



Grassroots Democracy: Analysis of the Ward or Village Tract Administration Law

**Action Committee for Democracy Development
and Progressive Voice**

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Grassroots Democracy: Analysis of the Ward or Village Tract Administration Law

The Ward or Village Tract Administration Law promulgated in 2012 in Myanmar, while an improvement on previous ad hoc, unclear regulations and authoritarian practices stemming from colonial-era legislation, it continues to fall short of basic standards for democratic elections and contains problematic sections that risks undermining participatory governance, democratic principles and accountability. Furthermore, the law is a powerful tool for administrative control for the military-controlled Ministry of Home Affairs, which oversees the General Administration Department (GAD) that employs Ward and Village Tract Administrators.

These elections of Ward/Village Tract Administrators are important, as the Ward or Village Tract Administration Law is the main link between communities and the state, increasingly play a key role in local development as it constitutes the most local level of the administration and is also supposed to represent citizens' interests. The local elections are also important as they form an indispensable part of Myanmar's transition to democracy, are one of the ways in which ordinary citizens can exercise their democratic rights - and are crucial to the development of active citizenship and good governance.

Without further amendments, the law risks at best being a limited improvement over the past - and the administrative elections the law mandates could become a bureaucratic exercise that lacks clarity. At worst, the elections risk becoming a decorative form of local-level democracy not fully reflecting the people's voices, particularly by restricting the voting rights of women and youth and other disenfranchised minorities. While civil society has successfully advocated for amendments to this law, and certain sections have been amended, more needs to be done. As this briefing paper outlines, Parliament must continue to review and amend problematic sections of the Ward or Village Tract Administration Law in order to promote local-level democracy, participation and equality of voting rights of all people, thus embedding the democratic process at the grassroots level.

Background

The Ward or Village Tract Administration Law,¹ promulgated in 2012, sets out the mandate for the administration and the supervision of all 16,700-plus wards and village tracts including the procedures of electing Ward/Village Tract Administrators. The law details the Ward/Village Tract Administrators' functions and duties; over half of which are related to security. Other duties include birth/death registration, public health issues, local development activities, and facilitating permission requests for public events among others.² The role of the Ward/Village Tract Administrators is extremely important for local level governance and administration in business, development projects and social issues such as management of land, taxation, microfinance projects, dispute settlement, and livestock ownership. As such, they play a very significant role in the daily realities of people's lives at a local level.

The law enacted under the 2008 Constitution, Article 289, which states "administration of ward, or village-tract shall be assigned in accord with the law to a person whose integrity is respected by the community."³ The implementation and administration of the law is under the General Administration Department (GAD), which is a part of the military-controlled Ministry of Home Affairs (MoHA). The Ward or Village Tract Administration Law replaces the colonial-era Towns Act (1907) and the Village Act (1907).

Since the law's emergence in 2012, amendments have been made three times including establishing penalties for those who used forced labor and limiting the terms for Ward/Village Tract Administrators to just two. Three rounds of Ward and Village Tract Administration elections have been held under the supervision of GAD – in 2013, 2016 and 2017.

Civil Society Mobilization and Methodology

Many civil society organizations (CSOs) have been active⁴ in advocating for amendments to parts of the law while some CSOs have been engaged in raising awareness of the law and voter education at the grassroots level.

A coalition - Coalition on Ward/Village Tract Administration Law Amendment (WA-VTA Coalition) - led by Action Committee for Democracy Development, Paung Ku, Charity-

1 The Ward or Village Tract Administration Law, 2012. Available at <http://www.altsean.org/Docs/Laws/Ward%20or%20Village-tract%20Administration%20Law.pdf>

2 The Ward or Village Tract Administration Law, 2012. Chapter VII.

3 2008 Constitution, Article 289. Available at http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf

4 Aung Kyaw Min, "CSOs urge amendment of guest registration law," The Myanmar Times, 11 August, 2016. <https://www.mmmtimes.com/national-news/nay-pyi-taw/20221-civil-society-groups-push-for-local-administration-law-revamp.html>

