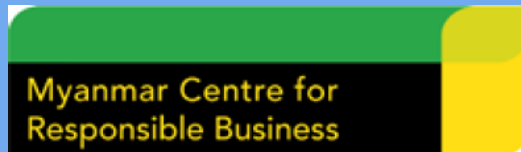




Draft Myanmar Tourism Law (2018)

LEGAL ANALYSIS

SUPPORTED BY



- There is a need for reform in the tourism legal framework

Tourism Law (1993) is currently in effect → in the last 25 years Myanmar has seen many economic, cultural and social changes → the legal framework has become unsuitable to current realities and needs revision

- Tourism is a spearhead economic sector that can also bring very vital cultural and environmental benefits if managed and practiced sustainably
- It provides significant benefits to current tourism destinations and has the potential to positively influence many communities in rural (and poorer areas) as well as in urban areas

OBJECTIVES OF A CONSISTENT LEGAL FRAMEWORK

- To provide a comprehensive legal framework for the proper development and management of tourism activities
- To support the conservation of natural resources and the preservation of cultural traditions
- To provide basic legal protection to travel consumers and organizations

III. International perspectives & regional examples

- Internationally tourism laws and regulations aim to provide for a fair and equitable environment in which the industry can operate in
- Most tourism laws and regulations are a combination of state, federal and international laws that regulate various functions of the travel industry → this can involve anything from environmental regulations to employment laws, community based tourism, aviation rules, etc.
- Observation: laws governing tourism tend to be disorganized and non-standardized, covering a complex sector

ALL TOURISM LAWS ATTEMPT TO PROTECT TRAVEL CONSUMERS AND ORGANIZATIONS

III. International perspectives & regional examples

VIETNAM TOURISM LAW (2017)

- To ensure that the law suits realities, facilitates the development of tourism and better ensures consumer protection
- Specific focus on community-based tourism and the development of communities through tourism
- Most prominent change from previous law: tourism-centered approach, consumer protection
- Simplification of many administrative procedures
- Defines clearly the responsibilities of local administrations and related ministries, thus facilitating the development of tourism

SINGAPORE

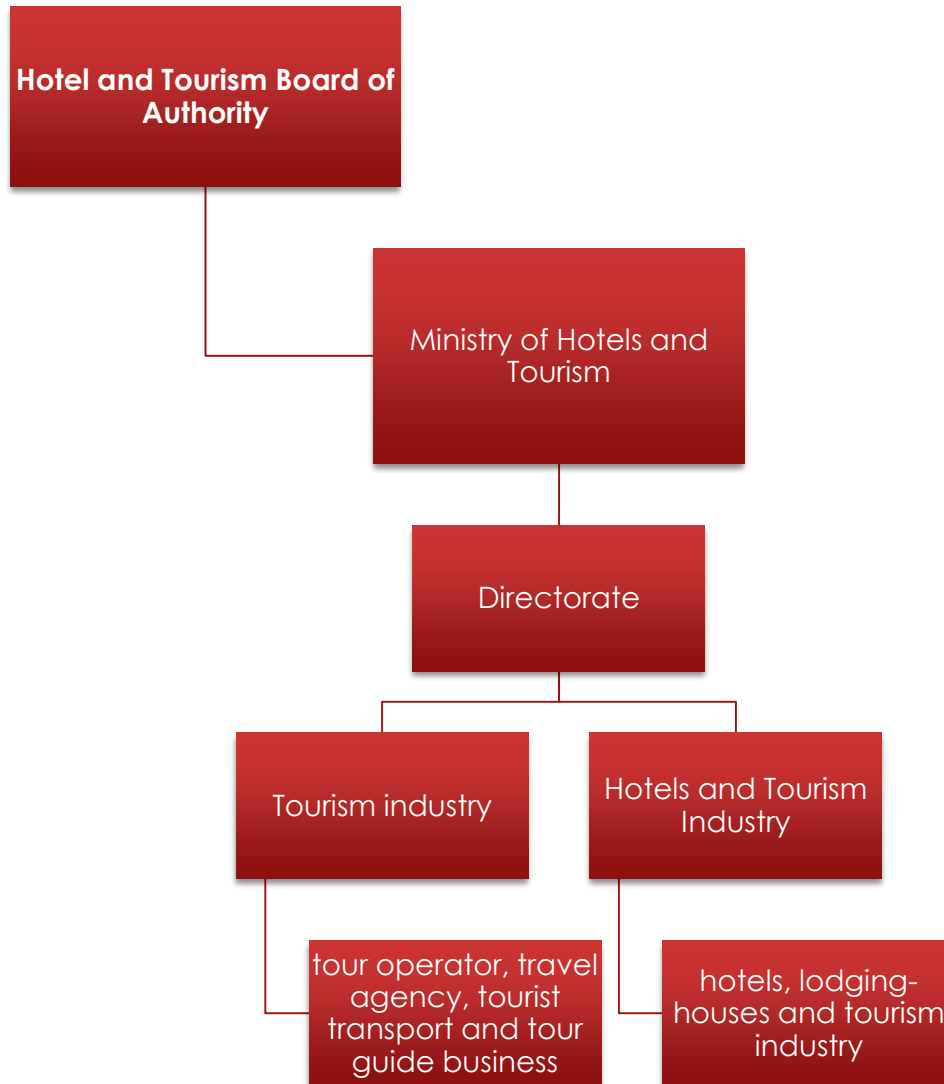
- Singapore Tourism Act
- Consumer Protection (Fair Trading) Act
- Hotels Act
- Etc.

