

FROM ENVIRONMENTAL RULE OF LAW TO SUSTAINABLE DEVELOPMENT IN MYANMAR*

Swe Zin Oo¹

Abstract

Environmental rule of law can be defined as a system of practicable environmental laws which has significant impacts on the environment that are consistently applied, and effectively and fairly enforced. Effective enforcement of environmental laws is fundamental to the environmental rule of law. The failure of environmental regulations in developing countries owes to incomplete, superficial and ineffective legal provisions. The issue is further exacerbated by the ineffective enforcement of incapable regulatory institutions. Without effective enforcement of environmental laws environmental rule of law cannot be expected. As a developing country, Myanmar has encountered the same issues. This research paper critically analyzes the relation between effective enforcement of environmental law and the environmental rule of law in achieving sustainable development in Myanmar. This research is a doctrinal and textual analysis of the concept of environmental rule of law and its important role in promoting sustainable development of Myanmar by utilizing primary and secondary data on the enforcement of environmental laws in Myanmar.

Keywords: Environmental Rule of Law; Sustainable Development, Environmental impact assessment

Material and Method

This research mainly applies doctrinal and empirical analysis of primary and secondary data. First relevant literature are collected, review and analysed to understand the concept of the concepts the rule of law, environmental rule of law and their relation with sustainable development. Then textual analysis of environmental laws of Myanmar are conducted to assess these laws through the lens of the environmental rule of law. Finally, this research carried out empirical analysis by reviewing reports and relevant literature to shed light on the environmental rule of law and sustainable development of Myanmar.

The Concept of the Rule of Law

Many countries in the world today have one or other form of environmental legal framework. The constitution of many countries has one or any other form of guarantee for their citizens to enjoy clean and healthy environment. However, in many developing countries, most environmental legislations are toothless. The laws are not followed by effective implementation and enforcement.² At a minimum level, rule of law requires that there should be the law which meet the necessary standards, equipped with institutions and machinery to enforce and, most importantly, followed by an effective enforcement.³ The rule of law is a basic foundation to maintain international peace, security and political stability, to promote economic, social and all-round development, and essential to protect the rights and fundamental freedom of people. It is

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¹ Department of Law, University of Mandalay.

² 'Environmental Rule of Law; First Global Report' (Report, July 2019) 3.

³ The Enduring Importance of the Rule of Law in Times of Change' (Speech, Environment and Planning Law Association (NSW) Annual Conference: The Times They are a-Changing, 13 October 2011) 13.

fundamental to ensure people's access to public services, combat corruption, constrain abusing power, and establish the social contract between people and the state.⁴

Formal and Substantive Concept of Rule of Law

The attempt by legal philosopher to define the concept of the rule of law led to distinguish the concept into two main ideologies, 'formal or thin conception' and 'thick or substantive conception.' One of the most notable formal conceptions of the rule of law is that of Lon Fuller. In the *Morality of Law*, Fuller lays out eight principles that can be used as guidelines for a legal system's adherence to the rule of law as follows: -

- 1) Decisions should be made according to rules; not in an arbitrary or ad-hoc manner;
- 2) Rules should be publicized, or at least made available to the people expected to observe them
- 3) Rules (legislation) should not be retroactive;
- 4) Rules should not contradict each other;
- 5) Rules should not require people to take steps beyond their capabilities;
- 6) Rules should not change so frequently that people are unable to plan their behaviour based on the rules; and
- 7) There should not be a significant disconnect between the way rules are drafted and the way they are enforced in practice.⁵

Fuller's eight principles do not state what the content of any given legal rule must be. Instead, they focus solely on the way in which legal rules are applied.

Professor Tamanaha advocates the same ideology as Lon Fuller. Tamanaha reject the substantive concept in the following terms; -

The rule of law is an ideal that relates to legality. Democracy is a system of governance. Human rights are universal norms and standards, or at least norms that claim universal application. Since each of these notions has meaning that is well understood, it invites confusion, in my view, to insist that the latter two are part of the definition of the rule of law. Each must be understood and argued for on its own terms. They are separate elements that focus on different aspects of a political-legal system, which can exist separately or in combination.⁶

Unlike formal conceptions, substantive conceptions of the rule of law do specify (to some degree) what content laws must include. In essence, substantive conceptions further added democratic and human rights value to the established formal conceptions.⁷

UN Secretary General Kofi Annan refers to substantive conception in "The rule of law and transnational justice in conflict and post-conflict societies". He advocated the concept as:

⁴ United Nations, United Nations and the Rule of Law, 'What is the rule of law?' (Web Page) <https://www.un.org/ruleoflaw/>.

