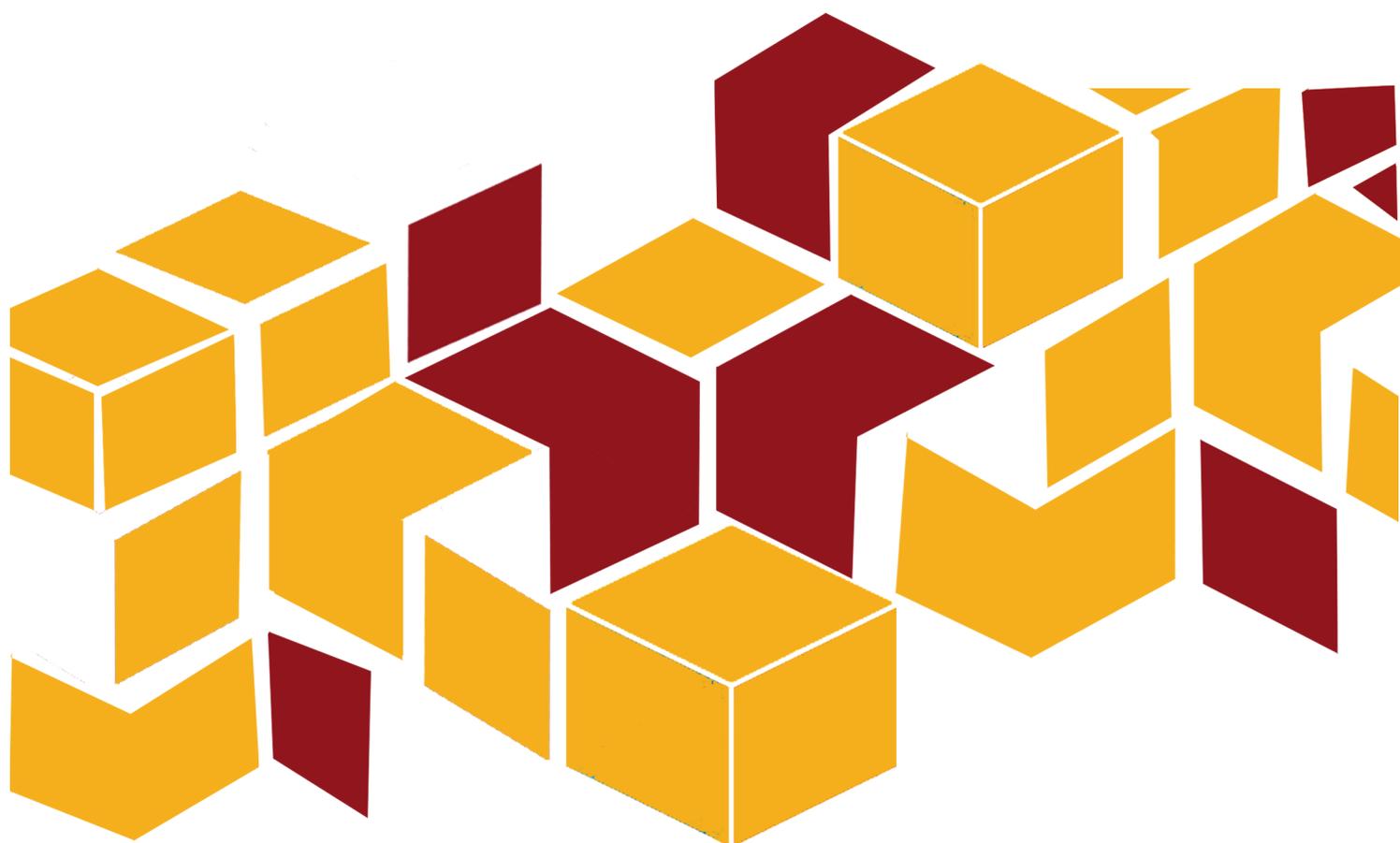


Suspicious Minds: **The Myanmar National Human Rights Commission's** **Trust Deficit** **2017**



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This report is the Myanmar chapter of the 2017 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia.

The Asian NGOs Network on National Human Rights Institutions (ANNI) was established in December 2006. It is a network of Asian non-governmental organisations and human rights defenders working on issues related to National Human Rights Institutions (NHRIs). ANNI has members that are national organisations from all over Asia. ANNI currently has 33 member organisations from 21 countries or territories. The work of ANNI members focuses on strengthening the work and functioning of Asian NHRIs to better promote and protect human rights as well as to advocate for the improved compliance of Asian NHRIs with international standards, including the Paris Principles and General Observations of the Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI).

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We would like to thank the Swedish Burma Committee for their generous support for the production of the Myanmar Chapter of the ANNI report.

Scope and Methodology

Information on the Myanmar National Human Rights Commission (MNHRC)'s activities was sourced largely from its website, most recent annual report, and statements to the media. However, given that the annual report covers only 2015 and that portions of the website, such as the complaints section, are incomplete, analysis on the MNHRC has been supplemented with in-person and email interviews with Commissioners, civil society and community-based organizations (CSOs/CBOs), domestic media, and international organizations both inside and outside of Myanmar. As the MNHRC was not addressed in the Asian NGO Network on National Human Rights Institutions' (ANNI) 2016 publication, this report covers developments from July 2015-June 2017, but places emphasis on the most recent 18 months. In establishing the effectiveness of the MNHRC, analysis focused primarily on activities of three of its five divisions: the Human Rights Policy and Legal Division, the Human Rights Protection Division, and the Human Rights Promotion and Education Division. A draft of this report was provided to the MNHRC to give an opportunity for them to clarify any information and make any comments, however, they declined to accept the report.