+ ASEAN STANDARDS

IV. Current Myanmar Tourism Legal Framework

- The Myanmar Hotel and Tourism Law (1993)
- Order for Licensing of Hotel & Lodging House Business (2011)
- Order for Licensing of Tour Guide Business (2011)
- Order for Licensing of Tour Operation Enterprise (2011)
- Order for Licensing of Tourist Transport Business (2011)
- Tourism related laws:
 - Myanmar investment law (2016), various labor laws, Environmental Conservation Law (2012) and EIA Procedure (2015), Vacant, Fallow & Virgin Land Law (2012), etc.
- Aviation-related laws:
 - The Myanmar Aircraft Act (1934), Aircraft Act (2014), Aircraft Rules (1920), (1937) and (1946), Carriage by Air Act (1934)

IV. Current Myanmar Tourism Legal Framework



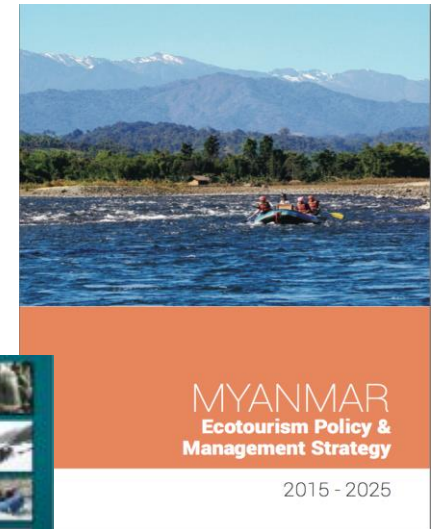
- No reference to State/Regional responsibilities
- Where are the Tourism Ministers in the regions, and what is their role?
- Issues of the centralized management are visible:

No reference to any institutions (MFT, Tourism Associations, Industry Associations, etc.), or S/R or township level

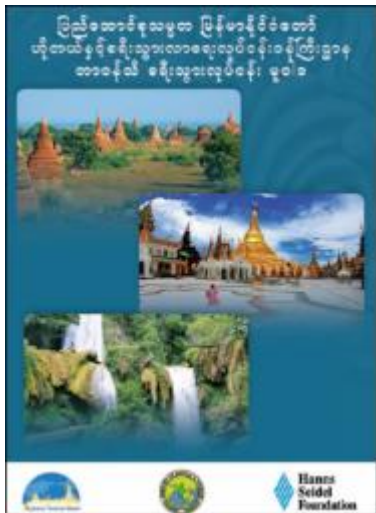
IV. Current Myanmar Tourism Legal Framework

Community Involvement In Tourism Policy (2013)