⁵ Lon L. Fuller, *The Morality of Law* 39, 41-42(1969), as cited by Benjamin K. Guthrie, 'Beyond Investment Protection: An Examination of the Potential Influence of Investment Treaties on Domestic Rule of Law', [2012-13] 45 *International Law and Politics* 1151, 1161-1162.

⁶ Brian Z. Tamanaha, 'The History and Elements of the Rule of Law' (2012) *Singapore Journal of Legal Studies* 232, 234.

⁷ Benjamin K. Guthrie, 'Beyond Investment Protection: An Examination of the Potential Influence of Investment Treaties on Domestic Rule of Law' [2012-13] 45 *International Law and Politics* 1151, 1162-1163.

a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.⁸

The World Justice Project (WJP) definition of the rule of law is probably one of the most persuasive when considering how a system may be created in order to avoid arbitrary governance. The World Justice Project (WJP) suggests that the rule of law is a system in which four universal principles are upheld:

- Accountability: The government and its officials and agents as well as individuals and private entities are accountable under the law.
- Just Law: The laws are clear, publicized, stable and just, are applied evenly, and protect fundamental rights, including the security of persons and property.
- Open Government: The process by which the laws are adopted, administered, adjudicated and enforced are accessible, fair and efficient.
- Justice is delivered timely by competent, ethical, and independent representatives and neutrals who have adequate resources, and reflect the makeup of the communities they serve.⁹

Therefore, the rule of law in general refers to a power subjected to the law. The concept belongs to both 'descriptive' and 'prescriptive' meaning. The concept of the rule of law can be used to describe a particular arrangement of political institutions. It is also used to formulate an ideal set of goal in which sovereigns govern their subjects by the laws that are fixed and adopted in advance, and to which the sovereigns themselves obey.¹⁰

Rule of Law for Promoting Sustainable Development

The rule of law is directly connected to sustainable development because it sets forth legal, political, and social order while also advancing security. For example, without proper functioning institutions of governance based on the rule of law that promote social stability and legal certainty, there cannot be investment and assumption of risk that for the basis of market economy development, let alone sustainable development. Rule of law also strengthens accountability for the exploitation of natural resources and, therefore, can reduce abuses of power and corruption as well as attract investments.¹¹

⁸ United Nation Secretary General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General* (Report, S/2004/616, 23 August 2004).

⁹ 'What is the Rule of Law?' *World Justice Project* (Web Page) <<https://worldjusticeproject.org/about-us/overview/what-rule-law>>.

¹⁰ Pietro Costa, 'The Rule of Law: An outline of its historical foundations' in Christopher May and Adam Winchester (eds), *Handbook on the Rule of law* (Edward Elgar Publishing, 2018) 135.

¹¹ Alexandra Dapolito Dunn and Sarah Stillman, 'Advancing the Environmental Rule of Law: A Call for Measurement' (2015) 21 *Southwestern Journal of International Law* 283, 287.

In fact, when 191 UN member states pledged to meet the Millennium Development Goals (MDGs) for sustainable development by 2015, the eight MDGs were agreed to by all of the world's countries and international development institutions. Although not specifically referred to in the text, strengthening the rule of law emerged again as essential to promote sustainable development and achieve the MDGs. Notwithstanding the affirmation of environmental sustainability as a MDG, a recurrent criticism of the MDGs is that they insufficiently address the environmental component of sustainable development and the weaknesses in the overall progress toward environmental sustainability persist. It is important to keep the environmental component of sustainability front and centre when using the rule of law as a sustainable development underpinning.¹²

Goal 16 of the SDGs 2030 is “peace, justice and strong institution”. Goal 16 aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Goal 16 targeted, among others, promote the rule of law at the national and international levels and ensure equal access to justice for all; develop effective, accountable and transparent institutions at all levels; promote and enforce non-discriminatory laws and policies for sustainable development; and, Promote and enforce non-discriminatory laws and policies for sustainable development.¹³ SDGs do not affirm environmental sustainability as a goal on its own; rather, the protection of our environment appears as an underlying principle that permeates throughout many SDGs.¹⁴

The Concept of Environmental Rule of Law

While notion and conception of rule of law has a long history, the term “environmental rule of law” was introduced recently. The term appeared in the Decision No. 27/9(2013) of the UNEP Governing Council. The Decision called upon UNEP to take a leading role and assist the states in developing and implementing environmental rule of law as follows:

