

# TERMS OF REFERENCE

for

A DESK REVIEW AND PRELIMINARY ASSESSMENT OF THE ROLE OF  
BUDDHISM IN JUSTICE IN MYANMAR

**August 2019**

# 1. Background

## 1.1 General Background

---

Based on their 2014 Annual Action Programme the European Union (EU) is funding the implementation of the *Strengthening Governance in Myanmar/Burma Programme* (DCI-ASIE/2014/037-333) from their general budget to the value of Euro 42 million over a period of four years from 2015. A key component of the EU Programme is to support the rule of law and access to justice, to help ensure that citizens are better protected by the law, and to increase their access to formal and informal dispute resolution and justice systems. It will also support civil society in their provision of legal education and awareness raising for citizens and officials, and improve the work of institutions, which support the rule of law.

The European Union has contracted the British Council to deliver the rule of law and access to justice component of the Strengthening Governance in Myanmar/Burma Programme through a delegation agreement through the implementation of MyJustice to the value of Euro 20 million over four years (2015-2019).

The objectives of MyJustice are:

### **Overall Objective:**

Improve access to justice and legal aid for the poor and vulnerable, develop legal capacity of justice sector professionals and strengthen selected rule of law institutions to better fulfil their mandates.

### **Specific Objectives:**

1. To improve access to both formal and informal justice systems especially for vulnerable groups in six regions/states in Myanmar;
2. To strengthen the capacity of formal and non-formal justice service providers in Myanmar.

MyJustice places emphasis on a people-centred approach, which is designed to encourage learning, trust and collaboration among and between all stakeholders. We will work in close consultation with communities to promote enhanced and equitable justice provision for all groups, especially those currently most excluded. The programme delivers work across four interconnected results areas:

- Result Area 1: Increased capacity within communities to use and apply knowledge and understanding about their rights
- Result Area 2: Justice services are more widely available, of higher standard, and increasingly meet the needs of communities and their residents.
- Result Area 3: Community based dispute resolution mechanisms increasingly utilise inclusive and accountable approaches and methods within the communities that they serve
- Result Area 4: Increased evidence and knowledge sharing to inform justice policy development and implementation.

This Terms of Reference describes a specific programme of work to better understand the role of Buddhism in shaping people's understanding and perspectives towards the concept of justice and how those understanding and perspectives influence their justice-seeking attitudes and behaviours.

## 1.2 Specific Background

---

Close to 90 percent of people in Myanmar are Buddhists and consequently Buddhism plays a powerful role in different aspects of social and political life in Myanmar. Since pre-colonial time, there has been an intricate relationship between the State, the Sangha (the community of monks), and the people of Myanmar and the Sangha acted as a powerful mobilizing force for different political movements in both colonial and post-colonial Myanmar. The nationwide political unrest and protests that took place in 2007 was named as 'Saffron Revolution' (after the colour of robes worn by the monks in Myanmar) because they were mainly initiated and organized by the monks. Matthew Walton discussed that '*Buddhists beliefs and practices provide a moral framework that delineates the boundaries of the political and determines what constitutes political subjects and legitimate forms of political authority and participation.*'<sup>1</sup>

The influence of Buddhism also extends to the area of law and justice and people's justice-seeking or dispute resolution behaviours in Myanmar. J.S. Furnivall wrote that Burmese people view law and justice as a statement and an expression of cause and effect, and believe that no one could escape from a bad deed he or she committed. Thus, anyone guilty of murder, theft, adultery, and telling lies, that person is liable to certain punishments prescribed by law and will also suffer through innumerable existences in various stages of hell.<sup>2</sup> This belief is greatly influenced by Buddhist ethics and related to Karma, which entails that every action has certain consequences in this life or the next and some of those consequences are beyond the jurisdiction of the courts and power of human capability.

Dr. Htin Aung also noted that Burmese customary law development had three major external influences: Hindu jurisprudence, the spread of Buddhism during the eleventh century under King Anawrahta (the founder of the Pagan Empire in 11<sup>th</sup> century AD), and British Colonial rule. 'Dhammathats', which are the main sources of Burmese customary law, are well-established sets of law that mainly dealt with non-criminal matters of individuals and families in pre-colonial Burma, and they are greatly influenced by Buddhist teachings. Andrew Huxley noted that though Dhammathats are not religious texts like the Koran or the Bible, they have some aspects with Buddhist ethics and they are greatly venerated.<sup>3</sup>

There were also views that priority should be accorded to the guidance of Buddha's Dharma (which is the teachings of Buddha), even when the issues encounter the forces of customary practices. King Alaungsithu, a grandson of King Anawrahta, insisted that 'legal disputes must be decided according to native customary law, but must not run counter to the spirit of Buddhist ethics'.<sup>4</sup>

A study of MyJustice in 2016 showed that many people in Myanmar do not report or try to resolve the disputes or injustices they face because they believe that those issues are the consequences of their past life debts and karma. To pay off those past debts and ensure good karma for their next lives, they believe that they need to let things go and endure the pains.<sup>5</sup>

However, according to the findings of a recent study of MyJustice '*Myanmar Justice Survey 2018*', belief in fate or karma is less explanatory than preserving social harmony, combined with corruption, abuse and delays, and suspicion of foreign influence.<sup>6</sup> The findings of the study indicate that despite the majority Buddhist culture, just over a third of people believe that injustices depend on fate, whereas 41 percent fully disagree with this statement. Hence, a deeper study is required to understand better to what extent Buddhism influences the values, beliefs, and thoughts of Myanmar people that determine their view of and drive for justice.

---

<sup>1</sup> Walton, M. J.(2017), '*Buddhism, Politics and Political Thought in Myanmar*', Cambridge University Press.