Oriented Myanmar, New Myanmar Foundation, Equality Myanmar, and Community Response Group was created in March 2016.^{5, 6} It has worked to mobilize the public and has advocated both houses of Parliament for legislative reform throughout 2016. The coalition convened a workshop of 30 civil society organizations from Yangon, Bago, Kachin, Kayin, Ayeyarwaddy, Magway, Sagaing, Rakhine, Mon, Mandalay Regions and States to analyze the law and proposed a table of specific recommendations in which 10 priority recommendations on amendments to the Ward or Village Tract Administration Law were agreed. Following a press conference⁷ to discuss these points in April 2016, the coalition was invited to the first ever public hearing to take place at the Upper House of Parliament, which resulted in some of civil society recommendations being included in the draft amendment to the law. The WA-VTA Coalition also organized 13 township/village discussions in Yangon, Bago, Ayeyarwaddy, Magway, Sagaing, Mon, Kachin, Chin, and Shan Regions and States with the participation of elected MPs, interested CSOs and individuals including legal experts. Those discussions and consultations with people from the ground helped shape advocacy for the law's amendment. A public hearing at the Lower House of Parliament followed this at which three representatives from the coalition presented the 10 priority points endorsed by 75 civil society organizations from Myanmar. President U Htin Kyaw approved the third amendment for the Law on 2 December, 2016.

After the third amendment, a workshop was held by civil society organizations, including the WA-VTA coalition, in June 2017 in Thaton Township, Mon State. The 35 attendees from ACDD's member networks, WA-VTA Coalition and local governance experts from Yangon, Bago, Magway, Sagaing, Mandalay, Kachin, Mon, Rakhine and Shan Regions and States expressed how the new law has "improved" since the third amendment. Some of the amendments partly reflect civil society recommendations such as the introduction of the direct voting system to elect administrators by one person per resident household (replacing the previous practice of indirect elections by 10-household leaders), the removal of over-night guest registration and its procedures for offences and penalties, the removal of education qualification for candidates, the addition of "or one household member who

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- 5 This followed on from a larger workshop on Ward or Village Tract Administration Law in January 2016 with 79 participants from 43 organisations, for further, see Susanne Kempel and Aung Tun, "Workshop Report: Myanmar Ward and Village Tract Administrator Elections 2016: An overview of the role, the laws and the procedures," Norwegian People's Aid, 31 January 2016. http://themimu.info/sites/themimu.info/files/documents/Report_Ward_Village_Tract_Administrator_Elections_2016_NPA_Jan2016.pdf
 - 6 In parallel, another coalition of local groups such as Peace and Justice Myanmar, Rainmakers and Hornbill Organizations released a survey on public's opinions on the importance of guest-registration in the Ward or Village Tract Administration Law.
 - 7 Lun Min Mang, "Civil society groups push for amendment to guest registration law," The Myanmar Times, 11 May, 2016. <https://www.mmtimes.com/national-news/nay-pyi-taw/20221-civil-society-groups-push-for-local-administration-law-revamp.html>

is over 18 years old” along with head of household in eligibility for voters, the removal of punishments for not registering overnight guests, the removal of restrictions on education requirements and the “good health” stipulation for candidates, and reduction of power and influence from township and district-level appointed officials over elected administrators.

However, several important suggestions for amendments by civil society organizations were not included such as universal suffrage, the right to recall, the removal of the stipulation that qualified candidates must be those “whose family members are of good morality, honest and simple,” a mandated publicly available timeline for announcing and holding the elections, and the transfer of power from Supervisory Committees to the Union Election Commission to oversee the local elections. Furthermore, due to unclear procedures there remains a high potential for election disputes and confusion. Thus, problems remain and civil society actors will continue to monitor performance of elected administrators, conduct voter education, report on public opinion polls, and advocate for policy and legislative change.

This briefing paper is based on the analysis and recommendations proposed by the various civil society initiatives outlined above and compiled by a leading organization in the aforementioned coalition. It thus outlines community concerns, perspectives, and recommendations on local democracy, community representation and participation with regard to this law and its position within the broader institutional structure of administration and local governance. It is a product of the community voices and efforts and seeks to further substantive democratic developments at the grassroots level.