To lead the United Nations system and support national Governments upon their request in the development and implementation of environmental rule of law with attention at all levels to mutually supporting governance feature, including information disclosure, public participation, implementable and enforceable laws, and implementation and accountability mechanisms including coordination of roles as well as environmental auditing and criminal, civil and administrative enforcement with timely, impartial and independent dispute resolution;¹⁵

The Decision highlights and covered the issues areas which countries, especially developing ones, are facing in the implementation of environmental law and achieving environmental goals. The issues highlighted reflect the fundamental concepts which needs to fulfil in order to ensure the rule of law. However, none of these documents have specifically defined the term “environmental rule of law”. It may be the reason that environmental rule of

¹² Ibid 287-288.

¹³ ‘Sustainable Development Goal 16’, *United Nations and the Rule of Law* (Web Page) <[¹⁴ Alexandra Dapolito Dunn and Sarah Stillman, \(2015\) ‘Advancing the Environmental Rule of Law: A Call for Measurement’ 21 *Southwestern Journal of International Law* 287-288.](https://www.un.org/ruleoflaw/sdg16/#:~:text=Goal%2016%20Targets&text=Promote%20the%20rule%20of%20law,all%20forms%20of%20organised%20crime.>”.></p>
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¹⁵ Advancing Justice, Governance and Law for Environmental Sustainability, UNEP GC Decision 27/9.

law is not a novel but concept originally being an underlying and an umbrella concept relevant to all the specific areas of law in general.

In international environmental documents, the term “environmental rule of law” is sparsely defined. In IUCN World Declaration on the Environmental Rule of Law defined “as the legal framework of procedural and substantive rights and obligations that incorporates the principle of ecologically sustainable development in the rule of law.”¹⁶ In UNEP report, environmental rule of law is defined as “the principle of rule of law applied in the environmental context.”¹⁷

While the term “environmental rule of law” was not frequently used, the mentioning of rule of law in relation of environmental protection and sustainable development is not rare. In 2012, UN General Assembly adopted a resolution on the rule of law at the national and international level in which it emphasized the importance of rule of law to sustain, among many other development goals, the sustainable development.

We are convinced that the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law, and for this reason we are convinced that this interrelationship should be considered in the post-2015 international development agenda.¹⁸

While the declaration did not specifically mention environmental protection, it is one of the essential pillars of sustainable development. The importance of rule of law for sustainable development is further reaffirmed in the 2012 UN Conference in sustainable Development (Rio+20).¹⁹

We acknowledge that democracy, good governance and the rule of law, at the national and international levels, as well as an enabling environment are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger. We reaffirm that to achieve our sustainable development goals we need institutions at all levels that are effective, transparent, accountable and democratic.²⁰

Therefore, the term “environmental rule of law” is not specifically used, these landmark international documents repeatedly emphasize the fundamental role of rule of law in achieving national and global goal of environmental protection and sustainable development.

Many legal scholars working on the environmental rule of law usually provide an applicable definition for the purpose of discussion in their hands. It is found out that scholars who did theoretical analysis of the concept usually a full account of discussion on both these concepts. On the other hand, some scholars tend to use a thinner conception to refer to and

¹⁶ ‘IUCN World Declaration on the Environmental Rule of Law’ 2016.

¹⁷ United Nation Environment Program, ‘Environmental Rule of Law: Tracking Progress and Charting Future Direction’ (DEL/2857/NA, United Nations Environmental Program, 2023) 15.

¹⁸ Implementation of Principle 10 of the Rio Declaration on Environment and Development UNEP Resolution 1/13 (27 June 2014) [4].

¹⁹ ‘The future we want’, (UN Doc. A/RES/66/288) [8][10][252].