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Part 1: Introduction

The National League for Democracy (NLD)'s electoral victory in November 2015 gave Myanmar its first democratically-elected government in 54 years. But over a year onwards from the NLD's ascension to power, the military maintains its stranglehold on political capital, and impunity continues to flourish unchecked. While there has been some progress, such as the release of hundreds of political prisoners and improved flexibility to conduct human rights work, the overall human rights situation remains precarious. In this context, it is even more urgent for the MNHRC to interpret its mandate in a "broad, liberal, purposive"¹ manner and become a more effective promoter and protector of human rights.

In the past two years, discriminatory laws such as the four controversial Race and Religion Protection Laws, enacted in 2015, continue to limit the rights of women and religious minorities, and the politicized, disproportionate use of certain legislation like Section 66(d) of the Telecommunications Law, continue to curtail democratic space. As of May 2017, there are 40 political prisoners serving sentences, and 209 people awaiting trial for political activities.² The murder of constitutional expert and NLD legal advisor U Ko Ni in January 2017 is a stark reminder of the fragile climate faced by people who attempt to change the status quo.

The past 18 months also saw an escalation in armed conflict between ethnic armed organizations (EAOs) and the Myanmar Army, and invigorated calls for investigation into alleged grave abuses of human rights by the Myanmar Army. CBOs such as the Shan Human Rights Foundation and the Kachin Women's Association of Thailand document regular looting, sexual violence, extrajudicial killings, arbitrary arrest, torture, and forced labor by the Myanmar Army in conflict zones of Shan State and Kachin State, respectively. In February 2017, the Office of the United Nations High Commissioner for Human Rights (OHCHR) released a harrowing flash report, based on testimonies of Rohingya refugees in Bangladesh, detailing abuses, including of mass gang-rape, torture, and killings, committed by the Myanmar Army on Rohingya civilians in Rakhine State following the surprise October 2016 attacks on border police by Rohingya militants. The combination of these allegations, in the context of failed domestic efforts at investigation, formed the backbone of calls for an independent, international investigation into the Myanmar Army's human rights violations —some of which, according to UN experts, possibly amounted to crimes against humanity.³ A resolution incorporating a fact-finding mission to investigate abuses throughout the country, particularly in Rakhine State, was passed by the UN Human Rights Council in March 2017.

Escalation of armed conflict in northern Shan and Kachin States, and the fallout from the October attacks in Rakhine State, have also contributed to widespread internal displacement. As of March 2017, approximately 98,000 remain displaced in Kachin and Shan States, and 120,000 in Rakhine State.⁴ Many of those living in internally displaced persons (IDP) camps face threats to their livelihood as ongoing armed conflict and government controls continue to obstruct humanitarian access.

Intensified state-driven attempts at natural resource extraction in ethnic areas have exacerbated ethnic communities' concerns over land confiscation and the destruction of livelihoods and natural environments. Protests are ongoing over proposed dam and mining projects, which have been further complicated by increased militarization by the Myanmar Army, particularly in Karen State. Eruption of armed conflict between the Myanmar Army and EAOs due to the Hatgyi Dam project in September 2016 led to the displacement of 5,000 people in Karen State,⁵ which has been a longtime host to IDPs. Land issues made up nearly 50% of the complaints submitted to the MNHRC in 2015.⁶

The first biannual 21st Century Panglong peace conferences were held in August 2016 and May 2017, but led to no substantive outcomes while rifts between non-signatory EAOs to the nationwide ceasefire agreement (NCA)

have been exacerbated. The stagnation of the peace process has made concerns over conflict-related human rights abuse even more pertinent, particularly as conflict has intensified.

Meanwhile, the MNHRC continues to refuse to investigate abuses in conflict areas, particularly those reportedly committed by the military, asserting that it is not part of its mandate to do so.⁷ Rather, it has primarily addressed low-hanging fruit—namely, cases that do not directly involve the Myanmar Government or Army, as well as high-profile cases that would further damage the Commission’s credibility if they were not addressed. For instance, after seething public outcry⁸ over the MNHRC encouraging the teenage victims of severe domestic abuse to accept a payout rather than pursue legal action, four Commissioners resigned in October 2016.⁹

Otherwise, the MNHRC has its focused efforts on what it has called a “longer-term strategy”¹⁰ of raising awareness of human rights practices. To that effect, the MNHRC has provided human rights training to military officers, police forces, civil servants, and prison staff, and helped expand integration of human rights education into public school curricula. Its prioritisation of human rights promotion over protection was the subject of parliamentary criticism in July 2016.¹¹

In November, following the 2015 ANNI mission into the country,¹² the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI)¹³ accorded the MNHRC a grading of B,¹⁴ denoting that the body is “not fully in compliance with the Paris Principles.”¹⁵ A year and a half later, the MNHRC has not gained any significant level of public confidence, nor has it succeeded in fulfilling its mandate in the broad manner needed to effectively progress human rights. The Myanmar National Human Rights Commission Law (hereinafter enabling law), cited as an obstacle by civil society, Members of Parliament, and outside critics alike, remains unchanged and thus a continued obstacle in the Commission’s efforts to improve. Without substantive legal and institutional reform, the MNHRC risks falling into greater irrelevance and ineffectuality.

Part 2: The MNHRC and Its Mandates to Protect and Promote Human Rights

2.1 Independence and Pluralism

While MNHRC Chairperson U Win Mra says that the body “[does] comply with [the] principle of independence [contained in the Paris Principles]”,¹⁶ both its composition and appointment procedure fall short. Furthermore, the Paris Principles states that national human rights institutions (NHRIs) should ensure the “pluralist representation of the social forces...involved in the protection and promotion of human rights.”¹⁷ While the enabling law pays lip service to pluralism by stating that the body should “seek to ensure the equitable representation of men and women, and of national races...”,¹⁸ this is not reflected in practice.