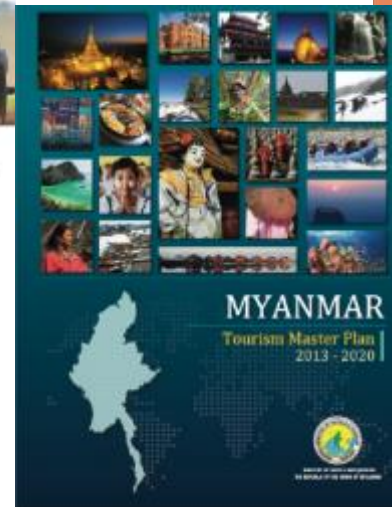
Ecotourism Policy (2015)



Responsible Tourism Policy (2012)



Tourism Master Plan (2013)



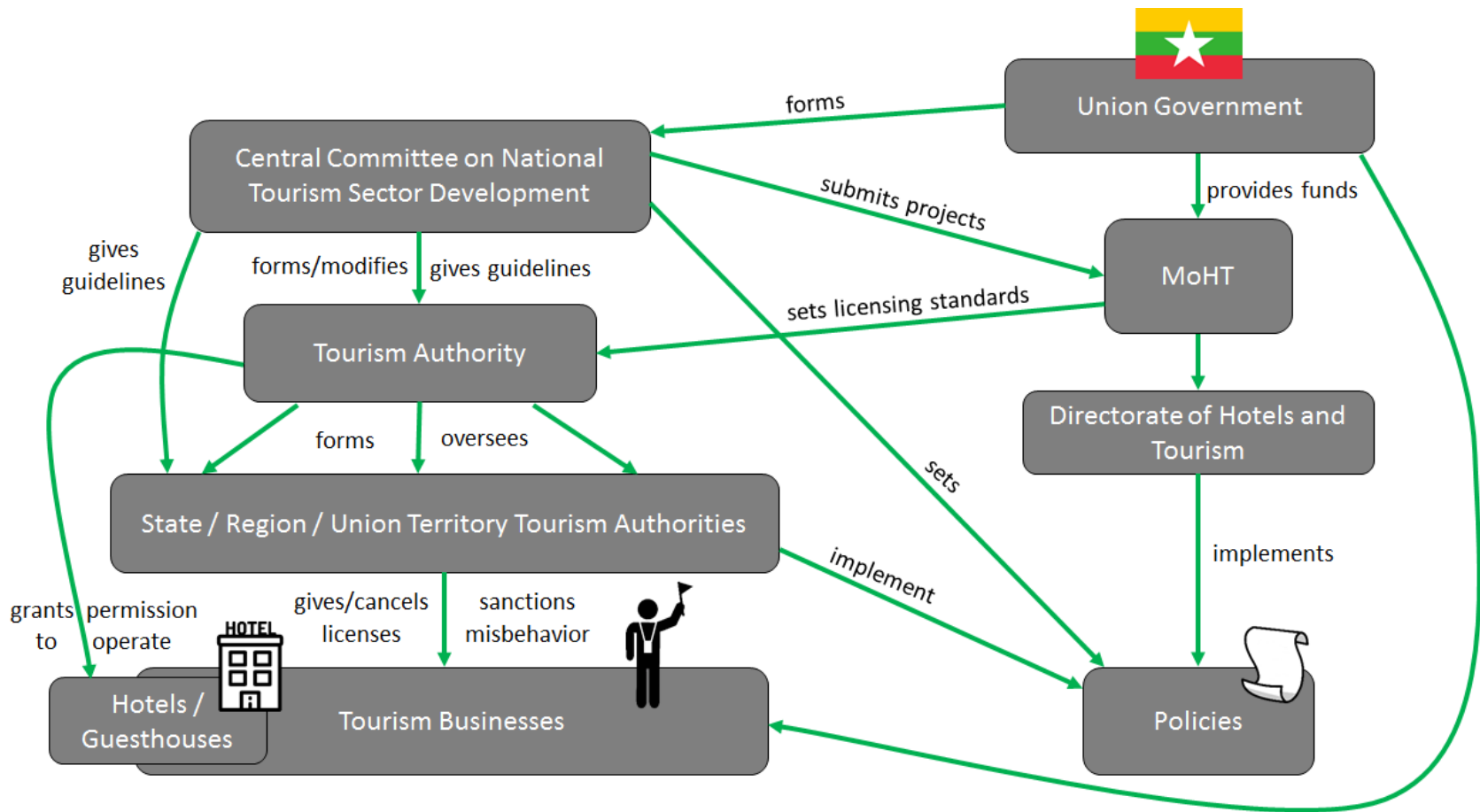
INTRODUCTION

- MoHT issued a first draft Law in 2014
 - Consultation with some stakeholders but no official publication of final draft
- 2016/2017 MoHT begins consultations again
 - Draft Law was publicly available for comment, and MTF, UMTA and other tourism associations were involved
 - MOHT issued a first draft Law in 2014
 - unclear how feedback was taken into account
- Submission of Draft Myanmar Tourism Law to Hluttaw in January 2018

