TERMS OF REFERENCE/REQUEST FOR PROPOSAL

from a Myanmar consultant

for

PRELIMINARY ASSESSMENT OF LEGAL EDUCATION IN MYANMAR

July 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 legal education needs in Myanmar. The team will work closely with the MyJustice programme and the institutional analysis will be used to inform potential additional EU support to legal education in Myanmar.

## 1.2 Specific Background

The delivery of legal education in Myanmar, like many other areas, is facing a period of rapid change. Higher education institutions (HEIs), including those that deliver degrees in law, are being expected to transform from institutions that have been significantly under-resourced and undermined through the period of authoritarian rule in Myanmar to delivering equitable access to a world-class higher education system under Myanmar’s National Education Strategic Plan (NESP), 2016-2021. The Government’s Myanmar Sustainable Development Plan (MSDP) has prioritised promoting justice and the rule of law, acknowledging that weaknesses in the rule of law “place a daily burden upon our people, particularly those who are poor and vulnerable, and presents a barrier to achieving durable peace, stability and sustainable development.” However, achieving this will require educating a new generation of legal professionals with the skills, knowledge and courage to protect the rule of law.

### A brief, recent history of legal education in Myanmar

There is limited documentation on the delivery of legal education in Myanmar’s universities. Research that does exist paints a picture of departments of law that have been constrained by decades of policy changes more focused on maintaining control and stability than ensuring quality of education. As a result, students complete their degrees without the necessary skills and knowledge to enable them to become effective advocates for the law.

Up to the 1960s, prior to authoritarian rule, Myanmar’s universities enjoyed a reputation as being among the best in East Asia. Since then, limited budgets combined with government policy aimed at restricting student activism has resulted in a prolonged decline in education standards. Myanmar now ranks almost last of 145 countries in the World Bank’s Knowledge Economy Index and there are no Myanmar universities among the 1,000+ listed in the Times Higher Education World University ranking. A range of policies over the last few decades have had a detrimental effect on the quality of legal education in Myanmar. Examples include:

* From the late 1980s to 2000 university campuses were closed across Myanmar. The government also emphasised a focus on learning through distance education. Both of these policies were put in place to minimise the risk of student unrest;
* Since the early 1990’s, universities have been required to deliver virtually all subjects in English. Students are also required to sit exams in English and most materials – including many colonial-era laws – are in English. This is despite the fact that the legal system operates predominantly in Burmese and the vast majority of court decisions are delivered in Burmese;
* A focus almost exclusively on exam results has encouraged curriculum development and teaching that prioritises rote memorisation and provides limited incentive for critical analysis by students and innovation in teaching;
* Government funding for education in Myanmar has been meagre, well below neighbouring countries. In 2011-12, only 4.8 per cent of the Government budget was spent on the education sector as a whole (0.78 per cent of GDP). The vast majority of the public budget for higher education (78 per cent) is allocated for recurrent costs, mainly salaries, leaving limited budget for improving infrastructure, training, access to learning materials or research.
* Salaries for academics are barely sufficient to meet household needs. This has a range of implications such as pressuring students to pay for private tutorials academics offer to supplement their income.
* As a result of the political context, research on laws and legal history has been almost non-existent. Academics, concerned at the sensitivity of legal research, have either left the profession or focus purely on teaching. As a result, until recently there were no law journals published by any universities and research was not considered part of the job description for academics.
* University admission policies prioritising sciences, combined with prolonged disregard for the legal profession under the authoritarian government, means there is little prestige associated with studying law or being a lawyer. Demand to enrol in law is low with the best and brightest choosing other professions.

Accurate information on the current state of legal education in Myanmar is scarce and, where available, outdated. There are 18 universities offering law degrees across Myanmar including two distance education universities. Combined, it is estimated that these 18 universities have approximately 500 academics teaching law. Research conducted in 2005 estimated that up to 50,000 students were enrolled in law degrees at any given time, with the vast majority enrolled through distance education centers. These figures highlight a high student-to-teacher ratio, incentivising generic mass examination and rote learning, with limited scope for quality in teaching. Curriculum are often outdated, focusing on general legal provisions and concepts of law rather than providing students with opportunities to develop skills for critical analysis and understanding of legal needs.