The current body does not have any female representation,¹⁹ not having replaced the two female commissioners who resigned following a controversial domestic worker case.²⁰ While the MNHRC membership has Muslim, ethnic Karen and ethnic Rakhine representation, it is unclear whether these commissioners were chosen for their understanding of ethnic or religious issues given the opacity surrounding the selection process. The MNHRC has asserted that its staff is pluralistic and selected via a competitive process,²¹ however, this cannot be verified as the composition of the staff is not made public, and no staff recruitment advertisement could be located online.²² A civil society member familiar with the MNHRC told the authors of this report that most of the female staffers were part of the Administrative and Finance Division rather than the more consequential Human Rights Protection and Promotion Divisions, and that the staffing process favors people from military and government backgrounds.²³

Moreover, all seven commissioners are former civil servants, two being former military employees, meaning that the body may find it difficult to extricate itself from the influence of the Myanmar government and Army. There’s

no need to look very far to see the inextricability of the Myanmar government and the MNHRC. Most notably, Chairperson U Win Mra and Commissioner U Khin Maung Lay were appointed by the State Counsellor's Office to serve on the Kofi Annan-led Advisory Commission on Rakhine State,²⁴ one of several government-mandated commissions set up in recent years to make recommendations on the situation in Rakhine State. Commissioner U Nyunt Swe serves on the Maungdaw Investigation Commission,²⁵ which was established in the aftermath of the October 2016 attacks in Rakhine State. Given these frequent instances of double involvement, it's not unreasonable to conclude that credible or out-of-the-box leadership from the MNHRC is unlikely. Furthermore, these instances can be interpreted as violations of the enabling law, which states that "a member of the Commission... shall not hold any other office or engage in any activities or practices that conflict with or may be perceived to conflict with the functions of the Commission."²⁶

Moreover, none of the current commissioners have had direct experience with civil society, all of them having engaged with the breadth of social issues related to human rights from the top-down perspective of corporations, government (including government organized non-governmental organization - GONGO), or intergovernmental bodies.²⁷ While this gap can be mitigated by meaningful engagement with civil society, interaction with CSOs and CBOs is neither regular nor substantive enough at this point to justify this gap. In a telling example, the MNHRC has produced a copy of the Universal Declaration of Human Rights (UDHR) booklet in the Karen language, yet a CBO working on ethnic Karen issues has already produced a translation that was clearer and more accessible for ethnic Karen villagers – something the MNHRC had been informed about. While such an initiative on the part of the MNHRC is positive, in the words of the CBO, "if the [MNHRC] would have collaborated with local ethnic human rights organizations they might not have needed to spend time and resources on producing something that already exists."²⁸ Direct experience with civil society is often crucial to comprehensively understanding or tackling any human rights issue—in this case, greater familiarity and affinity with CSOs and CBOs working on ethnic issues may have prevented this unnecessary expenditure of resources. Failing to include or involve civil society within its core leadership means that the MNHRC risks making strategic errors down the road.

In response to criticisms of the Commission's composition, current Commissioner U Yu Lwin Aung says that "attitude is more important than the background of the commissioners."²⁹ Yet the institutional mindset of the Commission is inconsistent in reflecting a progressive attitude toward human rights. The remarks of the Chairperson are a case in point: responding to criticism that the MNHRC has not spoken out against alleged abuses by the military in conflict areas, U Win Mra said "We do whatever we can, why would people expect us to do more



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than what we have the authority to do?”³⁰ The Chairperson has also stated that he does not read critical reports from outside groups due to their lack of objectivity,³¹ putting to question how conducive the Commission is to diverse feedback. Several civil society members questioned the strength of the Commission’s commitment to human rights, noting that while some commissioners may have the willingness to go the extra step to challenge the political constraints in the country, others did not.³² But the broader point that must be recognized by the MNHRC and NLD-led government is that no matter how much the MNHRC changes its attitude, or how much tangible progress is made, the backgrounds of the commissioners, if unchanged, will remain a strong source of public distrust. The commissioners’ backgrounds are regularly noted by civil society members as the primary reason as to why they do not, and will not, trust the MNHRC.³³

The problematic composition of the MNHRC is unsurprising given that its Selection Board, as per the enabling law, is no more pluralistic. While the enabling law acknowledges the role of civil society by stipulating that the Board must be made up of two representatives from registered non-governmental organizations, this stipulation is inadequate as large portions of the “social forces” involved in the promotion of human rights in Myanmar are not part of registered NGOs. Many CSOs and CBOs choose not to register, not least because doing so would put them under the purview of the military-controlled Ministry of Home Affairs.

The actual details surrounding the make-up and the procedures of the Selection Board remain murky. To this day, CBOs and CSOs say that they have not been made aware of how the Selection Board is currently comprised. Just like the opacity surrounding the 2014 reshuffle of the Commission,³⁴ it is unclear why the President’s Office has yet to replace the four members who resigned in light of the controversial domestic workers’ case. (While the current number of members falls within the range mandated by the enabling law, its lack of pluralistic representation and now diminished capacity begs this question).

The MNHRC has, in light of criticism for its lack of financial independence,³⁵ reformed its financing procedures. The body’s 2016-2017 budget, rather than being submitted to the President’s Office for approval as in previous years, was submitted and claimed directly from the Parliament through the Ministry of Finance.³⁶ This is a positive step towards financial independence, however, the enabling law must be modified to reflect this to ensure that this process is continued for successive administrations.

2.2 Effectiveness

The MNHRC has a broad legal mandate to protect and promote human rights. While civil society and Myanmar MPs have condemned the MNHRC as ineffective due to its reluctance to address key human rights issues, such as serious human rights violations by the Myanmar Army in areas of armed conflict, the Commission has argued that it has been effective given its limited legal and logistical capacity to address violations. Indeed, assessing the MNHRC’s effectiveness will require examining how the body has fared in practice based on its legal mandate, enshrined in the enabling law, and in the context of political restrictions in Myanmar.