²⁰ Ibid [10].

evaluate a particular country's system of laws and enforcement. Benjamin and Fulton defined environmental rule of law as "a state of being in which there is the presence of, respect for, and observance of environmental norms."²¹ Ristroph gave a quite similar working definition for her work in which she defines environmental rule of law as a system of practicable environmental law which has significant impacts on the environment that are consistently applied and, effectively and fairly enforced.²²

Rule of law is a concept supported by the world scholars, practitioners and political leaders alike. However, in many circumstance, the advocacy of the rule of law does not pair with some articulation of the term.²³ As Magraw argued "individuals from societies which have very different views of the concept of 'law'" will not refer to the same concept of the rule of law.²⁴ Magraw requires the thickest or strongest version of the rule of law to be applicable in the context of environmental protection. Basically, to protect the environment, environmental laws need to be complied with and, thus effective enforcement of those law are essential. However, due to paramount importance of the relation between human rights and the environment, and the role of the civil society in protecting the environment, the thickest version of rule of law is particularly necessary. With the foundation of the human rights, procedural and substantive rights which are imperative in the impartial enforcement of environmental laws can be assured.²⁵

Environmental Rule of Law in Myanmar

Myanmar ranks 135 out of 140 in overall score of in World Justice Project's 2024 rule of law index.²⁶ WJP's rule of law index is measured against eight factors; constraint on government power, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice. Among them the factor for 'regulatory enforcement' measures the extent to which regulations are fairly and effectively implemented and enforced. Regulations, both legal and administrative, structure behaviours within and outside of the government. This factor does not assess which activities a government chooses to regulate, nor does it consider how much regulation of a particular activity is appropriate. Rather, it examines how regulations are implemented and enforced. Myanmar also ranks 115 among 142 countries in regulatory enforcement.²⁷ Again, Myanmar ranks 179²⁸ in 2022, 177 in 2024 respectively in the Environmental Performance Index which is measured among 180 countries.²⁹ In terms of ecological vitality, Myanmar rank 177³⁰ among 180 countries both in 2022 and 2024 Environmental Performance Index.³¹ Scott argued that one possible reasons of strong correlation

²¹ Ibid 32.

²² Elizabeth Barrett Ristroph, 'The Role of Philippine Courts in Establishing the Environmental Rule of Law' (2012) 42(9) *Environmental Law Reporter* 866, 867.

²³ Daniel Barstow Magraw, 'Rule of Law and the Environment' (2014) 44(1-2) *Environmental Policy and Law* 201, 201

²⁴ Ibid 201.

²⁵ Ibid 208.

²⁶ 'WJP Rule of Law Index: Myanmar', *World Justice Project* (Web Page) <https://worldjusticeproject.org/rule-of-law-index/country/2023/Myanmar/>.

²⁷ Ibid.

²⁸ Yale Center for Environmental Law and Policy, *Environmental Performance Index 'Myanmar'* (Web Page) < <https://epi.yale.edu/epi-results/2022/component/epi>>

²⁹ Yale Center for Environmental Law and Policy, *Environmental Performance Index 'Myanmar'* (Web Page) < <https://epi.yale.edu/measure/2024/EPI>>

³⁰ Ibid.

³¹ Ibid.

between the rule of law ranking and environmental performance rankings is that rights may have no significance if people cannot exercise or protect them. It is only strong rule of law that can make sure people can protect environment through access to justice and participatory decision-making.³²

The failure of environmental regulations in developing countries owes to many reasons. One of them is the incapacity of regulatory institutions. They may be understaffed and poorly trained and equipped. They are not able to adopt appropriate standards and monitor due to a lack of technical expertise. Poorly paid staff are the grounds for corruption. Environmental ministries are less powerful than those responsible for economic development and their decisions are subject to interference.³³ More importantly, the environmental regulations failed because of the imbalances of interests and power between those who are the targets of regulation and those who are beneficiaries of regulations. Those regulated disregards the regulations or sometimes circumvent the regulation by influencing the regulator's decision through political connections or trying to minimize the environmental agencies.³⁴ Incompleteness of environmental legal texts is a usual problem in developing countries. Environmental provisions are superficial and ineffective. They are stipulated to satisfy some political interest and are not serious about the implementation and enforcement.³⁵

Historically, Myanmar's rule of law is flawed by weak or non-implementation of the laws under the successive governments.³⁶ There is no exception of these effect to environmental laws. Although specifically not as same environmental rights as many other embodied in their constitution, Myanmar also has footing in the Constitution of the Union of Myanmar regarding the protection of natural environment.³⁷ Myanmar have developed necessary legal framework to implement the basic environmental principle provided in the Constitution. However, the text of these laws itself are far from supporting effective implementation although the laws were drafted with the technical assistance of regional institutions such as ADB.³⁸

One example is the Environmental Conservation Law and Environmental Conservation Rules include the implementation of polluters-pays-principle but they are not fully materialized. While environmental insurance system to complement the polluter pays principle is required under the law,³⁹ there is no such system in place for the moment.⁴⁰ Environmental compliance monitoring of investment projects requiring under the Laws has not been in place yet even after

³² Jessica Scott, 'From Environmental Rights to Environmental Rule of Law: A Proposal for Better Environmental Outcomes' (2016) 6(1) *Michigan Journal of Environmental & Administrative Law* 203, 235.