### Preparing law students to promote justice and the rule of law

As mentioned above, the Government’s MSDP identifies the promotion of justice and the rule of law as a priority. This, in part, stems from National League for Democracy’s (NLD) history of highlighting the importance of the rule of law in the context of the extensive abuse of police powers to suppress political dissent during the period of military rule. Although none of the issues identified in the MSDP in relation to promoting justice directly address legal education, almost all will require a committed and knowledgeable legal profession to ensure effective implementation. Most noticeably, the MSDP calls for the development of “a robust and independent bar, including reforming the Bar Council Act” (Action Plan 1.3.5). Well educated law graduates are a prerequisite for developing professional lawyers.

An ADB-supported assessment of HEIs in Myanmar found that most university students are not ‘employment-ready’ on graduation. Research by the International Commission of Jurists has identified similar findings relevant to graduates of law studies. Efforts to implement clinical legal education programmes across law departments in Myanmar have also identified that the current syllabus fails to provide law students with an accurate picture of legal needs in Myanmar. The Rule of Law Centres and Justice Sector Affairs Coordination Body (JSCB) has highlighted the need to strengthen legal education, including through improving coordination between justice sector institutions and HEIs.

Improving the quality of legal education will be necessary to ensure law graduates are suitably well qualified and equipped with the rights skills to compete in an increasingly competitive market. Myanmar’s transition is leading to greater integration in regional and global markets. Local and international firms working in Myanmar will need highly skilled professionals.

Equally, if not more importantly, undoing the decades of denigration of the law, will require transforming legal education to ensure law graduates are taught to uphold fundamental values and principles of law’s role in modern society. Current context indicates this will require significant changes to both curriculum and approaches to teaching law students. Evidence globally, for example, suggests that clinical experiences during legal studies can embed law students with practical lawyering skills, sensitise them to needs of marginalised and diverse communities and engender long-term commitment to professional ethics and public service.

### Higher education reforms as they relate to law departments

Like many other areas in Myanmar, law departments are having to adjust to significant reforms. Through passage of the National Education Law (NEL) (2014) and the NEL Amendment Law (2015), the Government of Myanmar is aiming to modernise and improve quality across the education system in Myanmar. This has important implications for universities and, as a result, for all law departments. Most noticeably, the new laws focus on improving quality of education outcomes and create an opportunity for greater autonomy in universities. The laws provide universities with autonomy in areas including admission requirements, teaching, curriculum development and management on the condition that they are able to develop university charters that are approved by the National Education Policy Commission. Over time, this may provide greater freedom for individual faculties, including law departments, to develop curriculum, improve teaching standards and support research.

It is not yet clear what effect the new laws will have on resourcing for legal education. There is limited data available on government spending for HEIs. Spending on education overall has almost quadrupled from 0.7 per cent of GDP in 2011/12 to 2.7 per cent of GDP in 2016/17. Despite this, Myanmar’s education budgets are still the lowest per capita in ASEAN and below the average for low income countries (3.3 per cent). Expenditure under the Department of Higher Education for 2017/18 was US$191 million, including approximately US$105 million spent on universities. It is not clear how much of an increase this represents in recent years and no data is available for law departments. Moving forward, the NESP’s priorities for HEIs focus on: (i) strengthened governance and management capacity; (ii) quality of outcomes; and (iii) equitable access. The plan includes grants for research and innovation centres, funds for e-learning and e-libraries, professional development for faculty members and scholarships and tuition waiver for students from different socio-economic backgrounds.

Unlike some other sectors where line ministries oversee tertiary education institutions, law departments continue to be faculties under broader universities and therefore are under the jurisdiction of the Ministry of Education, with a board of legal studies setting the curriculum for all law departments. This provides greater complexity for stakeholder coordination. Law departments need to engage with both the Ministry of Education and justice sector institutions to ensure that changes to legal education align with broader justice sector reform initiatives, such as those identified in the MSDP.