2.2.1 Human Rights Protection

Per the enabling law, the MNHRC can investigate human rights violations and recommend further action from competent authorities. It has established a public complaints mechanism to help facilitate this process. The first case study below will elucidate how the MNHRC has little excuse for its current level of inaction against abuses by the Myanmar Army but also how the NLD-led Government has a role in according greater authority to the Commission. The second case study will reveal the opportunities available for the MNHRC to become a more authoritative voice on civilian-to-civilian abuses, and how various domestic and international stakeholders play a crucial role in holding the MNHRC accountable to its mandate.



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Case Study 1: Conflict-related human rights violations

Per GANHRI-SCA recommendations, the MNHRC should conduct itself with a “heightened level of vigilance and independence”³⁷ in times of internal unrest or conflict. However, despite frequent and escalating reports of violations such as sexual violence and extrajudicial killing committed by the Myanmar Army in conflict areas,³⁸ the MNHRC has continuously failed to adequately speak out. In the rare occasions that it has, the MNHRC does not assign responsibility nor suggest potential perpetrators, choosing to rely on generic recommendations such as “both sides should take extra care not to inflict undue damage to the lives and belongings of the populace.”³⁹ In the past 18 months, the MNHRC has not made a single statement on allegations of conflict-related violations on its website.⁴⁰ Even in light of OHCHR’s damning flash report—which highlighted cases of mass gang-rape and children being killed in front of their mothers by security forces in Rakhine State⁴¹—the body failed to take a stance. Instead, the MNHRC has prioritised promotion over protection. According to Chairperson U Win Mra, “education is the best way towards peace” as it is “more sustainable than any type of ceasefire.”⁴² The MNHRC has also attributed its failure to protect vulnerable populations in armed conflict areas to the lack of complaints brought to its attention. In response to skepticism about its ability to address cases of sexual violence in conflict areas, an MNHRC representative said, “If there are women being abused in the conflict areas, we want them to make complaints to the MNHRC, but they haven’t done it so far.”⁴³

Yet there is nothing in the enabling law that prohibits investigating conflict-related violations, or any form of human rights violations for that matter. Rather, the actual wording is quite broad. Per the enabling law, duties and powers of the Commission include “verifying and conducting inquiries in respect of complaints and allegations of human rights violations,” and “visiting the scene of human rights violations and conducting inquiries, on receipt of a complaint or allegation or information.”⁴⁴ Second, while it is unclear how many conflict-related complaints have been made to the MNHRC, CSOs and CBOs have long been sending evidence of military-perpetrated sexual violence to the government, and such information has been widely and regularly disseminated in the public

domain. Moreover, given the lack of public confidence in the body, many find it futile to send in complaints and choose not to do so. (Indeed, the number of complaints are on the decline.⁴⁵) Given the egregious nature of the allegations, the MNHRC should have, regardless of the presence of relevant complaints, and per its mandate to act “on receipt...of information,” visited and reported on the situation in at least Rakhine State, Kachin and northern Shan States.

In making the argument that it is focusing on human rights education rather than investigating complaints from conflict areas, while also mentioning the lack of complaints it has actually received, the MNHRC reveals not only its lack of sensitivity to human rights, but also that it has chosen to interpret its mandate, as outlined in the enabling law, in a limited manner. Given the pressing human rights problems in the country, however, particularly in armed conflict areas, more must be done in the short-term to address such grave situations immediately and give a clear message that perpetrators of such violations will be held accountable. Tackling impunity in the country, and building public confidence in the body, requires consistency in stance, and the simultaneous implementation of both short term and long term solutions.

Naturally, the MNHRC’s various rationale for inaction could be a mere euphemism for the fact that the Commission remains bound to the military line. While it hasn’t made outright refusals to investigate conflict-related violations, its limited authority can be seen with how it addresses complaints. In May 2016, the MNHRC dealt with a complaint regarding a Kachin villager killed by the Myanmar Army in Kamaing, Hpakant Township by passing the case onto the Ministry of Defense,⁴⁶ one of the three military-controlled ministries. Even with the high-profile alleged rape and murder of two Kachin teachers, the MNHRC was limited to sending a letter to the Ministry of Home Affairs recommending that the suspects be tried in civilian court.⁴⁷ The MNHRC has expressed willingness to address complaints of sexual violence in conflict areas but when probed as to what that meant in March 2016, responded, “if some cases are related to the military, we would ask the military for an explanation.”⁴⁸ Indeed, the MNHRC’s lack of authority is well-recognized by civil society.⁴⁹ The burden here is on the Myanmar Executive and Parliament to provide the MNHRC with more autonomy, power, and independence—a point that was emphasized repeatedly by interviewees for this report. This is especially salient now that the number of commissioners is down to seven since four resigned after the Ava tailoring case, while three of the commissioners are serving on either the Maungdaw Commission or the Kofi Annan Commission. It is the responsibility of the President’s Office to convene the Selection Committee to appoint further commissioners.

Still, the military’s Orwellian presence is not adequate rationale for the MNHRC’s inaction on serious human rights violations. It remains to be seen how the MNHRC has attempted to maximize its mandate. For instance, it can apply indirect pressure on the military by choosing to reach out to the affected communities, and to speak out more regularly and compellingly on violations in conflict areas, without naming perpetrators. Rather than creating arbitrary boundaries for its mandate, it can pressure parliamentarians to push for reform of the enabling law or use the media to carve more political space for its work. (The GANHRI-SCA notes that, “the release of public reports [in particular] serve to combat impunity for human rights violations.”⁵⁰) Furthermore, the MNHRC can be more transparent, such as by publicising its responses to complaints online in a timely manner to allow stakeholders to hold both the Commission and respective government ministries accountable. Opportunities to change the status quo are limited by the creativity and commitment of the MNHRC.

Case Study 2: Teenage Domestic Workers

The high-profile case of the two female domestic workers was by all measures, in the words of a domestic journalist that covered the case, “easy.”⁵¹ With nothing about it directly implicating the Myanmar Government or Army, this was an ordinary civilian case that garnered, with the exception of the MNHRC itself, a consensus of outrage. Given the political restrictions faced by the MNHRC in dealing with cases involving the state, ordinary civilian cases represent the greatest area of opportunity for the MNHRC to enact change, and a deeper analysis into the

response to the case can help highlight gaps for attention and improvement.