³³ Lesley K. McAllister, *Making Law Matter: Environmental Protection and Legal Institutions in Brazil* (Stanford University Press, 2008) 3.

³⁴ Bernardo Mueller, *Who Enforces Enforcement? Can Public Prosecutor in Brazil Break the Endless Regress?* (Brasilia: Department of Economics, University of Brasilia, 2006) as cited in Lesley K. McAllister, *Making Law Matter: Environmental Protection and Legal Institutions in Brazil* (Stanford University Press, 2008) 3.

³⁵ John Dwyer, 'The Pathology of Symbolic Legislation' (1990) 17 *Ecology Law Quarterly*, 233 as cited in Lesley K. McAllister, *Making Law Matter: Environmental Protection and Legal Institutions in Brazil* (Stanford University Press, 2008) 3.

³⁶ Tun Myint, 'Environmental governance in the SPDC's Myanmar' in (eds) Monique, and Trevor Wilson, *Myanmar- The State, Community and The Environment* (Australian National University Press and Asia Pacific Press, 2009) 189.

³⁷ *Constitution of the Republic of the Union of Myanmar 2008* s 45.

³⁸ William J. Schulte and Matthew H. Baird, 'Myanmar's Nacent Environmental Governance System: Challenges and Opportunities' (2018) 33(2) *Natural Resources and Environment* 21, 22-24.

³⁹ The Environmental Conservation Law 2012 ss 26-27.

⁴⁰ Interview, MONREC.

several years of the stipulation of the Laws.⁴¹ There is no strict criminal liability for environmental damage under the Laws. Without the proper liability for environmental damages caused by foreign investment, Myanmar environment cannot protect and sustainable development cannot be achieved.

The environmental impact assessment (EIA) is fundamental for the protection of the environmental issues which are likely to be caused by investment projects. The Environmental Impact Assessment Procedure 2015 is basically in line with international standards and good practice. Despite being good on textual context, there are challenges with its implementation. The Environmental Conservation Department (ECD) which is mainly responsible for the screening of the EIA faced with challenges at the screening stage regarding how to deal with projects that do not fall into any of the project categories enumerated in Annex. As a consequence, it can delay the projects since it is challenging for ECD staff to evaluate a proposal without any numeric criteria to refer to and provide a judgement on what level of assessment should be required.⁴²

The major obstacle they pointed out is the insufficient capacity in the department.⁴³ OECD also pointed out this particular issue in a recent policy review for Myanmar. Investment proponents face major delays in the review and approval of EIAs and IEEs, due to a significant lack of manpower and human resources in MONREC. The number of documents received by the Ministry for review has increased hugely every year, with over 2700 EIA, IEEs and EMPs received in 2017-18, against around 250 in 2014-15. According to ECD data as of early 2019, only 13% of EIAs submitted had been approved.⁴⁴

Beyond the ex-ante EIA approval process, relevant authorities at national and subnational levels also lack the capacity to monitor and audit the implementation of investments to ensure compliance with EIA results. While some of the above issues are expected due to the relatively recent establishment of Myanmar's safeguards system, urgent steps are needed to unblock critical areas. The government needs to prioritise the functioning of the country's EIA system by strengthening MONREC's staff resources, capacity and budget – at national and subnational levels.⁴⁵

According to the authorities, to keep pace with demand, ECD has increased its staff capacity in recent years and is continuing to work towards reducing the system backlog with the financial and technical assistance of development partners, such as UNDP, JICA, IFC and World Wildlife Fund (WWF). This has involved, for instance, the hiring of outsourced reviewers if the cost of review is borne by the project proponent, building the capacity of all staff in the EIA department, using specific checklists for ease and consistency of assessment and saving time, and refreshing the organizational structure among others. Efforts are also underway to enhance the monitoring process. According to the authorities, although ECD has not yet been able to carry out systematic and regular monitoring, aside from checking monitoring reports submitted by project proponents every six months according to the condition of the approval

⁴¹ Ibid.

⁴² William J. Schulte and Matthew H. Baird, 'Myanmar's Nacent Environmental Governance System: Challenges and Opportunities' (2018) 33(2) *Natural Resources and Environment* 21, 23-24.

