

March 8, 2013

# Constitutional Reform Key, But Still Far Off

By Paul Vrieze

Reforming Burma's Constitution is essential to establishing rule of law but it is unlikely that necessary amendments can be made before the 2015 elections, according to a new report. It also said that the judiciary, legal profession and criminal defense and legal aid system are in need of comprehensive reforms.

“There is consensus that law reform efforts are underway in Myanmar, but questions remain as to whether these efforts can be permanent and irreversible without meaningful constitutional reform,” said the “Myanmar Rule of Law Assessment.”

The report was released earlier this week by international legal aid non-profit New Perimeter, US law firm Perseus Strategies and the Jacob Blaustein Institute for the Advancement of Human Rights.

“All parties interviewed, except the government, had concerns about various provisions of the Constitution,” wrote the authors, who spoke with more than 70 sources, including government officials, opposition parties, ethnic groups, lawyers and UN and non-government organizations.

They noted however, that constitutional amendments would probably not happen any time soon.

“Constitutional reform is a major point of dispute between government and opposition leaders—it appears unlikely these issues will be substantially addressed until after the 2015 presidential and parliamentary elections,” the report said. It added that even if elections shift the balance of political power, support from military MPs would still be needed to enact constitutional amendments.

The former military junta drafted the Constitution in 2008 and it gives military officers control of 25 percent of Parliament—even after the elections. Another provision stipulates that constitutional reform requires support from more than 75 percent of MPs. This situation gives the military MPs a de facto right to veto any amendment to the Constitution.

Such provisions and many others in the Constitution should be amended, recommends the report, which notes that “There are numerous ‘exception clauses’ in the Constitution to fundamental rights and freedoms.” Other concerning provisions include Article 59, which disqualifies opposition leader Aung San Suu Kyi from becoming president because her sons are foreign nationals.

The Constitution also gives the central government control over state governments in ethnic regions and all local natural resources. Amending these provisions is a key demand of ethnic rebel groups, most of which have started peace negotiations with the government last year.

Managing director of Perseus Strategies Jared Genser said in an email that these “serious constitutional issues” were unlikely to be tackled in the near term, but he added that reforming Burma’s judicial system was a key step that should start now.

The judiciary is in need of large-scale reform as “corruption is a serious issue and decisions are sometimes made by the executive branch,” according to the report.

“There are many other important areas for growth but without a judicial system that is up to the task, the remaining reforms will not be able to be sustained,” said Genser, who was a pro bono lawyer acting for Suu Kyi during her last years of house arrest.

The report also noted numerous shortcomings in the functioning of the criminal defense and legal aid system, the legal profession, the Parliament and the government’s human rights commission, which was formed last year.

“Currently, the lawmaking process is opaque with only initial drafts of introduced bills and adopted bills being made public,” the report said of Parliament. It added that funding should be allocated to build up capacity and expertise of MPs, so that they can initiate the drafting of legislation.

The report described the state of practice for Burma’s lawyers as “truly dismal—with most qualified lawyers in the country not practicing law and those who practice lacking access to sufficient office space, basic legal materials, computers, and printers.”