### What support have law departments received to date

University law departments to date have not benefited substantially from the recent expansion of donor assistance to the justice sector. A number of donors are active in providing support in the justice sector. Most noticeably, this includes the European Union (primarily through the MyJustice programme implemented by the British Council); the United Nations Development Programme (primarily through support to the Union Attorney General’s Office – UAGO and implementation of Rule of Law Centres through the International Development Law Organisation); the Embassy of Denmark (through Peace, Rule of Law, and Human Rights Programme); and USAID (through the Promoting Rule-of-law Project – PRLP).

Support to university law departments appears to have been primarily focused on clinical legal education (CLE) and human rights education to date. The former has been through the Myanmar CLE Programme Consortium working with 18 law departments across the country. In 2017, Denmark commenced a human rights education project that includes collaboration with two law departments to build human rights teaching capacity. Although limited information exists about other areas of donor collaboration with law departments, a small handful of better equipped law departments (mainly universities in Yangon and Mandalay) have been able to access ad hoc assistance primarily through joint research initiatives with international universities and academics.

Experience from implementing the CLE project indicates that university law departments are open to external assistance and piloting new approaches although challenges exist in providing assistance. CLE project documentation highlights that willingness to participate from law departments was higher than anticipated, evidencing a demand for access to new ideas. Challenges included negotiating across a range of stakeholders, ensuring sustainability in a context where academics are regularly transferred between universities and supporting universities equitably given a preference from international actors to work with more recognised universities in Yangon and Mandalay.

### Summary

In summary, like many other areas in Myanmar, university law departments are being asked to adjust to a new reality. Over decades, law departments have been extensively under-resourced resulting in law graduates with insufficient skills and knowledge. An inadequately qualified legal profession undermines all other efforts to promote justice and the rule of law. With some targeted exceptions, it is also an area where there has been limited focus in supporting reform to date. The scale of the problem, and possible options for addressing the problem, must be fully explored in order to ensure the next generations of legal professionals in Myanmar are able to compete effectively in the global marketplace and play an active role in strengthening the rule of law in the future.

# 2. Description of the assignment

## 2.1 Global objective

The overall objective of this assignment is to assist the Government of Myanmar and development partners to determine the most appropriate approaches to improving the quality and relevance of legal education delivered by universities in Myanmar, based on a detailed understanding of the current context.

## 2.2 Specific objective

The specific objective of the assignment is to conduct a preliminary assessment to advise British Council on the feasibility and design of any future in-depth studies seeking to provide deeper understanding of the current context of legal education through universities in Myanmar.

## 2.3 Requested services

## Approach and Deliverables

The assessment will be undertaken by an organisation/team comprising researchers/consultants with a mix of expertise in analysis of legal education and social science research in the Myanmar context. The final approach will be determined by the teams in agreement with MyJustice as part of the first task. The selected organisation/team of consultants will be responsible for producing the following deliverables:

1. A detailed workplan and timeframe to achieve the deliverables to be prepared within 2 weeks of the contract
2. Organizing preliminary stakeholder – teachers, administrators, recent graduates, current students, Union Attorney General’s Office and Office of the Supreme of the Union – consultations on the needs for legal education reform; looking at resources, administration, quality of outcomes as well as issues of access and equity. The team will deliver a short report summarizing key points from stakeholder consultations. Annexed to this report will be any power point presentations used during the consultations.
3. The team will be expected to deliver a progress report (which could be through a presentation) at approximately mid-way through the assignment, as a minimum: a summary of progress to date; highlighting of initial, including unexpected, findings; identification of challenges and recommendations on changes or additions to the approach in response to progress to date; and findings on commitment and engagement with different stakeholders.
4. Preparing an inception report flagging areas for any future studies, clearly identifying opportunities and challenges, and prepare ToRs for the same. The inception report shall, as a minimum, include:
   1. Mapping out the law departments and the kinds of degrees/diplomas and courses they offer
   2. Mapping out key stakeholders and those who provide assistance in the legal education sector;
   3. Identifying and collating relevant material for further studies including:
      1. legal and regulatory provisions governing the delivery of legal education in Myanmar: for example, law teacher qualification, admission requirements to study law, costs of legal education, qualifications awarded to law students, legal qualifications required to practice, establishing governance structures that bear on course of study etc.
      2. Identifying and collating existing secondary material and information on curriculum, governance and management arrangements, financial resources and challenges
      3. Identifying other information/data that will be needed (and the sources from where it could be collected) for a deeper analysis challenges, curriculum, governance and management arrangements, and budgeting and resourcing of legal education in Myanmar
   4. Identifying key research questions that a deeper institutional analysis will aim to address;
   5. Methodology including a description of the proposed data sources and how the different data sources, combined, will address the key research questions;
   6. Recommendations on sampling, including a proposed approach for effectively comparing quality and accessibility across law departments;
   7. Suggested implementation arrangements including data collection approach, stakeholder engagement and any institutional arrangements that may be recommended to enhance ownership of the final study; and
   8. Identification of risks and approach to risk management.