<sup>2</sup> Furnivall, J.S. (1948), '*Colonial Policy and Practice*', Cambridge University Press.

<sup>3</sup>For more discussion of 'Dhammathats', please see Huxley, A (1988-89) '*Burma: It Works, but is It Laws?*';<sup>27</sup> *Journal of Family law* 23; Huxley, A. (2014). *Is Burmese Law Buddhist? Transition and Tradition*. In M. Crouch, & a. T. Lindsey, *Law, Society and Transition in Myanmar* (p. 59). Oxford: Hart: & Maung Maung (1963), '*Law and Custom in Burma and the Burmese Family*', Martinus Nijhoff, The Hague

<sup>4</sup> Htin Aung (1958-59), '*Customary Law in Burma*', the Rangoon University Law Society Annual, vol.1 no-6

<sup>5</sup> Denney, L., Bennett, W. & Khin Thet San (2016), '*Making Big Cases Small and Small Cases Disappear: Experiences of Local Justice in Myanmar*', London: British Council, Overseas Development Institute and Saferworld

<sup>6</sup> MyJustice. (2018). *Searching for Justice in the Law: Understanding Access to Justice in Myanmar*. London: British Council.

## 2. Description of the assignment

### 2.1 Global objective

---

The overall objective of this assignment is to assist MyJustice to understand better about the role of Buddhism in shaping people's understanding and perspectives towards the concept of justice and how those understanding and perspectives influence their justice-seeking attitudes and behaviors.

### 2.2 Specific objective

---

The specific objectives of the assignment are identification of:

1. prevailing Buddhists values, beliefs and thoughts that are most relevant to or resonate with ideas of fundamental rights, justice and fairness as well as those that may be in tension with these concepts; and
2. potential area for additional research or programming entry points.

### 2.3 Requested services

#### Approach and Deliverables

---

The suggested activities and methodology for the assignment are presented below; the Consultant(s) should take this just as a guide and add their own ideas. The consultant will be working closely with Community Justice Manager.

1. Clarify the scope of the assignment with the MyJustice team and prepare a detailed workplan and timeframe to complete the assignment within 2 weeks of the contract
2. Undertake a review of MyJustice research and other relevant literature in a systematic fashion before the field study
3. Prepare a brief report identifying and analyzing the main findings of the literature review
4. Design the field visit in consultation with MyJustice: identifying key research questions, key relevant stakeholders (including religious leaders, scholars and community members from selected regions and states of Myanmar) and choosing locations of study.
5. Conduct the field visit by interviewing relevant key stakeholders from selected areas of Myanmar.
6. After the field study, conduct a workshop with MyJustice team and other invited stakeholders to verify and co-analyse the findings
7. Prepare a final report presenting and analyzing the key findings of the study with an annotated bibliography or list of references and a set of options and recommendations for follow-up activities
8. Prepare a 3-4 page study brief and a powerpoint presentation to present to and be shared with relevant stakeholders including government officials

### 2.4 Intellectual Property Rights

---

All documentation produced as a result of these Terms of Reference including but not limited to strategies, reports, application forms, curriculum, and campaign products, report forms, etc. are transferred Deliverables and ownership of Intellectual Property Rights (IPR) is to be assigned to the British Council, excluding any Background IPR and Third Party IPR which is and shall remain the exclusive property of the party owning it.

### 3. Expert's profile

The service provider or expert shall have the following qualifications, knowledge, and experience:

- Postgraduate degree qualification with a significant aspect of social, political, legal or anthropology-oriented research
- Understanding of and experience of working with various community leaders including religious leaders, civil society organisations, and community members of diverse backgrounds
- Understanding and experience of working in a politically and socially sensitive context
- Strong knowledge of the political-socio context and justice conditions of Myanmar
- Experience of designing and implementing systematic field research
- Excellent presentation and report-writing skills in English
- Some familiarity with Buddhism would be preferable

### 4. Location and duration

#### 4.1 Starting period

---

The Consultant should be available to commence services by 1 September 2019.

#### 4.2 Foreseen finishing period or duration

---

The total allocation of days to this assignment is 35. The assignment must be concluded, on acceptance of all the agreed services including the final report, by 15 November 2019.

#### 4.3 Location(s) of assignment

---

The assignment will be conducted in Myanmar, at the MyJustice Head Office in Yangon. The assignment might also include travel to some locations outside Yangon where MyJustice's activities exist. MyJustice will cover the cost of project related travels.

### 1. Application process and deadlines

---

**Applicants are required to submit their applications by 12 August 2019, 5:00 pm MMT. Applicants must be sent to: [myjustice@mm.britishcouncil.org](mailto:myjustice@mm.britishcouncil.org)**

The applications must clarify how the consultant will approach the work (no more than 3 pages) and provide details of his/her relevant experience and qualifications to conduct the assignment. The application must clearly specify the proposed methodology and plan for completing the assignment. The proposed approach should reflect a thorough understanding of the scope of the work and services required and must clearly demonstrate an understanding of the local context. Response should demonstrate a logically developed set of activities and a realistic schedule for delivery. A separate CV must also be submitted with the application.

The application must be accompanied by a pricing approach/budget for the assignment. Please note that MyJustice will provide an allowance for travel outside Yangon at MyJustice's prevailing travel and per diem rates. All other costs must be budgeted.

## 2. Evaluation Criteria for Applications

---

<b>Evaluation Criteria</b>	<b>Score</b>
<b>Relevant experience of the consultant</b>	<b>40%</b>
<b>Proposed methodology and workplan</b>	<b>40%</b>
<b>Cost</b>	<b>20%</b>