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Judicial, Constitutional Reforms Key to Change in Myanmar

By Stella Dawson

WASHINGTON (TrustLaw) - Myanmar needs to reform its judiciary and constitution in order to embed the major changes launched by President Thein Sein in ending the military dictatorship and opening up to democratic governance, according to a new report.

Myanmar held its first elections in 20 years, and opposition leader Aung San Suu Kyi was released from captivity in November 2010, marking the ending of decades of military dictatorship and the start of reforms by the government.

Yet these changes remain tenuous and have not spread deeply throughout society, according to the Myanmar Rule of Law Assessment. **The report** examines national policy challenges to help identify areas in which free legal assistance could be provided by the international law firm DLA Piper.

“Many government institutions are quite fragile, and the role of the military remains opaque. For these changes to be permanent and irreversible, constitutional reform is important,” the report said.

Corruption is a serious issue in the judiciary and parts of the executive branch of government; law reform has been top down and needs to be driven into government bureaucracies and down to the local level; and major efforts are needed to educate citizens of their rights at the grassroots level where the impact of reform has been far less evident, the report said.

REPRESSION VS RULE OF LAW

The work was prepared by the international law firm that has represented Suu Kyi for five years **Perseus Strategies**, the charitable arm of the international law firm DLA Piper **New Perimeter**, and by the **Jacob Blaustein Institute** for the Advancement of Human Rights. DLA Piper, which operates in 32 countries worldwide, was not immediately available to comment on its plans for legal assistance on reforms in Myanmar, which it is

expected to start this year.

Jared Genser, the managing partner at Perseus, said the biggest impact in building confidence and creating sustainable change in Myanmar would come from reforming the judiciary, which has undergone the least institutional change in the last two years.

“The only way people will feel that the system is moving away from legal repression - where justice is an arm of the military - toward a system that follows the rule of law is for the judiciary to embrace reform,” Genser said in a telephone interview.

In the criminal justice system, for example, more than 90 percent of accused are convicted, and yet they have no access to free legal defense in a country where more than 70 percent of people live in poverty, he said.

Judges also need training in the basics of criminal law, such as requiring witnesses and not just relying upon testimony of the police and military. Salaries need to be increased to eliminate any justification for taking bribes, and legal education is essential, Genser said.

New Perimeter programme manager Kristen Abrams said discussions are now underway with Myanmar's Attorney General's office on the country's needs, and the pro-bono arm of DLA Piper will decide in early May on the shape of the programme. Abrams expects it will last for a number of years. DLA Piper's pro-bono arm operates in 32 countries worldwide and has provided post-support to Kosovo, East Timor and other post-conflict nations.

OTHER REFORMS

Other recommendations in the report include:

- Review the constitution. This would allow civil society to debate basic rights and consider such issues as the independence of the judiciary, qualifications for office, ethnic minority rights, and military coups.
- Reform the national parliament by adopting a clear committee structure, explaining its procedural rules, opening its activities to the public and funding expert staff to draft legislation.
- Reform the judiciary by developing a system for appointing judges through independent selection panels, and establishing comprehensive programmes for training and for addressing corruption. Legal aid for criminal cases and legal education are also needed.
- Provide access to information through a freedom of information act and amendments of a law that prohibits sharing of draft legislation.

On the constitutional front, Myanmar's parliament on March 15 **voted for a review committee** in the first step towards possibly amending the constitution ahead of 2015 elections. This could pave the way to qualify Suu Kyi to run for the presidency.

The Myanmar Rule of Law Assessment was based on interviews with more than 75 people from the Myanmar government, political parties, foreign governments, UN agencies, international financial institutions and non-governmental organisations.