TABLE OF CONTENT

- 1) Title and Definitions
- 2) Objectives
- 3) Formation of Central Committee of National Tourism Sector Development
- 4) Formation of Tourism Authority
- 5) Classification of tourism business, definition of license fees and formation of inspection teams
- 6) Functions and duties of the Directorate
- 7) Formation of State (or) Region Tourism Authority
- 8) Formation of Union Territory Tourism Authority
- 9) Functions and duties of State, Region or Union Territory Tourism Authority
- 10) Development of Human Resources in the Tourism Sector
- 11) Funding
- 12) Rights and Responsibilities of tourism businesses
- 13) Applying for prior permission
- 14) Licensing
- 15) Administrative Sanctions and appeal
- 16) Restrictions
- 17) Penalties
- 18) Miscellaneous

V. Draft Myanmar Tourism Law



VI. What has changed in Myanmar since 1993?

POLITICS AND ECONOMY

- 2008 constitution
- Law 45/2015 -> changed Schedules of the Constitution to explicitly make Hospitality / Tourism a State / Regional competence
- Move towards decentralisation and federal principles
- Peace Process
- Greater concern about environment and EIA process
- Focus on enabling environment for private sector, particularly SMEs

TOURISM

- Accessibility: many townships are now open, cross border entry
- Inbound: More Asian and Western tourists, more non-tourist visitors in MM: business, NGOs
- Significant growth of Myanmar domestic tourism
- Outbound tourism, MM people travel overseas
- Technology changes: TripAdvisor, AirBnB, etc.

PRINCIPLES FOR TOURISM LAW REFORM

1. Supporting Myanmar's triple transition: economic, political and peace
2. Decentralisation in line with Schedules 2 / 5 of the 2008 Constitution
3. Strengthen local destination management and planning
4. Cut red tape, particularly for SMEs
5. Strengthen environmental protection and respect indigenous rights
6. Protect travel consumers and ensure equal protection for foreign & Myanmar visitors
7. Provide tourism technical and legal expertise

PRINCIPLE ONE: SUPPORT MYANMAR'S TRIPLE TRANSITION: ECONOMICAL, POLITICAL AND PEACE

Concern: Current law does not embrace the concepts of the transition to democracy

- Economy: create enabling environment, reduce red tape
- Politics: decentralise tourism decision-making powers
- Peace: share vital benefits with local communities

Solution

NCA, peace, and power sharing can be addressed through political will, meaningful stakeholder consultations, equitable tourism management, decentralisation & empowerment of lower levels of government, and sustainable SME tourism development.

PRINCIPLE TWO: DECENTRALISE IN LINE WITH SCHEDULE 2 & 5 OF THE 2008 CONSTITUTION

Concern: Hospitality and Tourism is a State / Regional competence according to Amending the Union of Myanmar Constitution Law No 45/2015 Pyidaungsu Hluttaw Law No.45/2015 (Changes in Schedule TWO and Schedule FIVE) has not been considered in the drafting of the law
Decentralisation spearheads the process to federalism and makes important contribution to the peace process

Solution

Schedules 2 & 5 clearly delegate responsibilities. The law should be reviewed according to the constitution and should clearly identify those responsibilities. It should decentralise tourism:

Either to State /Regional government, or below => easier for SMEs to obtain licences => creating an enabling environment for SMEs

Currently the National Tourism Authority is still in charge of granting hotel/guesthouse licenses in the draft law => This should be at least at State / Regional Tourism Authority level or Township (as with municipally licenced guesthouses)

