

Legal Protection and Preservation of Cultural Heritage in Myanmar

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Abstract

Cultural heritage is an ancient monument or ancient site which is required to be protected and preserved by reason of its historical, cultural artistic or anthropological value. Cultural heritage may be classified as tangible, intangible and natural heritage. Because of being nonrenewable resource and inherited from previous generations, the protection and preservation of the cultural heritage play the important role of the modern society. So protection of cultural heritage needs not only at the international and regional level but also at national level. For this reason, there are many laws enacted for the protection and preservation of cultural heritage from the past to the present time in Myanmar. Moreover, it is necessary to educate the public to love, preserve and protect cultural properties. Thus every state and every citizen need to protect and preserve of cultural and natural heritage, prevent illicit transfer of cultural properties and has been undertaken for the preservation by the government as a national task. The objective of this study is to know the general notion of cultural heritage and to be aware the importance to protect the cultural properties and lastly to analyse the legal protection and preservation of cultural heritage in Myanmar.

Keywords: Cultural heritage, protection, preservation, individual responsibility, national task

Introduction

The Cultural Heritage is remarked as a largely nonrenewable and historical resource of the world because of it is not only the invaluable property of each nation but also the mankind heritage. It is also the property that should be protected and preserved by states, international organizations and regional institutions for sustainable development. But nowadays cultural heritage properties are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions. So protection of cultural heritage needs not only at the international and regional level but also at national level.

Definition and Classifications of Cultural Heritage

“Cultural Heritage” is the ancient monument or ancient site which is required to be protected and preserved by reason of its historical, cultural artistic, archaeological, geological or biological value.

Cultural heritage is defined as the legacy of cultural property along generations in order to maintain and exploit it and to further deliver it to future generations.¹ In order to be the protectable objects in Myanmar, the term “cultural heritage” is defined in the national laws in accordance with various international conventions in which she is one of the Contracting Members.

Under Section 2 (a) of the Protection and Preservation of Ancient Monuments Law 2015, “Ancient monument” means geological sites located on the ground or underground or on the water or underwater where relics and fossils with an age of 100 years and over are found, and other residential places built by ancient people.²

This Section should be read together with Section 2 (h) of the Protection and Preservation of Cultural Heritage Regions Law 2019. Under this Law, “Ancient Monument”

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¹ Katerina Papaioannou (2017), The International Law on the Protection of Cultural Heritage, IJASOS-International E-Journal of Advances in Social Sciences, Vol. III, Issue 7, p-257.

² The Protection and Preservation of Ancient Monuments Law 2015.

means in above or under the ground or in above or under the water which the fossils are found by geological nature and buildings that have existed since 100 years lived and used by human.³

Under Section 2 (a) of the Protection and Preservation of Antique Objects Law 2015, “Antique object” means object which are used by human begins including fossils over one hundred years old in above or under the ground or in above or under the water.⁴

All these definitions emphasize the term “Cultural Heritages” with various context from various national and international laws. Therefore, it can be seen that cultural properties described in the above definitions are the protectable properties at national level in Myanmar.

Cultural Heritage is an expression of the ways of living developed by a community and passed in from generation. In order to be protected property, it may be composed of three types in general; Tangible Cultural Heritage, Intangible Cultural Heritage and Natural Heritage.

Tangible Cultural Heritage refers to physical artifacts produced, maintained and transmitted inter-generationally in a society.⁵ It includes all tangible cultural goods, artistic creations and built heritage as prescribe in Article 1 of the Convention Concerning the Protection of the World Cultural and Natural Heritage 1972 including;

- (i) movable cultural heritage, e.g., paintings, sculptures, coins, manuscripts, etc.,
- (ii) immovable cultural heritage, e.g., monuments, archaeological sites, etc. and
- (iii) underwater cultural heritage, e.g., shipwrecks, underwater ruins and cities, etc.

The intangible cultural heritage means the practices, representation, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith that communities, groups and in some cases, individuals recognize as part of their cultural heritage. Intangible cultural heritage is a form of heritage in constant evolution and comprises also realities that, until recently, were not properly valued in the eyes of the international community.⁶

Natural Heritage includes natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.⁷

On February 2020, the United Nations Educational, Scientific and Cultural Organization (UNESCO) has identified 1121 world heritage properties in the world. Among these properties, the Pyu Ancient Cities are inscribed in 2014 and Bagan in 2019 as World Heritage Property. Although not yet recognized by UNESCO, Sites on the Tentative List in Myanmar have 15 in number at present. Therefore, all cultural heritage including national or world heritage whether tangible, intangible or natural heritage, should be protected and preserved as renewable and invaluable properties in each country.

