Socialist Republic of the Union of Burma (hereafter, the 1974 Constitution) was adopted in 1974. According to the 1974 Constitution, people represented the sovereign powers of the State, and the People's Assembly, a single chamber legislative organ represented by people, exercised such sovereign power and, additionally, delegated organs of state power⁴. Analogically to other socialist states, the People's Assembly could exercise constitutional interpretation and determine the validity of the acts of executive authorities⁵. The newly adopted 1974 constitution stipulated relevant provisions on constitutional control.

The military government established a dictatorial rule in 1988 amid forced oppression of public movement for the country's democratization. The 1974 Constitution was suspended in 1988, and the military seized all the power. The multi-party general election was held in 1990 and the National League for Democracy (NLD) led by Aung San Suu Kyi, a pro-democracy activist, got about 80 percent of votes, while the military-backed party won only 10 seats out of 485. However, the military junta refused to transfer the power to the NLD and insisted that the country's prioritized political task was to prepare the constitution. The military government set up the National Convention to draft the new constitution in 1993. It worked over the draft about 15 years with a long interval between 1996 and 2004 caused by the NLD boycott. Despite the undemocratic drafting process, the government announced that the 2008 Constitution was adopted with 92.48% of people's consent by the national referendum in May 2008. Eventually the new constitution came into force in January 2011.

In March 2011, almost after the half-century of the military regime, President Thein Sein formed a civilian government. This initiative came as a pseudo-democratization, as Thein Sein had a long military career. Furthermore, the Union Solidarity and Development Party (USDP), the military-backed party, occupied the Parliament seats. In addition to the USDP parliament members, the 2008 Constitution allocates 25 percent of seats for the military members. The recent Myanmar's political

⁴ Section 12 of the 1974 Constitution.

⁵ Section 200 of the 1974 Constitution.

landmark is the 2015 general election, a first openly competitive election since 1988 in which the NLD won a supermajority of seats at the parliament. The non-military president Htin Kyaw was elected, and the NLD regime started in March 2016.

The 2008 Constitution states that the country aims genuine, disciplined multi-party democratic system⁶, and the legislative, the executive and the judicial branch are separated and exert reciprocal control, checks, and balances among themselves⁷. Hence, after half a century of the authoritarian military regime and in the circumstances of complicated transition, the newly established Tribunal has been expected to adjust the power among three branches.

II. Functions and Duties of the Tribunal

The Tribunal related provisions appear within the 2008 Constitution's Chapter on Judiciary. This chapter also includes the provisions for ordinary courts and Courts-Martial. The Constitutional Tribunal of the Union Law (hereafter, the Tribunal Law) was promulgated in 2010 based on the 2008 Constitution, and it came into force on the day when the 2008 Constitution came into effect. According to the Section 322 of the 2008 Constitution, the primary functions and duties of the Tribunal are; to interpret the provisions of the Constitution, to scrutinize the constitutionality of laws promulgated by the union and regional level parliaments, and the actions of the executive authorities of the union and regional governments⁸. The Tribunal is also entitled to decide on constitutional disputes and disputes related to the rights between the Union and regional authorities, and among regional authorities. The Tribunal only deals with enacted laws and does not examine bills before enactment, and subordinate laws, such as rules, regulations, and notifications. The Tribunal has the power to conduct both abstract and concrete constitutional review.

⁶ Section 7 of the 2008 Constitution.

⁷ Section 11 of the 2008 Constitution.

⁸ The Union constitutes seven regions, seven states, and union territories. The Regions are the areas predominantly resided by the ethnic Burmese, and the States are the areas dominated by ethnic minorities with their ethnic names, such as Kachin, Kayah, Kayin, Chin, Mon, Rakhine, and Shan (Section 49 of the 2008 Constitution). Myanmar introduced the quasi-federal system, and the Regions/ States are conferred the autonomy to some extent under the 2008 Constitution.