Law Reform

Freedom of Movement

The right to freedom of movement is enshrined in Article 12 of the International Covenant on Civil and Political Rights⁸ and Article 13 of the Universal Declaration of Human Rights which states that, “Everyone has the right to freedom of movement and residence within the borders of each state.”⁹

Although some amendments have been made to the law regarding guest registration, there remain significant issues that restrict freedom of movement, which must be addressed. While it is welcomed that the amendment no longer includes punishment for not registering guests, residents of the village tract or ward are still required to report

8 International Covenant on Civil and Political Rights (ICCPR), Article 12. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

9 International Declaration of Human Rights (UDHR), Article 13. Available at <http://www.un.org/en/universal-declaration-human-rights/>

to the authorities and register any guests staying in their homes for a duration of one month or more.¹⁰ Previously, guest registration was used as a surveillance tool to monitor political activists and members of civil society organizations, while restricting freedom of movement and impinging on privacy of the public.¹¹ The recent amendment was a positive development from its original stipulation that any guest who stays for even one night must be registered; otherwise the person whose residence the guest is staying in will face punishment. However, it is still restrictive and can be used to impinge on the privacy of the public. Therefore, it is still required that all sections related to guest registration law be repealed. Additionally, several concerns remain regarding minority rights to freedom of movement, as several villages have been declared to be “Muslim free,” preventing Muslims from entering, staying, or living there.¹²

Election Procedures

The right to elect and be elected into governmental agencies and institutions of government is enshrined in Article 21¹³ of the Universal Declaration of Human Rights and in Article 25¹⁴ of the International Covenant on Civil and Political Rights. While the Ward or Village Tract Administration Law has been amended three times, there remain sections and stipulations that pose problems for a truly democratic process. One is that the ultimate authority on the formation of the supervisory board that oversees the election of the Ward/Village Tract Administrator is the Township Administrator. According to Section 6, “The township administrator will form and assign duties to the supervisory board with five elders who are given tasks by the people in wards and village tracts and are willing to supervise the election of Ward/Village Tract Administrators.” The Township Administrator, however, is unelected and assigned by the GAD. Furthermore, the stipulation that it is only “elders” (ရပ်မိရပ်ဖ) that can be selected to the supervisory board is problematic in that it excludes the participation of younger community members. Additionally, there is also no specific term for the supervisory board.



“The ward/village tract administrators must be treated as “elected” administrators, not as staff of the General Administration Department (GAD)” - Civil Society representative from Bago Region.

10 Ward or Village Tract Administration Law, Chapter IX. Section 17.

11 “Midnight Intrusions: Ending Guest Registration and Household Inspections in Myanmar,” Fortify Rights, March 2015. Available at http://www.fortifyrights.org/downloads/FR_Midnight_Intrusions_March_2015.pdf

12 “Persecution of Muslims in Burma,” Burma Human Rights Network, 5 September, 2017. Available at <https://pro-gressivevoicemyanmar.org/2017/09/05/bhrn-report-persecution-of-muslims-in-burma/>

13 UDHR, Article 21.

14 ICCPR, Article 25.

for a discourse regarding cultural implications and rights of women as head of the family, household heads in Myanmar are typically men and therefore women's exclusion is very high.

Another problem regarding the democratic process is that there is no clear election time-line and so people are unaware of the timing of the process and thus their right to participate. This also results in lack of opportunity to adequately prepare for the elections including for local election officials, potential candidates, possible election observers, members of parliament, experts, civil society, media and the wider public. Furthermore, there are no rules or regulations regarding campaigning for each position, including campaign spending limitations, financing of the election management process, budgetary issues, incitement to violence and hate-speech, or an election dispute mechanism. Without these key aspects of a democratic election process, the law remains unclear and open to interpretation. Importantly it falls short of basic standards for a democratic election process.¹⁶ Township Election Commissions already exist under the Union Election Commission with the capacity and mandate for voter registration lists, election monitoring, and complaint and resolution mechanisms for electoral disputes. These should be utilized as part of the election of Ward/Village Tract Administrators—regardless of whether or not future elections remain under the mandate of GAD, is transferred to the Union Election Commission, or is managed under a potential new and separate election commission for subnational elections.

Qualification of the Candidates

While the qualifications and criteria for who is eligible to be a Ward/Village Tract Administrator, as outlined in Chapter III, Section 5, were amended after recommendations made by civil society, this section still contains some arbitrary clauses.