The draft inception report will be subject to a review and may require revision by the team prior to acceptance of the final report.

## 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. Experts profile

## 3.1 Number of requested experts and number of days required

The preliminary assessment of Legal Education in Myanmar will be conducted by a team of experts qualified in research and analysis of legal education. It is envisaged that the team will comprise of two experts as outlined in Table 1 below. The table below also identifies an estimated number of days per expert. Proposals may suggest alternative allocations of estimated days.

Table 1: Anticipated Personnel and Estimated Maximum Number of Days

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| --- | --- |
| **Position** | **Estimated Maximum Days** |
| Lead Consultant | 15 days |
| Researcher | 25 days |

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## 3.2 Suggested Profile – Local Researcher

The lead consultant will be an existing MyJustice partner, Danish Institute of Human Rights. The local researcher will work closely with and under the guidance of the lead consultant. The required qualifications and experience for the local researcher is outlined below.

**Category and duration of equivalent experience**

At least 5 years of experience undertaking research in the social sciences in Myanmar, with progressively increasing responsibility.

**Education**

An undergraduate degree in social sciences or law. Preference for a post-graduate degree or a degree from a recognised university.

**Experience**

* Experience working with international organisations undertaking qualitative and quantitative research in the fields of social science with a preference for candidates familiar with either tertiary education or justice sectors.
* Strong communication skills, including interviewing and leading focus group discussions and an ability to engage effectively with key stakeholders including government officials and academics;
* An attention to detail and good analytical skills, as evidenced through past experience in documenting field research, compiling quantitative data or presenting research findings;
* A proven ability to work constructively as part of a team in a cross-cultural context and, at times, work under limited guidance to deliver high-quality results;
* Preferably, the researcher shall have experience conducting research on higher education institutions in particular universities in Myanmar, and an understanding of administrative/official requirements for navigating research in universities. Having a legal background and/or experience working with law departments or in the delivery of legal education is an asset. Experience with and understanding of costing analysis or public expenditure reviews is also desirable
* The position will require an ability to travel in Myanmar.

**Language Skills**

* The candidate shall be fluent in Myanmar language (written and oral). It will require a high level of understanding of English with capacity in oral, listening and written communication.

# 4. Location and duration

## 4.1 Starting period

The Consultants/team should be available to commence services by 1 August 2019.

## 4.2 Foreseen finishing period or duration

The assignment in country must be completed and a final report submitted not later than 30 October 2019. It is envisaged that, combined across the team, a maximum of 40 work days will be allocated to this task.

## 4.3 Location(s) of assignment

The assignment will be based out of Yangon. Consultants may be required to travel to Naypyidaw on occasion and the assignment may also involve travel to other parts of Myanmar where law departments are located.

1. **Application process and deadlines**

**Applicants are required to submit their applications by 15 July 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 bear all costs related to any travel outside Yangon. All other costs must be budgeted.

1. **Evaluation Criteria for Applications**

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| --- | --- |
| **Evaluation Criteria** | **Score** |
| **Relevant experience of the consultant** | **40%** |
| **Proposed methodology and workplan** | **40%** |
| **Cost** | **20%** |