Generally, constitutional review systems are considered as the continental law product. Since the British colonial rule in the 19th century, the legal system of Myanmar has been influenced by the British Common Law system. As a result of the socialist and military authoritarian regimes impact, Myanmar obtained hybrid aspects from both the continental and common law systems.

Only a limited number of public actors can submit petitions for constitutional review to the Tribunal directly, namely, the President, the Speaker of the Union Parliament (*Pyidaungsu Hluttaw*), the Speaker of the House of Representatives (*Pyithu Hluttaw*), the Speaker of the House of Nationalities (*Amyotha Hluttaw*), the Chief Justice, and the Chairperson of the Union Election Commission⁹. Additionally, the Chief Ministers of regional executive bodies, the Speakers of regional legislature, the Chairperson of the Self-Administered Area, and more than ten percent of the Union level parliament representatives can access to the Tribunal indirectly¹⁰. Constitutional Tribunal does not stipulate *actio popularis*. Therefore, individuals cannot directly lodge their petitions to the Tribunal and thus, cannot quash public actions and statutes. It is only the Supreme Court which has authority to forward cases to the Tribunal¹¹.

III. Judicial Independence Crisis on the ‘Union Level Organization’ case

The first three cases submitted in 2011 and 2012 touched upon the unconstitutionality in the area of the executive authority. In the Submission No. 1/2011, the critical issue was the constitutionality of the judicial power conferred to the sub-township administrative officers to adjudicate minor criminal cases by the Ministry of Home Affairs, which was exercised in the previous military regime. The Tribunal agreed to the Supreme Court’s claim that the judicial power is only vested in the judiciary. In the Submission No. 2/2011, the Tribunal decided that unequal status for Ministers of the National Affairs at regional level entitled to the emoluments, allowances, and insignia was unconstitutional and they should be treated equally to other ministers in the Regions and States. The President requested to review this

⁹ Section 325 of the 2008 Constitution.

¹⁰ Section 326 of the 2008 Constitution.

¹¹ Section 17 of the Tribunal Law.

decision; however, the Tribunal rejected it since the resolution was final and conclusive which found itself in the Submission No. 2/ 2012. The Tribunal opposed the executive power to play an essential role as check and balance at the early stage.

The incident threatening judicial independence occurred in 2012, so-called the 'Union Level Organization' case. According to the 2011 set of laws on Union Parliament, the House of Representatives and the House of Nationalities (hereinafter, the Union level legislature),¹² each house of the Union level legislature is eligible to establish the committees, commissions and bodies to actively carry out legislative activities under own authority. The Union level legislature claimed their status as the 'Union Level Organization' which have greater authorities such as the right to submit the bills to the Union level legislature¹³, and to attend and take part in discussions at parliamentary sessions with the permission of the Speakers¹⁴. President Thein Sein submitted the petition to the Tribunal to clarify whether or not such Committees have the 'Union Level' status. The 2008 Constitution mentions about the 'Union Level Organization' several times; however, it does not provide any clear definition. The Tribunal decided that the 'Union Level Organization' should be appointed by the President with the approval of the Union Parliament. Simultaneously, the Tribunal ruled that those actors who were not appointed by the President, but merely established under the parliament by its own will, could not be considered as the 'Union Level Organization'. Subsequently, the legislature widely opposed the Tribunal's decision, and initiated impeachment of all nine members. This step came out following the legislature's opinion that the Tribunal intended to restrict its power. President Thein Sein and the military representatives in the parliament opposed to the impeachment, and the Tribunal members finally resigned voluntarily in September 2012.

This incident has arisen from a political conflict between the President and the legislature. The result could be a victory of the legislature, however, it caused a severe infringement of judicial independence. The parliament uses the means of impeachment

¹² The Union Parliament consists of the House of Representatives (a lower house with 440 seats) and the House of Nationalities (an upper house with 224 seats).

¹³ Section 100(a) of the 2008 Constitution.