VII. Myanmar in 2018

Constitution	Schedule (As amended by Law 45/2015 of
<p>Art 96. The Pyidaungsu Hluttaw shall have the right to enact laws for the entire or any part of the Union related to matters prescribed in Schedule One of the Union Legislative List.</p>	<p>Schedule One 4. Economic Sector (a) Economy; (b) Commerce; (c) Co-operatives; (d) Corporations, boards, enterprises, companies and partnerships; (e) Imports, exports and quality control thereon; (f) Hotels and lodging houses; and (g) Tourism.</p>
<p>188. The Region or State Hluttaw shall have the right to enact laws for the entire or any part of the Region or State related to matters prescribed in Schedule Two of the Region or State Hluttaw Legislative List.</p>	<p>SCHEDULE TWO Region or State Legislative List 2. Economic Sector (a) Economic matters undertaken in the Region or State in accord with law enacted by the Union; (b) Commercial matters undertaken in the Region or State in accord with law enacted by the Union; and (c) Co-operative matters undertaken in the Region or State in accord with law enacted by the Union. (d) Hotel and guest house business, in accordance with the law enacted by the Union, to be managed by State or Region. [added in Law 45/2015] (e) Tourism business, in accordance with the law enacted by the Union, to be managed by State or Region. [added in Law 45/2015]</p>
<p>Charges and Taxes to be Collected by the Region or State Government 254. (a) The Region or State shall collect the taxes and revenues listed in Schedule Five in accord with law and deposit them in the Region or State fund. (b) The Region or State has the right to expend the Region or State fund in accord with the law.</p>	<p>SCHEDULE FIVE Taxes Collected by Region or States (25) Hotel and guest house tax matters undertaken by State or Region in accordance with the law enacted by the Union. [added in Law 45/2015] (26) Tax matters relating to tourism managed by State or Region in accordance with the law enacted by the Union. [added in Law 45/2015]</p>

PRINCIPLE TWO CONTINUED: DECENTRALISE IN LINE WITH SCHEDULE 2 & 5 OF THE 2008 CONSTITUTION

Decentralising provisions:

- Law 45/2015 of 22 July 2015 specifically identifies tourism and hospitality as State/Regional Competence with hotels, guesthouses and tourism in Schedules 2 (regulation) and 5 (taxation) of the Constitution
- The scope for using these decentralising provisions should be specified in the Union level law. This will enable States and Regions to choose to do adopt legislation, particularly concerning licencing and taxation.
- Certain basic standards concerning safety and consumer protection should be established at Union level to the extent these are not regulated by cross-sectoral laws

PRINCIPLE TWO CONTINUED: DECENTRALISE IN LINE WITH SCHEDULE 2 & 5 OF THE 2008 CONSTITUTION

Example text for Law:

1. Requirements necessary for safety and consumer protection concerning tourism accommodation and services shall be established by this Law and ensuing Rules and Regulations, where they are not provided for in existing laws. In accordance with Article 188 and Schedule 2 of the Constitution, Region or State Hluttaw may also enact legislation which further enhances the level of safety and consumer protection for tourists above that established in this Law.
2. In accordance with Article 188 and Schedule 2 of the Constitution, Region or State Hluttaw may enact legislation concerning all other aspects of tourism business regulated by this Law. Where legislation has not been adopted at Region or State level, the Union level law shall apply

PRINCIPLE THREE: STRENGTHEN LOCAL DESTINATION MANAGEMENT AND PLANNING

Concern: current lack of local participation in tourism

- Problem of non-decentralisation: How can communities be involved – if local, regional / state level government do not have decision-making authority? More local participation needed
- No guarantee that local communities are involved in decisions of tourism development
- Ensure transparency regarding permission processes, tourist entrance fees and funding collected by different levels of government

Solutions:

- Most tourism entrance fees should be retained at S/R level
- Township development committees & MPs of the regions should have stronger influence as they are people's representatives -> their current role is unclear regarding tourism development
- Local participation is essential for long-term success, particularly for community-based tourism (CBT)

PRINCIPLE FOUR: CUT RED TAPE, PARTICULARLY FOR SMES

Concern: inflexible law with unsuitable rules for the diverse tourism sector

- How to open up a small guesthouse/diving operator/ kayak business / Yoga retreat, etc? Process is unclear, lengthy, cumbersome and subject to corruption
- Ensure transparency regarding permission processes, fees and funding collected by different levels of government
- The law needs be clear that accommodation includes ALL accommodation types
- No artificial distinctions between hotels, guesthouses, lodging houses, B&Bs etc → just call it 'accommodation'