In a move that drew domestic and international ire in September 2016, the MNHRC pressured the families of two female victims of domestic abuse⁵² to accept a monetary settlement of 5 million kyat (\$3,700 USD) rather than pursue legal action. The victims, Ma San Kay Khaing, 17, and Ma Tha Zin, 16, were tortured for five years during their time as domestic helpers at the Ava Tailoring Shop in Yangon's Kyauktada Township. Testimonies from the girls reveal harrowing experiences of being stabbed with scissors, severely beaten, and being deprived of meals and adequate bedding. For years, the abusers also lied about the girls' whereabouts to their families.⁵³

The MNHRC became involved when a Myanmar Now journalist, Ko Swe Win, contacted them after the police in Kyauktada Township failed to take action. In encouraging a payout for a case that involved egregious human rights abuses, the MNHRC revealed its lack of sensitivity to human rights issues, giving credence to civil society criticism about the lack of competence of the commissioners. According to an interview with a civil society member familiar with the MNHRC, some of the commissioners had voted against allowing the payout but was overpowered by two others, revealing again the importance of having a body of commissioners that is more pluralistic and more sensitive to human rights issues.⁵⁴ Civil society responded with anger, including protests in front of the MNHRC office, along with an online petition, "Justice for the Domestic Helpers," calling for legal action against the shop-owners and an investigation into the MNHRC.⁵⁵ An open letter to President U Htin Kyaw from 142 CSOs was also sent, calling for the reform of the MNHRC according to the Paris Principles.⁵⁶

This case also highlights how limited knowledge among the general public about the MNHRC allowed it to shirk its duties—the families of the two girls came from rural areas and were illiterate, and without adequate counsel to fully understand their situation.⁵⁷ Were the case not brought to the national limelight, garnering attention from INGOs, MPs, domestic media, the President's Office, and domestic civil society, and eventually leading to the resignation of four commissioners, the plight of overlooked cases of civilian-to-civilian abuse, especially involving those who do not have sufficient knowledge of the legal system, might have never been highlighted.

The way that this case was brought to the limelight is also concerning—the case was afforded serious attention only because a journalist with the shrewdness to mobilize the media got involved. Cases like this are ongoing throughout the country; one can only imagine the number of overlooked abuses.

While it is difficult to ascertain how the MNHRC has reformed beyond allowing the four commissioners to resign without penalty, the fear of further backlash seems to have led the Commission to be more proactive and prompt in their responses to human rights issues. One CSO noted that "since the commissioners resigned in 2016, [our] ability to communicate with the MNHRC has improved."⁵⁸ In one example of greater initiative, in March 2017, the MNHRC investigated the site of a reported domestic violence against a housemaid by her employers in Mandalay's Amarapura Township, based on information gathered on social media.⁵⁹

While ultimately the demands by civil society for a personnel overhaul of the MNHRC and criminal penalties for the commissioners involved fell short,⁶⁰ revealing the reluctance for the MNHRC to change and its lack of accountability to the people it has vowed to protect, the resignation of the four commissioners highlights the crucial role that both international and domestic civil society can play in holding the MNHRC accountable, even when democratic space is severely curtailed.

It must be noted, however, given the process for addressing complaints, which involves the MNHRC investigating a case and then making recommendations to relevant government ministries, it is not always guaranteed that substantive action will be taken on complaints, even if an investigation has been done by the MNHRC. In 2015, of the 288 complaints forwarded to relevant ministries by the MNHRC, only 180, or 62.5%, received responses



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within the stipulated 30 days by the enabling law.⁶¹ The lack of response by government ministries is symptomatic of a systemic problem, and partly a reflection of the lack of recognition of the utility or relevance of the MNHRC. Thus, there is an urgent need for the MNHRC to more effectively increase its efforts in pressuring government bodies, such as by using the domestic media or by improving its outreach so that the ministries are more amenable to addressing the complaints. More broadly, this is an urgent reminder for the MNHRC to maintain a more consistent, sensitive stance on its mandate and its broader purpose.

Inspection of Prisons, Labor Camps, Detention Centers and Places of Confinement

Per the enabling law, the Commission is responsible for conducting inspections to prisons, detention centres and other places of confinement. The Commission has accordingly continued its prison visits, visiting a total of seven from January to August 2016, and has made recommendations on prison-related problems.⁶² According to the MNHRC, it has recommended to the Ministry of Home Affairs to take necessary measures to redress these problems, and the Ministry has responded that it has taken the recommendations into “serious consideration.”⁶³ In a tangible example, the MNHRC says that the Ministry of Home Affairs had enlarged its budget, to deal with the problem of overcrowding, leading to the addition of a storey for a prison in Kachin State.⁶⁴ This is a positive outcome, however, the long-standing consistency of recommendations made by the MNHRC over the years at each prison site suggests that there may be significant gaps in its follow-up or understanding of issues. One such gap has been suggested by a CSO that works with political prisoners—namely, that the MNHRC needs to shift its ways of thinking. For example, instead of building more prisons or expanding prison buildings to deal with overcrowding, the MNHRC can recommend that the relevant ministries incorporate mechanisms such as probation, parole or reduction of sentences for minor offences.⁶⁵ The CSO also noted that while there is generally transparent follow-up of these visits on the MNHRC website, the recommendations made could be more detailed.⁶⁶

The gaps in the MNHRC's understanding could be mitigated with greater engagement with CSOs that have expertise in the area. This has become evident with the Myingyan Prison case in October 2016, involving the protest of prisoners accusing the prison wardens of human rights violations,⁶⁷ for instance, when the MNHRC greatly benefitted from collaboration with a CSO working on the issue of political prisoners. After this CSO contacted the MNHRC about this case, the MNHRC elicited suggestions from them on the most ethical way to interview the prison staff and the prisoners involved.⁶⁸