¹⁴ Section 77(c), Section 112(c) and Section 144 of the 2008 Constitution.

against the Tribunal members' unsatisfied decision. It implicates risks that the Tribunal members cannot decide cases independently.

IV. Losing the Tribunals Competence through the Amendment of Constitutional Tribunal Law

The Tribunal consists of nine members. Three of the members chosen by the President, three by the Speaker of the House of Representatives, and three by the Speaker of the House of Nationalities, with the subsequent approval of the Union Parliament¹⁵. Term of the members of the Tribunal is five years, which makes it the same as the term of the Union Parliament¹⁶ and the President¹⁷. Such term is relatively short compared to other countries. In particular, the risk of such short term is related to the politically motivated appointments of members and highly possible influence on them by the ruling party.

The candidate members must have legal practice experiences such as judge, prosecutors or advocates for certain period prescribed in the 2008 Constitution. However, if the President considers the candidate as a suitable jurist, he or she can be nominated as a member¹⁸.

The President should nominate the Chairperson of the Tribunal among the nine candidates¹⁹; however, the first amendment of the Tribunal Law in 2013, requires such negotiation with the Speakers of the House of Representatives and the House of Nationalities to take place beforehand. In the hearing process, the attendance of the Chairperson is mandatory²⁰, and the decisions of the Tribunal would be passed by the majority vote, including the Chairperson²¹. The Chairperson has great authority and influence upon the decisions. The 2013 amendment is the outcome of the 'Union Level

¹⁵ Section 321 of the 2008 Constitution.

¹⁶ Section 335 of the 2008 Constitution.

¹⁷ The President shall be elected right after the parliaments have been formed.

¹⁸ Section 333(d)(iv) of the 2008 Constitution.

¹⁹ Section 327 of the 2008 Constitution.

²⁰ Section 20 of the Tribunal Law.

²¹ Section 22(d) of the Tribunal Law. To pass the interpretation and opinion of the Tribunal, it does not require the Chairperson's consent as long as it is approved with majority vote (Section 22(c) of the Tribunal Law).

Organization' case, as a result of which the Union Parliament gained more influence on the nomination of the Chairperson of the Tribunal. The Tribunal initiated re-amendment of the Tribunal Law in 2014, to nominate the Chairperson solely by the President without the consultation with the legislature; however, such attempt failed²². The 2014 amendment only included some clarification on procedure, and technical and terminological modifications.

The 2013 amended law also stipulates that the Tribunal members should report the performance of their functions and duties to the President, Speakers of the House of Representatives and the House of Nationalities who have been elected members. The Tribunal members should not be controlled by anybody, otherwise this amendment can be considered as an infringement of judicial independence. Hence, this amendment has limited certain Presidential competency regarding the Tribunal.

The decisions of the Tribunal are final and conclusive²³. When the Tribunal declares law as unconstitutional, the relevant law becomes invalid upon the prescribed procedure and immediately expected to be amended. However, not all laws are amended after they are declared as unconstitutional because the legislative branch might not be satisfied with the decisions. Additionally, the first amendment of the Tribunal Law in 2013, Section 25 which stated that “the decisions of the Tribunal shall have an effect on the relevant Government departments, organizations, and persons or the respective region” was deleted in favor of the provision stating that “only those cases sent from the ordinary courts shall be applicable to all cases”²⁴. This amendment resulted in the degradation of the competency of the Tribunal's judgments.

V. The Tribunal's Reaction to Union-Regional Disputes and Minority Rights

It does not mean that the Tribunal is totally useless in terms of the Constitutionalism in Myanmar. Myanmar is a multi-ethnic state which introduced a quasi-federal system to protect minorities' rights based on the 2008 Constitution.

²² Khin Khin Oo, “Judicial Power and the Constitutional Tribunal: Some Suggestions for Better Legislation Relating to the Tribunal and its Role”, in Andrew Harding & Khin Khin Oo (ed.), *Constitutionalism and Legal Change in Myanmar*, Hart Publishing, 2017, p. 201.