Solutions

- Provide an enabling climate for SMEs
- Pursue a systematic approach to develop regulation that takes the needs of all SMEs into account, including red tape removal
- Registration processes should be under the management and responsibility of states/regions (as in Schedule 2) → decision making power should be with them without pre-approval to higher levels

PRINCIPLE FIVE: STRENGTHEN ENVIRONMENTAL PROTECTION AND RESPECT INDIGENOUS RIGHTS

Concern: Lack of environmental and socio-cultural considerations

- Lack of reference to the rights of local communities, including indigenous peoples
- Waste and water management, and municipal planning must be addressed under destination management
- What about zoning? E.g. Tourism development in Marine Protected Areas or National Parks
- Lack of local retention of tourist fees and user charges

Solutions

- Determine the rights and obligations of the State/Regional and Township Government in terms of protecting natural & cultural resources as well as tourism development & management
- Include environmental and social protections as part of the tourism law and align with secondary laws and notifications
- E.g. Environmental Conservation Law (2012) and EIA Procedure (2015); Vacant, Fallow & Virgin Land Law (2012); UN Declaration on the Rights of Indigenous Peoples (UNDRIP); etc.

PRINCIPLE SIX: PROTECT TRAVEL CONSUMERS AND ENSURE EQUAL PROTECTION FOR FOREIGN & MYANMAR TOURISTS

Concern: Insufficient consumer protection, two-tier system

- The new law lacks any consumer protection clauses
- Significant need to protect domestic travellers => 5 million domestic tourists in 2017 according to MoHT statistics
- The law should not create higher levels of protection for foreigners compared to local Myanmar travellers => no more two tier system

Solutions

- Safety, insurance and consumer protection are key aspects of a good tourism law => enhances investor confidence
- E.g. Mandatory travel insurance for tour operators that compensate Myanmar citizens when there are accidents
- Consumer protection clauses in tourism: Right to Equality in the Consumer Market and Protection Against Discriminatory Marketing Practices, Right to Disclosure of Information, Right to Fair and Responsible Marketing, Right to Fair and Honest Dealing, etc.
- Boats or coaches carrying commercial passengers whether tourists or other travellers, whether Myanmar or foreign, should have a single licence concerning safety
- Create a level playing field by abolishing two tier system (example Vietnam)

PRINCIPLE SEVEN: PROVIDE TECHNICAL AND LEGAL EXPERTISE

Concern: Lack of reference to key legal terms & Myanmar legal framework

- Tourism-related laws are not mentioned (Myanmar investment law (2016), various labour laws, Environmental Conservation Law (2012) and EIA Procedure (2015), Vacant, Fallow & Virgin Land Law (2012) => Unclear which law prevails when the provisions of other laws and the tourism law conflict => harmonization of the laws is needed
- Lack of policy consistency => law should be guided by policies => Responsible Tourism Policy, Community Involved Tourism Policy and Ecotourism Policy => need integration
- Key terms: COMMUNITY BASED TOURISM, ECOTOURISM, DESTINATION MANAGEMENT should be clearly defined in law as they're govt policy

Solutions

- Consult with Myanmar tourism stakeholders & legal experts
- Reference tourism-related laws where appropriate
- Ensure consistency with policy

VIII. How to implement solutions?

Smart amendments in some parts of the law

+

Suitable secondary legislation

+

Orders and Notifications that reflect the reality on the ground

=

Tourism legal framework is aligned with principles of law reform

IX. Suggested next steps

- Clearly identify roles and responsibilities of government at central, state/regional, and township level in tourism development
- Identify particularly at regional level the current gaps and constraints in legislation related to tourism planning, development, management and promotion
- Based on the above, formulate changes to the draft law for the sustainable development, management and regulation of tourism
- Formulate an implementation plan for the enforcement of the New Tourism Law
 - NGOs offer to support MPs in reformulating the draft law

**A REVIEW OF THE DRAFT IS NEEDED TO DELIVER ON THE GOVERNMENTS
COMMITMENT TO SUSTAINABLE TOURISM.**

**THE LAW SHOULD RECOGNIZE THE CURRENT REALITY AND CHALLENGES
OF THE TOURISM SECTOR.**