Another frequently cited problem is that while the reports of these prison visits have been publicised online, the visits were conducted after prior notification has been given to the Ministry of Home Affairs. As noted by the GANHRI-SCA, prior notification would compromise a fair assessment of the conditions. This is an issue that must be dealt with via reform of the enabling law, which requires such prior notification.⁶⁹

2.2.2 Human Rights Promotion

Education and Training

Since the last ANNI report, the Commission has, per its mandate, continued with its human rights awareness-raising activities, cooperating with international organizations like the United Nations and the Raoul Wallenberg Institute (RWI) to host trainings for its own staff, civil servants, police force, and military officers from the regional to the township levels.⁷⁰ In December 2016, the MNHRC hosted several workshops across the country to train prison officials on rights-based treatments of prisoners.⁷¹ The body's efforts in addressing education has led to the integration of human rights education in primary schools as early as second grade.⁷²

However, despite the MNHRC's efforts in human rights promotion, interviews with CSOs from rural areas reveal that there is very little awareness about the MNHRC's capacity.⁷³ Per its mandate, the burden is on the MNHRC to educate the public about its role in human rights protection. The overall ability of the Commission to do so has also been put to question by civil society. CSOs that have worked with rural communities say that the MNHRC lacks understanding of the situation on the ground in rural areas, leading to tangible gaps in its promotion strategy. For instance, the MNHRC is conducting human rights education activities mostly for high ranking officials in urban areas when most of the human rights violations are committed by lower ranking soldiers or officials in rural areas. The same can be said with its outreach, which is primarily in urban areas. As this CSO based in Taunggyi, the capital of Shan State pointed out, "Many CSOs based in Taunggyi or big cities don't know about MNHRC, so it is more likely that many CSOs in ethnic areas don't know about MNHRC."⁷⁴ By focusing on the urban areas, the MNHRC will miss out on protecting the most affected and vulnerable populations.

Human Rights Policy and Law

Per the enabling law, the MNHRC is to make recommendations to the government on treaties and conventions that it should become a party to, and to hold the government accountable to ones that it is currently a party to.⁷⁵ In June 2016, the MNHRC submitted a report on the implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), in which it recommends that the government ratify the ASEAN Convention on Trafficking, among others.⁷⁶ The MNHRC has also recommended the Myanmar government to accede to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which the government signed in 2015. However, given the relatively few international human rights conventions that the government has acceded to, the MNHRC can do more in speaking out to invigorate these processes. The MNHRC should prioritise the nine core international human rights treaties in its approach,⁷⁷ such as by bringing back to public and parliamentary attention the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishments (CAT), which has fallen off the map in recent years after efforts during the Thein Sein administration.⁷⁸

In November 2015, per the enabling law, the MNHRC submitted a statement as part of the government's submission to the UPR. The submission, however, is quite simplistic and makes broad conclusions such as "complaints were given careful consideration"⁷⁹ without providing much detail. What is more concerning is the self-assessment that the MNHRC has provided: "[the MNHRC] is now carrying out its mandate for the promotion and protection of human rights effectively."⁸⁰ Such statements reveal how out of touch the MNHRC is with the realities on the ground in Myanmar.

2.3 Engagement with stakeholders

2.3.1 Civil Society

As outlined in the enabling law, the MNHRC should "engage, coordinate, and cooperate"⁸¹ with civil society working in the field of human rights. It has held consultations with CSOs, and gave speeches at CSO-led workshops and forums.⁸² It has also utilized, in cooperation with a CSO that works on human rights education, the training materials of that CSO for human rights talks at the grassroots level.⁸³

While CSOs say that they are willing to work with the MNHRC strategically,⁸⁴ there is a broad consensus amongst civil society that the MNHRC is not to be trusted, with the primary reason that the Commission lacks independence and pluralism. For CSOs, many of which are either composed of or represent people who have suffered at the hands of previous military regimes, a human rights commission riddled with former representatives of repressive military governments and no representation from civil society is egregious and simply unacceptable. That the MNHRC and the NLD-led government hasn't prioritised personnel reform represents a fundamental misunderstanding of the very populations that they seek to assist and protect. (This misunderstanding is evident in the Commission's 2014-2016 Strategic Plan, which states: "[The MNHRC] has earned credibility, confidence, and the trust of people through its work over the past two years..."⁸⁵). If the MNHRC wishes to garner any semblance of public confidence, it must first undergo a massive personnel overhaul.

There is also consensus amongst civil society that the MNHRC is largely a toothless organisation. Several civil society members interviewed said that while the MNHRC can improve on its consultation with civil society, its ineffectiveness is largely due to its lack of political authority. This lack of authority has correspondingly contributed to frustrations from CSOs and CBOs. Several questioned whether the MNHRC had, or will ever have, the capacity to address its promises. As described in an interview with one CBO, the MNHRC had apparently pledged to help the CBO organize a meeting with representatives of all human rights organizations in Myanmar, but has not yet followed up.⁸⁶

While the MNHRC has consulted with civil society, such as on the draft prison law, it seems that the MNHRC rarely, if ever, takes the more proactive approach to reach out. One example of how it did proactively reach out after reading reports of human rights violations in Karen State, only led to disappointment. After contacting a CBO that had documented human rights violations in the area to help arrange a meeting with affected villagers, the MNHRC postponed the meetings after the villagers had already arrived at the previously agreed upon place. The new time given by the MNHRC was not convenient for the villagers who had to travel a long way to get there. Ultimately the meeting did not happen, trust in the MNHRC on the part of the villagers was eroded, and the CBO that had helped to organise the meeting lost credibility with the villagers.⁸⁷

The MNHRC has also been inconsistent in responding to requests from CSOs and CBOs to engage. While it is understandable that the MNHRC cannot respond favorably to every request, the MNHRC should work to improve its communication with civil society to mitigate misunderstanding.