³ Section 2 (h) of the Protection and Preservation of Cultural Heritage Regions Law 2019.

⁴ The Protection and Preservation of Antique Objects law 2015.

⁵ www.unesco.org/cairo/culture

⁶ Art.2 (1) of the Convention for the Safeguarding of Intangible Cultural Heritage, 2003.

⁷ Art.2, the Protection of the World Cultural and Natural Heritage 1972.

Risks and Danger Threatening Cultural Heritage

Cultural heritage is a reflection of human history, civilization and the coexistence of human beings and their ways of life. Its protection is a common responsibility of the whole community, the international or national, for the interest of future generations. Today, because of facing numerous risks and dangers threatening the cultural heritage, the protection of it is vital important for the contemporary society.

Under the UNESCO, the world cultural properties are faced with specific and proven imminent danger, such as: serious deterioration of materials, of structure and/or ornamental features, of architectural or town-planning coherence, of urban or rural space, or the natural environment, significant loss of historical authenticity and important loss of cultural significance. The potential dangers which could have deleterious effects on its inherent characteristics are; modification of juridical status of the property diminishing the degree of its protection, lack of conservation policy, threatening effects of regional planning projects, threatening effects of town planning, outbreak or threat of armed conflict, threatening impacts of climatic, geological or other environmental factors.⁸

Moreover, the issues of environmental preservation are also directly related with the safeguarding of cultural heritage. Due to pollution, unregulated construction, resource extraction and other destructive practices, the deterioration of the natural environment has a direct detrimental impact also on cultural heritage sites and monuments, whereas the conservation and correct management of cultural resources result in a combined positive effect on the surrounding natural environment.

Because of these deleterious effects and deterioration, the 53 properties of world heritage, such as Historic Center of Vienna in Austria (2017), have been decided to include on List of World Heritage in Danger by the World Heritage Committee.⁹

Therefore, it is necessary to protect the cultural heritage as the national task and provides the effective legal protection from the government side.

Legal Framework for the Protection and Preservation of Cultural Heritage in Myanmar

Legal actions are required to transmit world cultural heritage to future generations because of the facing technological, natural or man-made threats of world cultural heritage. Protection of cultural heritage by legal ways is the base of all protection ways.

In order to effectively protect Cultural Heritage in worldwide, UNESCO provides the mission and establishes various International Conventions in cultural heritage field. Although the major international conventions relating to cultural heritage protection established by UNESCO are five in number, Myanmar had already ratified in four; the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) on 10 February 1956; Convention on the Means of Prohibiting and the Preventing Illicit, Import, Export and Transfer of Ownership of Cultural Property (1970) on 5 September 1993; the Convention Concerning the World Cultural and Natural Heritage (1972) on 29 April 1994 and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003) on 7 May 2014. Moreover, as the member of the UNCLOS 1982, Myanmar has the duty to protect objects of an archaeological and historical nature found at sea and shall cooperate for this purpose.

Significant changes in existing law are made for the protection of cultural assets in the last period in Myanmar. After international agreements are ratified, the national legislation is determined compliance with international law in the process of integration of cultural assets with contemporary life.

⁸ World Heritage in Danger, www.unesco.org accessed at 25.2.2020, 9:30 pm.

⁹ Ibid.

In Myanmar, from the past to the present time, many laws have been enacted for the protection and preservation of cultural heritage effectively. The ancient cultural heritage has been undertaken for the preservation by the government as a national task. This task has already been included in the Four Social Objectives. This objective is “to upgrade national identity and preservation of cultural heritage and national characteristics”.

In accordance with this objective, many laws have already been enacted for the benefit of Myanmar cultural heritage preservation. Under the chronologically, the Laws that had already been repealed, are the Ancient Monuments Preservation Act 1904 which has repealed by the Antiquities Act 1957, the Antiquities Act 1957 amended in 1962 and repealed by the Protection and Preservation of Antique Objects Law 2015, the Protection and Preservation of Cultural Heritage Regions Law 1998, amended in 2009 and repealed by the Protection Preservation of Cultural Heritage Regions Law 2019.