²³ Section 324 of the 2008 Constitution and Section 24 of the Tribunal Law.

²⁴ Section 23 of the Tribunal Law.

Indeed, the Tribunal has an experience of dealing with some cases relevant to the union and regional disputes, and ethnic minority issues.

As mentioned above, the unequal treatment to the National Races Affairs Ministers of the Region or State was declared as unconstitutional (Submission No. 2/ 2011), and the related law was amended to adjust inequality. In the Submission No. 1/ 2014, it was examined whether or not the appointments of National Races Affairs Ministers for Lisu and Rawan races in Kachin and Shan State were in conformity with the Constitution. The national races which constitute more than 0.1 percent of the population in the Union and have not obtained the State or Self-Administered Area, can elect one representative at the regional parliament and such appointee can serve as the National Races Affairs Minister²⁵. The Tribunal supported the decision of the Union Election Committee which allowed one elected representative for Lisu and Rawan races, and they decided that the appointments were in conformity with the Constitution.

Submission No. 3/ 2012 is known for scrutinizing the legislative jurisdiction of the Union and regional legislature. The Mon Development Committees Law promulgated by the Mon State Parliament contradicted to the Union leveled 1993 Development Committees Law which, in turn, was enacted before the 2008 Constitution came into force. The 1974 Constitution adopted the centralized state structure under the philosophy of socialism; however, in the 2008 Constitution Myanmar introduced the union system, which enables the regional authorities to practice certain executive and legislative functions. The 2008 Constitution provided the legislative power of the Union and regional legislature in Schedule I and II respectively. The Tribunal declared that the Mon Development Committees Law, which is related to the development affairs, was under the jurisdiction of regional legislature according to the 2008 Constitution. The 1993 Development Committees Law is still valid because the transitional provisions in the 2008 Constitution stipulated that existing laws remain in operation until repealed or amended by the Union Parliament if it is not contrary to the Constitution²⁶. The Tribunal advised the Union Parliament to invalid the 1993

²⁵ Section 161(c) of the 2008 Constitution.

²⁶ Section 446 of the 2008 Constitution.

Development Committees Law and ruled the Mon Development Committees Law was not in conformity with the Constitution. The Tribunal's decision, which supported the regional parliaments' legislation against the Union laws may be considered as a novelty considering the actual situation with constitutional review in Myanmar.

The constitutional petition usually guarantees to the parliamentary minorities a standing to bring cases to the constitutional court to protect their rights. However, the opposite case happened in Myanmar. In the Submission No. 1/ 2015, the Tribunal stated that the National Referendum Law which targeted whether to amend the constitution or not was indeed found as unconstitutional. In particular, this law granted a right to vote at the referendum to the holders of the temporary registration cards known as the white cards²⁷. They had participated in all military-orchestrated elections held in Myanmar from 1936 to 2010, and voted for their representatives to the parliaments and state assemblies. They also had the right to vote in the 2008 referendum for the adoption of the 2008 Constitution²⁸. White cards holders are mainly Rohingya Muslim people, who reside in a border area with Bangladesh. The 1982 Citizenship Law provides that the full citizen is an individual who had settled in Myanmar territories before 1823 when the British rule started. The ethnic problem has been derived from the British 'divide and conquers policy' towards Burmese and non-Burmese people. Authorities in Myanmar do not consider Rohingya people as citizens of Myanmar and, therefore, issues them white cards which automatically makes them stateless, and thus highly vulnerable. The Tribunal decided that the white card holders are not citizens of Myanmar, and therefore, must not have voting rights.

The Constitutional Courts are often designed as the mechanism for protecting the rights of the minority. This case clearly shows that the Tribunal in Myanmar does not function as such. Indeed, the 2008 Constitution grants the rights to vote only to the citizens. However, similarly to the case of Mon State Development Committees Law, the Tribunal could consider the case in line with the past customs which would have eventually allowed Rohingya minorities to participate in the political affairs and even recommend the legislature to correct the 1982 Citizenship Law.