⁴³ Interview (MONREC, October 2018).

⁴⁴ 'OECD Investment Policy Review: Myanmar 2020', (OECD Investment Policy Review, OECD, 2020) 190.

⁴⁵ Ibid 191.

letter or Environmental Compliance Certificate, some state and regional offices have started monitoring and inspection processes for approved projects. Authorities also reported that ECD is starting to prepare a monitoring guideline and is training staff for this purpose with the support of the Norwegian Environmental Agency and UNDP.⁴⁶

Sometimes, government may worry that if raising environmental standards and stringent implementation of environmental laws may drive away the investors. In this regard, Dan Esty and Michael Porter examined empirically to what extent not only income levels but also a nation's regulatory regime influences environmental quality. The results of this research which is based on an examination of regulatory intensity and environmental quality in a great number of developed and developing countries, is that economic development and environmental protection go hand in hand with the improvement of a country's institutions, and more particularly the environmental regulatory regime. The empirical evidence hence suggests that a country can benefit environmentally not only from economic growth, but also from developing the rule of law and strengthening its governance structures. Most importantly, they also found evidence that countries that adopt "a stringent environmental regime relative to their income" were able to "speed up economic growth rather than retarding it." An important policy conclusion from the empirical literature of Esty and Proter is that strengthening the regulatory structure also encourages the promotion of environmental quality.⁴⁷

Therefore, as Magraw argued, it is not realistic to expect the desired level of environmental protection embodied in environmental law in the absence of compliance. The responsible government's institutions should enforce the laws in full accord, with due process and equal protection.⁴⁸ Effective enforcement of the laws is fundamental elements of the environmental rule of law. Without the effective enforcement of the laws, environmental rule of law, even in the thinnest concept, will not be materialized. Thus, Myanmar should strive to achieve an effective enforcement of the law to promote the environmental rule of law and sustainable development in the country.

Discussion

The Environmental rule of law is not a novel concept but the application of the rule of law concept in the context of environmental protection. In international environmental documents, the term "environmental rule of law" is sparsely defined. IUCN World Declaration on the Environmental Rule of Law defined the term as 'the legal framework of procedural and substantive rights and obligations that incorporates the principle of ecologically sustainable development in the rule of law.' Conceptions of the rule of law are typically grouped into two distinct categories with varying use of terms "thin definition and thick definition" or "formal definition or substantive definition". In the context of environmental protection, due to the paramount importance of the relation between human rights and the environment, and the role of the civil society in protecting the environment, the thickest version of rule of law is particularly

⁴⁶ Ibid.

⁴⁷ Daniel C. Esty & Michael E. Porter, 'National Environmental Performance: An Empirical Analysis of Policy Results and Determinants' (2005) 10(4) *Environment and Development Economic* 391, 393-425 cited in Michael G. Faure, 'Effectiveness of Environmental Law: What does the evidence tell us?' (2012) 32(1) *William & Mary Environmental Law and Policy Review* 293, 298-299.

⁴⁸ Daniel Barstow Magraw, 'Rule of Law and the Environment' (2014) *Environmental Policy and Law* 44(1-2) 201, 202.

necessary. On the other hand, whilst environmental protections always should be based on the thickest concept, thin concept is also a useful analytical tool depending on one's particular end.

Myanmar's rule of law is flawed by weak or non-implementation of the laws under the successive governments.⁴⁹ There is no exception of these effect to environmental laws. According to Magraw, it is not realistic to expect the desired level of environmental protection embodied in environmental law in the absence of compliance. Effective enforcement of the laws is fundamental elements of the environmental rule of law. Without the effective enforcement of the laws, even the minimum requirements of environmental rule of law will not be materialized.

Myanmar's Environmental Policy, 2019 also envisions promoting environmental rule of law to achieve sustainable development as follows; 'institutional and legal frameworks for implementing and enforcing environmental laws and policies will be strengthened through clear definition of rights and responsibilities, and greater collaboration among different institutions within the government at all levels, as well as with non-government stakeholders.'⁵⁰ Accordingly, Myanmar should strive to achieve an effective enforcement of environmental laws to promote the environmental rule of law and sustainable development in the country.

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⁴⁹ Tun Myint, 'Environmental governance in the SPDC's Myanmar' in (eds) Monique, and Trevor Wilson, *Myanmar- The State, Community and The Environment* (Australian National University Press and Asia Pacific Press, 2009) 189.

⁵⁰ Myanmar Environmental Policy, 2019, p -10.

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