The Protection and Preservation of Ancient Monuments Law (2015), the Protection and Preservation of Antique Objects Law 2015, the Protection Preservation of Cultural Heritage Regions Law 2019 are the existing laws.

Apart from these laws, relating to the case of the antique objects which do not cover under the Protection and Preservation of Antique Objects Law 2015, it shall be charged with under the Penal Code 1860.

According to the above factors, it may be seen that Myanmar is actively participating in the cultural heritage protection although not completed yet.

Offences and Penalties Relating to Cultural Heritage under National Laws

For the effective protection and preservation of cultural heritage, it has already been provided the offences and penalties in the respective laws. In the Myanmar cultural heritage protection laws, it is provided many prohibitions that could danger the heritage properties and the penalties for the violation of these prohibitions. Although every prohibition and penalty being important, the followings are vital important and everyone should be aware of them.

Relation to the Ancient Monuments, any Department, any organization or any person desirous of repairing and maintaining the whole or a part of an ancient monument without altering its original form or its original workmanship or altering the boundary of its enclosure, plastering, modifying, white washing, painting, offering respectfully with gold leaf gilding, placing royal finial up, placing royal diamond bud and royal vane and so on, shall abide by the provisions of other existing laws and apply for the prior permission under this Law to the Department of Archaeology, National Museum and Library in accord with the stipulations.¹⁰

Moreover, no one shall carry out any of the following acts which is assumed to cause damage to an ancient monument within the specified area of an ancient monument or of a listed ancient monument without a written prior permission (a) taking photo, video, film or copying and modeling an ancient monument stipulated as a listed ancient monument for commercial purposes (b) using machines which causes vibration within the specified place of an ancient monument and running various types of vehicles (c) cultivating, gardening, breeding, fencing by blocking nearby an ancient monument or doing any other act which can affect an ancient monument (d) emission of gas such as hot-air balloon which can affect an ancient monument (e) landing and taking off and, flying aeroplane and helicopter which can directly or indirectly affect an ancient monument (f) discarding chemical substance and rubbish which can affect an ancient monument and the environment.¹¹

¹⁰ Section 14 of the Protection and Preservation of Ancient Monuments Law 2015.

¹¹ Ibid, Section 20.

The Person who violates the provisions of Section 14 and Section 20 of this law, shall, on conviction, be punished with imprisonment for a term from a minimum of six months to a maximum of not exceeding one year or with a fine from a minimum of three hundred thousand kyats to a maximum of fifteen hundred thousand kyats or with both.¹²

Again relating to antique objects, the person who finds any object which has no owner or custodian, he shall promptly inform the relevant Ward or Village-Tract Administrator if he knows or it seems reasonable to assume that the said object is an antique object.¹³ And whoever violates this provision shall, on conviction, be punished with imprisonment for a term from a minimum of six months to a maximum of one year or with a fine from a minimum of one hundred thousand kyats to a maximum of three hundred thousand kyats or with both under Section 19.

Then the person who carries or transports an antique object to a foreign country without permission shall, on conviction under Section 15, be punished with imprisonment for a term from a minimum of five years to a maximum of ten years or with a fine from a minimum of 5000000 kyats to a maximum of 10000000 kyats or with both. In addition, the exhibit of the antique object involved in the offence shall be confiscated.

Under Section 16, whoever degenerates the original form, destroys, excavates or searches an antique object above or under the water or above or under the ground without permission shall, on conviction, be punished with imprisonment for a term from a minimum of three years to a maximum of seven years or with a fine from a minimum of three million kyats to a maximum of five million kyats or with both. In addition, the exhibit of the antique object involved in the offence shall be confiscated.

Relating to protection and preservation of cultural heritage region, a person who without prior permission granted under state or regional Conservation Committee or regional Conservation Committee, carries out any of the following functions within the Cultural Heritage Region (a) carrying out renovation to non-altering the original ancient workmanship of an ancient monument or renovating or extending the boundary of its enclosure, (b) carrying out archaeological excavation, (c) constructing or opening the museums, (d) constructing public infrastructure, essential requirement building for the tasks of protection and preservation of Cultural,¹⁴ shall on conviction be punished with the imprisonment for a term which may extend from minimum of 1 year to a maximum of 3 years or with the fine which may extend from minimum of 1000000 kyats to a maximum of 5000000 kyats.¹⁵