The third amendment removed the controversial criteria for eligibility such as to “be a person sufficient for living,” thus giving more opportunity to those with lower income and also removed that the person must be one “who is in good health,” thus creating fairer opportunities for persons with disabilities. The amendment also removed the educational criteria that is one of the priority recommendations from CSOs and reduced the length of residence requirement in that ward or village tract from 10 years to 5 years.

Problematic criteria, however, still remain. For example, family members must be “persons in good morality, simple and honest.”¹⁷ Terms such as “simplicity,” and “honesty” cannot be

16 “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.” [Article 21, Universal Declaration of Human Rights, 1948]

17 Ward or Village Tract Administration Law, Chapter III, Section 5.

verified or measured easily and can be easily interpreted in an arbitrary fashion. Another qualification that administrators must be at least 25 years old, is explicitly excluding a large portion of the youth from being able to participate.

Accountability

There are also problems regarding the elected Ward/Village Tract Administrators' accountability towards the community they represent. The appointed Township Administrators can dismiss elected administrators unilaterally or if necessary "with an investigation team."¹⁸ This provision places the Ward/Village Tract Administrators as accountable to the unelected, GAD-appointed Township Administrators that are ultimately accountable to the military. Furthermore, there are no recall procedures for Administrators by the people or even a complaint mechanism, further disempowering the community. Furthermore, the criteria for forming the investigation team are unclear. At the same time, the elected Ward/Village Tract Administrators' representation is very weak in the community as the electorate consists of only one person per household. Thus, they are not directly accountable to all of the community, but rather to select members of the community while more direct accountability flows upwards, towards the Township Administrators.

Broader Institutional and Political Implications

It is important to place the Ward or Village Tract Administration Law within the broader political, institutional and legislative framework of Myanmar. One of the most significant aspects of this law is its position within the mandate of the GAD, which itself is under one of the three ministries assigned by the 2008 Constitution to military control – the Ministry of Home Affairs. This gives the military a ubiquitous presence and influence in the everyday running of the country as the GAD has "wide-sweeping administrative functions...which affect the country at every level of governance."¹⁹ Within the Ward or Village Tract Administration Law there is the existence of the GAD-appointed Ward or Village Clerk, whose position is unelected, permanent and influential.²⁰ Another aspect is the recent amendment to the Ward or Village Tract Administration Law that creates 'village focal persons' and could be exploited by the military-backed Ministry of Home Affairs to infiltrate and expand their presence right down to each 100 households or small villages by using such persons as informers and/or to enforce their agenda. The Ward or Village

¹⁸ Ward or Village Tract Administration Law, Chapter VIII, Section 15.

¹⁹ "Another Piece of the Democratic Puzzle," Progressive Voice, January 2017. <https://progressivevoicemyanmar.org/2017/01/20/another-piece-of-the-democratic-puzzle-reform-of-the-administrative-structure-of-myanmar-essential/>

²⁰ Ward or Village Tract Administration Law, Chapter XIV, Section 31.

Tract Administration Law is to be implemented by the GAD, with upward accountability to the GAD-appointed Township Administrator. The mooted Township Administration Law²¹, which has not yet passed and is in draft form, will only cement the powerful position of the military - vis-à-vis the GAD - in local level governance and administration. Thus, even if the Township Administration Law - when eventually passed - changes the position of the Township Administrator from one of appointment to election, the ultimate authority remains with the military via the Ministry of Home Affairs and the GAD. Thus, it would be in accordance with democratic norms if the responsibilities of the Ward and Village Tract elections are transferred away from the GAD to an independent election body – and that the mandate for and management of the Ward/Village Tract Administrators are transferred to administrative bodies under civilian control.

There is an overall need for comprehensive subnational administration reform. Currently, decentralization and subnational administration changes have proceeded in an ad hoc and piecemeal manner without a broad and comprehensive framework for subnational administration based on democratic norms set within a transparent, accountable and inclusive policy and guided by a vision of a federal democratic union of Myanmar. For substantive change to occur, a process of constitutional reform must begin.