Generally, CSOs and CBOs that have managed to successfully reach out to the MNHRC in the past 18 months do



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not report any problems in regards with communication; the response rate from the MNHRC is reportedly immediate.⁸⁸ However, it must be noted that these CSOs and CBOs are generally well-equipped with the knowledge and resources for communication, and have headquarters in urban settings. Awareness of and engage with the MNHRC is still low throughout the country, especially in the rural areas.⁸⁹

The lack of engagement in rural areas can be seen in the relatively fewer number of complaints that come from those areas. While the areas that have the largest number of complaints come from the country’s three most populated states, Yangon, Ayeyarwaddy, and Mandalay,⁹⁰ the fourth largest number of complaints come from Naypyidaw, the third least populated, whereas Shan State, home to nearly the same population of Mandalay, as well as ongoing armed conflict, is tied for eighth for the number of complaints.⁹¹ According to the RWI, a Swedish organization that has provided capacity building to the MNHRC since 2013, outreach to CSOs has “tapered off in recent years.”⁹²

Naturally, the MNHRC should continue with its prompt response rate to build greater trust, but also should accordingly step up its effort to reach out to less prominent, non-urban CSOs, including non-registered ones, as they are usually dealing with the populations that are the most vulnerable to human rights abuse.

2.3.2 International organizations

In the past 18 months, the MNHRC has conducted workshops with numerous international organizations, including OHCHR, UN Women, Democracy Reporting International (DRI), and the RWI. The RWI described a largely positive experience working with the MNHRC, noting that both sides have initiated projects, and that the MNHRC has consistently integrated feedback from the RWI into their working plans.⁹³ The MNHRC should seek to continue this positive collaboration.

2.3.3 Government

According to the MNHRC, the “authorities never interfere in our process,” and that [its] process is better under the present administration.⁹⁴ However, it remains unclear how willing the NLD-led government is to maximize the mandate of the MNHRC and afford it adequate authority to protect the Myanmar people. Chairperson U

Win Mra noted that the MNHRC has offered training to the new administration, however has not yet received a response.⁹⁵ In one instance in May 2016, the government-appointed Legal Affairs and Special Issues Commission that is mandated to review legislation reached out to civil society for recommendations on amendments to the enabling law. Yet after receiving a document from civil society that analyzes the law and makes recommendations, there was no response by the committee.

The RWI, which has provided capacity building and funding to the MNHRC since 2013, has stated that, the MNHRC’s “human rights outreach to ministries and other state related bodies have gone well and have opened doors for cooperation,” and that “ministries are now aware of their mandate and complaint letters are replied to within the stipulated timeframe.”⁹⁶ While this may be true, there still seems to be a lag in timely, effective response from certain ministries to ensure justice for victims of severe abuse, suggesting that the MNHRC should continue their outreach, as there is frequent turnover within the ministries.

2.3.4 Media

As seen with the Ava Tailoring case, the media has a crucial role in holding the MNHRC accountable and in highlighting cases of human rights abuse to the general public. The relationship between the media and the MNHRC seems to be weak, however, suggesting that the MNHRC needs to do more in improving its outreach. For instance, the MNHRC can provide information in a more transparent and timely manner, and take a more proactive action in using the media to promulgate its mandates.

2.3.5 Parliament

The parliamentary debate in July 2016 over the 2015 Annual Report revealed that parliamentary confidence in the MNHRC was low,⁹⁷ suggesting that the MNHRC must improve its outreach to the Parliament. Part of the duties of the Commission is to respond to any matter referred to the Commission by either the Lower or Upper House of Parliament.⁹⁸ Thus, it is also incumbent upon the Parliament to use the MNHRC in a more purposive, consistent manner, such as by bringing matters of importance to the MNHRC’s attention.

Part 3: Assessment/Conclusion and Recommendations

The MNHRC has consistently asserted that time will show just how effective it can be, but six years into its existence, the body largely still lives up to original criticisms—that is, it continues to be deeply reluctant to do anything that may incur the dissatisfaction of the government or military. The ICC-SCA report of November 2015 outlined seven key aspects that must be changed in order for the MNHRC to be Paris Principles compliant. While it has made some moves towards rectifying one of these, the allocation of its budget from Parliament rather than the President’s Office, it remains to be seen how much progress will be made on the other six.

The most egregious weakness of the MNHRC is its failure to serve as a spokesperson for the country’s most vulnerable, independent from the government and military line. On the ground, this has resulted in the MNHRC offering a distinct lack of protection of victims of human rights violations in conflict affected areas. Indeed, as recognized by stakeholders across the board, the failures of the MNHRC are reflective of the systemic obstacles facing Myanmar’s transition into civilian rule. Thus, especially as the powers of the MNHRC are so reliant on the Myanmar executive, the NLD-led government should do more as well, such as with pushing for reform of the enabling law, and adding pressure to reform the composition of the bodies, and on government ministries to respond more promptly to recommendations by the MNHRC. As it stands, the NLD-led government seems reluctant to use the MNHRC, as seen with its creation of several separate commissions to address violations in Rakhine State, and with the apathetic statements made by its representatives: When asked about how the new government would deal with the MNHRC in March 2016, NLD spokesperson U Win Htein responded: “I don’t know. I don’t care

about them.”⁹⁹ Without more proactive action from the Myanmar government, the MNHRC will remain stuck in its own optimism, while public trust and confidence in the body continues to deteriorate.