And no one would do the following facts in the ancient site zone without the permission of the Ministry of Cultural or the National Securing Committee or the Regional Securing Committee, (a) the maintaining of the ancient original hotel, motel, hostel, guesthouse and the industry buildings, (b) planting of perennial plants on farmland and land which can effect the environment and nature view, (c) the following process which could destroy the topographical area, (i) gold prospecting, sand producing, stone digging, making bricks, throwing trashes, throwing waste water, (ii) mining the nature hill and adjusting ground, digging and blocking water flow, (iii) covering up on lake, brook, irrigation, dam, ravine, valley, (d) chopping regional natural plants, destroying shrubs and planting the perennial plants which are not regional (e)releasing and schooling animals into the surrounding of ancient historical site zone and buildings, (f) hiding and covering up , blocking around that kampong, the view of ancient historical buildings which are in the yard.¹⁶ If

¹² Ibid, Section 21.

¹³ Section 12 of the Protection and Preservation of Antique Objects Law 2015.

¹⁴ Section 33 of the Protection and Preservation of Cultural Heritage Region Law 2019.

¹⁵ Ibid, section 37.

¹⁶ Section 34 The Protection and Preservation of Cultural Heritage Region Law 2019.

violate, he shall on conviction be punished with the imprisonment for a term which may extend to 1 year or with the fine which may extend to 3000000 kyats or with both.¹⁷

Without the permission of State or Regional Conservation Committee under this law, a person who carries out any of the followings in the Cultural Heritage region (a) destroying the ancient monument or a part of building, (b) carrying out to alter the original form or the original workmanship or original ancient name of ancient monument, (c) digging to search antique object, (d) digging to research petroleum, natural gas, gem or mineral¹⁸ shall on conviction be punished with the imprisonment for a term which may extend from a minimum of 3 years to a maximum of 5 years or with the fine which may extend from minimum of 1000000 kyats to a maximum of 5000000 kyats.¹⁹

Moreover, the Court shall also pass any of the following order on whoever is convicted of any of the offence under the law (a) causing the building constructed to be dismantled (b) causing the restoration of extended building or boundary of enclosure to its original position. (c) causing the restoration of altered and repaired form of building or land to its original form. (d) collecting exhibit in court as peace dividend.²⁰ Under section 42, whoever fails to abide by the order within the limited under section 41 shall be liable to be fine which may extend to minimum of 100000 kyats for each day for failure to abide by such order.

Therefore, every person, natural or legal, should abide the existing legal provisions relating to protection and preservation of cultural heritage as their national duty.

Conclusion and Finding

Today, as it has been tried to show all over the world, Myanmar has more heritage sites, monuments and ancient places. Although Pyu Ancient Cities (Halin, Beikthano and Sri Ksetra) was recognized as the World Cultural Heritage Site by UNESCO in 2012 and ancient temples in city Bagan in 2019 and other fifteen tangible heritages are in tentative lists of the UNESCO, it can be not yet inserted the intangible cultural heritage such as Myanmar Yoke Thay in this list and it can be not yet provided the intangible cultural heritage law in national level. Cultural heritage is not only the invaluable property of each nation but also the heritage of mankind. Therefore, it is needed to promote, protect and maintain more for cultural heritage before danger. The preservation of cultural heritage is one of the activities of the Union Government. Because of the lack of cooperation between the ministries, local authorities and communities, it is difficult to manage to protect and preserve the cultural heritage. With the aim of safeguarding the cultural heritage, the Ministry of Religious Affairs and Culture has provided many national laws and taken in cooperation with related ministries, regions or state governments and non-governmental organizations for the protection and preservation of ancient cultural zones. Moreover, one of the other important issues of protection is to share the importance of cultural heritage with all segments of society. It is because cooperation of individuals is of vital importance to strengthen the protection and preservation of cultural heritage sites in Myanmar. This will achieve through the media and the media should actively participate in cultural awareness sector in order to reach all segments of society to gain the knowledge and awareness of heritage protection. Therefore, the government, the organizations, national or international, and individual citizens should abide the current national heritage protection laws and should avoid the matters that threat or damage the cultural heritage property because the protection of cultural heritage is also the protection of national interests.

¹⁷ Ibid, section 39.

¹⁸ Ibid, section 35.

¹⁹ Section 40 of the Protection and Preservation of Cultural Heritage Region Law 2019.

²⁰ Ibid, Section 41.

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