There are important further issues related to the governance of Myanmar that relate to aspirations of ethnic nationalities and the peace process. The Ward or Village Tract Administration Law is just one piece of a centralized system of governance and administration. Ethnic peoples' aspirations of self-determination and ethnic equality must be addressed through a federal system of governance, and this involves devolving substantive power to ethnic areas to govern many aspects of political, economic, social and cultural life themselves – including administration. Even if the Ward or Village Tract Administration Law was amended to be more democratic, it does not necessarily decentralize the administrative structure. Thus, reform of the GAD, and by proxy, the Ward or Village Tract Administration Law, must be part of a broader process that establishes autonomy for ethnic nationalities.



“The Constitution must be amended urgently. When we talk about very basic things like daily administration, Article 288 of the Constitution is a problem. The elected local administrators can’t nod and work for appointed township administrators. Township, District and regional administrators must be elected” - Representative from Action Committee for Democracy Development.

21 This law, proposed by the Thura Shwe Mann-led Legal Affairs and Special Cases Assessment Commission, was widely shared through social media in April and May 2017 but it hasn’t been passed or discussed yet in Parliament.

Within the current legislative framework, the dominance of the military within Parliament is another roadblock to reform as it is guaranteed 25% of seats in both houses of Parliament. During the process of the third amendment of this law in 2016 - as pushed for by civil society and including public hearings in both houses of Parliament - pushback from the military and conservative forces within the bureaucracy against certain amendments diluted more substantive progress. For example, after a draft amended law which incorporated many recommendations from civil society was approved by the Upper House, after discussions in the Lower House, some controversial articles were not amended. The most notorious, the guest registration sections, while improved, maintained the mandatory registration of guests who stay overnight in someone's home for more than 30 days. That these restrictions remain today is due to objections and concerns raised by the military parliamentarians in the name of 'security'.

Conclusion

Amendment of the Ward or Village Tract Administration Law is crucial as it can create a vital link between communities and the state. The Law has the potential to play a key role in promoting sustainable peace, democracy and development, while local elections are of huge importance as they form an indispensable part laying the foundations for Myanmar's transition to democracy. Ultimately, the amendment of the law must be part of broader reforms of the administration of the country. A key to this is ending ultimate military authority over the GAD, which gives the Myanmar Army power right down to the village level by infiltrating daily life of civilians and thus entrenching its position as the most powerful institution in Myanmar. It must also be part of a broader reform process that devolves power and establishes a federal, democratic system of governance that empowers ethnic nationalities and ensures equal power sharing. Reform of the GAD and wider subnational administration and governance reform, including amending the Ward or Village Tract Administration Law can, however, create the institutional structure and process in which ordinary citizens can exercise their democratic rights - and are crucial to the development of democracy, active citizenship and participatory local governance.

■ Recommendations

To the Myanmar Parliament

- To Amend Relevant Legislation, including the Ward or Village Tract Administration Law:
 - To remove all the articles related to guest registration and related regulations to restrict the citizens' freedom of movement and residency;
 - To grant universal suffrage to all people 18 years old and over in local administrative elections rather than simply household heads;
 - To reduce the minimum age limitations for the qualifications of the administrators from 25 years old to 18 years old;
 - To remove all restrictive and ambiguous eligibility criteria for Ward/Village Tract Administrators such as the 'simplicity' and 'honesty' of their family;
 - To simplify the election procedure of Ward/ Village Tract Administrators and educate the public widely on this procedure;
 - To establish a procedure and criteria for the public's right to recall elected administrators;
 - To cooperate openly with civil society to conduct and monitor free and fair elections of administrators as well as monitor administrators' performance;
 - To conduct systematic and nationwide voter education programs with the participation of civil society;
 - To ensure representation and accountability for all villages within a village tract; and
 - To establish an electoral process for the selection of Township Administrators rather than GAD-appointment.

To the Ministry of Home Affairs

- To urgently release the by-laws based on the most recent amendments to the Ward or Village Tract Administration Law;

- To provide clear and accessible information regarding the election timeline and legal provisions;
- To work with Township Election sub-commissions to supervise elections, including campaigning;
- To cooperate openly with civil society for to conduct and monitor free and fair elections of administrators as well as their performance; and
- To conduct a systematic and nationwide voter education programs with the participation of civil society.

To the Myanmar Army

- To engage in substantive political dialogue to amend the 2008 Constitution and establish a federal democratic system of governance, including administration; and
- Relinquish control of and allow civilian responsibility for the GAD.



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