²⁷ Their holders are those who reside in Myanmar but do not have full citizenship rights.

²⁸ Nural Islam, Rohingya and Nationality Status in Myanmar, in Ashley South Marie Lall, *Citizenship in Myanmar: Ways of Being in and from Burma*, Chiang Mai University Press, Thailand, 2018 p. 267.

Notably, the 2008 Constitution integrates three basic principles; the non-disintegration of the Union; the non-disintegration of national solidarity; and the perpetuation of sovereignty. Hence, one may observe that national integration is the most prioritized mandate in Myanmar, whereas the protection of minority rights is an ignored principle under the Myanmar-styled Constitutionalism.

VI. Analyzing the Tribunal's Performance

Since the establishment of the Tribunal in 2011, the Tribunal produced a small number of cases. In particular, the Tribunal initiated only 15 cases within the last nine years. It is a very limited number, especially taking into consideration the fact the NLD considers itself as the first 'democratic' government after half a century of military rule. It is believed that the role of Tribunal increases if the democratization progresses; however, up to date Myanmar demonstrates a totally opposite effect. The NLD considers that a separate body like the Tribunal poses a threat to democracy, whereas the Supreme Court can be better trusted to exercise judicial review²⁹.

Because of the NLD's distrust, the Tribunal produced only four cases under the NLD government. The first case was related to the appointment of the Tribunal members (Submission No. 1/ 2016). The President can appoint a person who is, in his opinion, 'an eminent jurist'. After two of the members recommended by the Speakers of House of Representatives and House of Nationalities did not meet the criteria for being nominated as Tribunal members, the Speakers decided to nominate them under the title of 'an eminent jurist'. Notably, the Tribunal Law stipulates that only the President can select 'an eminent jurist' even if the candidates do not meet the qualification. In this regard, the NLD government insisted that the President could eventually apply 'an eminent jurist' to all nine judges after obtaining the list of nominees. The Tribunal dismissed the case by pointing that it was a result of conflict between the Constitution and the Tribunal Law.

There were two cases in 2019, and both of them touched upon the constitutional amending process. The Joint Committee on Amending the 2008 Constitution (hereafter,

²⁹ National League for Democracy, Analysis and Recommendations for the 2008 Constitution (June 2014), as cited in Dominic Jerry Nardi "How the Constitutional Tribunal's Jurisprudence Sparked a Crisis" in Andrew Harding & Khin Khin Oo (ed.), *Constitutionalism and Legal Change in Myanmar*, Hart Publishing, 2017, p. 187.

the Joint Committee) was established in February 2019 under the Notification No. 15/2019, and was comprised of 45 members. The main task of the Joint Committee was to review the 2008 Constitution, submit the report with their findings to the Union Parliament, and prepare amendment bills after the Union Parliament approve their report³⁰. Another committee named the Joint Committee to Scrutinize the Second Bill Amending the Constitution (hereafter, the Scrutinizing Committee) was established on the same day under the Notification No. 14/2019 to review and scrutinize the Second Amendment Bill submitted by the 143 parliament members including USDP representatives. In the first case (Submission No. 1/2019), it was submitted whether or not the Second Amendment bill should be discussed with the Joint Committee's upcoming bills. In the second case (Submission No.2/2019), the Tribunal examined the constitutionality of establishment of the Joint Committee. The critical issues of both cases refer to the interpretation of Section 435 of the 2008 Constitution, which provides that bills submitted by more than 25 percent of the total number of the Union Parliament should be considered at the Union Parliament. The Tribunal dismissed both of the cases, and supported the NLD's opinion to continue the Joint Committee's duties.

In general, constitutional courts are established to limit or balance the activities of the executive and the legislative branches, and expected to work as neutral arbitrators among the two branches. Under the Thein Sein era, the Tribunal was primarily a forum for dialogue between the president, the legislature and members of parliament from ethnic political parties³¹. Under the Thein Sein government, there was tension between the President and the legislature and conflicts were often brought to the Tribunal. Most of parliament members viewed constitutional review as a threat to the Union Parliament's law-making authority³².

Constitutional designers are interested in governing models after the adoption of a new constitution, and they seek to design institutions that maximize their ability to

³⁰ The Joint Committee submitted two bills to the Union Parliament on January 23, 2020, and it was revoked on January 28, 2020, as it completed its duties.

³¹ Melissa Crouch, Dictators, democrats, and constitutional dialogue: Myanmar's constitutional tribunal, *International Journal of Constitutional Law*, Vol. 16, No. 2, p.423.

³² Dominic Jerry Nardi, "How the Constitutional Tribunal's Jurisprudence Sparked a Crisis", in Andrew Harding & Khin Khin Oo (ed.), *Constitutionalism and Legal Change in Myanmar*, Hart Publishing, 2017, p. 188.

govern under the new constitutional order. Constitutional court can act as an insurance for electoral losers, and Ginsburg calls it as ‘the insurance model of judicial review’³³. In Myanmar, this theory is not applicable. The term of the Tribunal member is the same as the President and the Union Parliament. Between 2011 and 2016, some cases were filed as unconstitutional; however, the Tribunal never opposed the NLD government. Especially after the constitutional crisis caused by the ‘Union Level Organization’ case, it is difficult for the Tribunal to act as a checks and balances institution, particularly when it comes to the interactions with the legislative branch of power. If the Tribunal issues the judgments to which the parliament disagrees, the parliament can take an impeachment action against the Tribunal’s members. The Tribunal cannot decide cases independently, and the trends of ignoring the Tribunal spreads among the opposition parties at parliaments, especially after the NLD government took power in 2016.

The NLD has introduced a position of a state councilor for its leader Aung San Suu Kyi, which *de facto* gave her supreme political power. It eventually raises many justified concerns and critics among parliament members regarding the contradictions with constitutional provisions and inability of the Tribunal to adequately react to the matter. In such circumstances, when the Tribunal acts as a support agent for one political actor against others, the role of the Tribunal in future democratization is very unclear.

VII. Conclusion

Since 1962 when the military junta took power, the constitutional review mechanism has been absent, and no mechanism was in place to perform the functions of the checks and balances towards the executive and legislative power. For a long time under the authoritarian regime, the separation of powers was denied, and the judicial body could not control the actions conducted by the executive and legislative bodies. The 2008 Constitution introduced the Tribunal as an independent body for the first time in the constitutional history.

³³ Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asia*, Cambridge University Press, 2003, pp. 24-25.

One of the critical factors of constitutionalism is to limit the executive and legislative authorities, according to the constitution. At the early stage, the Tribunal opposed the executive authorities; however, the 2012 crisis between the President and the legislature yielded the judicial independence infringement. Their independence has been weakened, and they could not be considered as ‘the insurance model’ to hold the political power after the political changes.

Furthermore, the vital role of the Constitutional Courts is the protection of citizens’ rights. The cases brought to the Tribunal are mainly disputes among the political elites. The drafters of the 2008 Constitution viewed the Tribunal predominantly as a forum to resolve intra-elite disputes, but not to protect fundamental rights or to constrain government power³⁴. The Tribunal deals with the constitutional disputes among the political elites, and elites are not concerned about the citizens’ rights. It is difficult to assert that the Tribunal can act effectively to protect the rights of minorities.

It can be concluded that the Tribunal acts as the supporter of the current political actors, and cannot perform functions of a mechanism which would contribute to the development of the democracy and protection of fundamental rights in Myanmar.

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³⁴ Dominic Jerry Nardi, “How the Constitutional Tribunal’s Jurisprudence Sparked a Crisis”, in Andrew Harding & Khin Khin Oo (ed.), *Constitutionalism and Legal Change in Myanmar*, Hart Publishing, 2017, p. 184.

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