But the MNHRC’s failure to attend to serious violations of human rights cannot be attributed only to the enabling law or the political environment. Even within these limitations, the MNHRC has room to do more than what it has currently done. Despite shortcomings, an analysis of the enabling law reveals that the institution has a broad mandate to promote and protect human rights and contribute positively to democratic reforms. For one, the MNHRC can do more to maximize the vagueness of the enabling law (such as with the scope of the nature of the violations that it is supposedly allowed to investigate) and push outside the arbitrary boundaries that it has created and functioned under. Thus, rather than focusing on human rights education and promotion as regards conflict affected areas, it should take clear and decisive action to investigate perpetrators of human rights violations, and this includes pursuing accountability of those from the most powerful institution in the country – the military. It could also be more proactive with its approach, such as by taking on overlooked cases and by institutionalizing its relationship with civil society. Taking these steps are necessary to building public and parliamentary confidence in the body, which is crucial for the fulfillment of its mandate.

Recommendations:

To the Myanmar Government (Executive)

- To provide support to the Parliament to reform the enabling law to:
- Explicitly mandate the MNHRC to investigate violations in conflict zones and to allow them unrestricted access to active conflict and ceasefire areas with guarantees of protection
- Expand the stipulation for the composition of the Selection Board to include civil society representatives from non-registered NGOs
- Establish a quorum for different criteria regarding pluralism, such as by specifying that at least a third of both the body’s membership and staff are from gender, ethnic and religious minorities or from civil society with human rights experience
- Establish an independent mechanism for dismissal of commissioners to prevent reprisal for investigation into sensitive issues
- Make the processes of selection more transparent, such as a requirement to publicise the members of the Selection Board, in order to remove executive influence from the formation of the Selection Board
- Remove clause about prior notification to allow for unannounced visits to sites of detention
- Allow MNHRC to initiate an investigation into a case if a case is under trial before any court or if a Myanmar court has “finally determined on a case”
- Ensure that the two parliament representatives of the Selection Board are selected by the Parliament itself rather than the President and that they represent different political forces in the legislature
- Set out procedures for nominating potential members of the MNHRC, which should include broad consultations with civil society
- Give the Commission authority to take actions if the response provided by relevant ministries is not satisfactory
- Specifically stipulate that the funds for the MNHRC should be allocated through parliamentary vote
- Ensure that the budget is public, such as by adding a line in the national budget for the MNHRC budget
- To ensure regular, wide and systematic publication of the MNHRC’s reports and findings by deleting “as appropriate” from Article 22(j) and Article 45, “as may be necessary” from Article 39, and by adding “to the public” to Article 22(m)
- Ensure staff recruitment procedure is open and transparent, such as advertising the positions publicly
- Refrain from interfering in MNHRC investigations and demonstrate the political will to respect and un-

dertake recommendations from the Commission

- Amend the 2008 Constitution to include the MNHRC and enshrine the independence of the Commission

To Parliament

- Encourage meaningful debate on the role and the annual report of the MNHRC in parliamentary sessions, and hold public hearings on the MNHRC, including on amendments of the enabling law
- Table a motion to amend the enabling law

To the MNHRC

- Interpret the enabling law in a “broad, liberal, purposive”¹⁰⁰ manner that is more consistent with the Paris Principles
- Be more proactive in pressuring the government and parliament to reform the enabling law in accordance to the Paris Principles

Human Rights Policy and Legal Division

- Review and implement the recommendations made by the GANHRI-SCA
- Ensure that the work of the MNHRC adheres to international agreements relevant to NHRIs such as the Paris Principles, Merida Declaration and Belgrade Principles
- Solicit inputs from civil society and other key stakeholders in the development of MNHRC’s organizational objectives, including strategic plans
- Continue to actively encourage the Parliament to sign and ratify international conventions, especially the nine core international human rights treaties, which Myanmar is still not a party to
- Undertake a more proactive approach in using the domestic, and when relevant, international, media to add pressure
- Ensure that meaningful, inclusive consultation with CSOs is undertaken before submitting comments to government ministries on draft legislation or proposed amendments
- Encourage government ministries to invite CSOs for consultations on draft legislations or proposed amendments

Human Rights Protection Division

- Educate the general public on process of complaints submission, such as that the MNHRC is required by law to protect complainant confidentiality
- Take the initiative to act upon information about human rights abuse, even not in the form of complaint filed to the Commission
- Act in a confidential manner when it comes to information sharing between the Executive, Parliament, the Myanmar Army and other branches of law enforcement to ensure that complainants and relevant witnesses are protected from reprisal
- Accompany human rights investigations and recommendations with political pressure to ensure that relevant parties, especially government ministries, respect them
- Solicit assistance from civil society to deal with all aspects of human rights protection, including receiving complaints and carrying out investigations

Human Rights Promotion Division

- Provide human rights training to lower-ranking Myanmar Army soldiers, police officers, Border Guard Forces and local government officials, especially in rural ethnic areas where most egregious human rights violations are taking place
- Open more branch offices in the rural areas with sufficient resources to educate marginalized, vulnerable communities about its mandates to protect and promote human rights

- Engage in more outreach with smaller CSOs and grassroots CBOs
- Include resources useful for vulnerable communities online, such as a calendar of upcoming events, a repository of relevant laws, and a searchable database of human rights training materials used and developed by the MNHRC

Transparency

- Improve its website to make it more user-friendly
- Publicise all complaints and responses online, while maintaining confidentiality as necessary
- Make clearer the procedure for submitting complaints, such as by including detailed instructions online
- Ensure that complaint forms and procedures are available in all local languages
- Publicise results of consultations with government ministries, CSOs, intergovernmental institutions, as well as all reports in a more timely manner
- Publicly disclose financial statements online
- Publish all annual reports online in a timely fashion

To the International Donor Community

- Continue to provide capacity building to the MNHRC until it is fully effective and in compliance with the Paris Principles, and all other declarations and principles relevant to NHRIs, including the Belgrade Principles, Merida Declaration, Edinburgh Declaration
- Encourage the Parliament and the Government to reform the law and open and recognize the space for civil society to strengthen the MNHRC
- Actively participate in consultations with the Government and the MNHRC, and engage in periodic follow-ups

To Domestic Civil Society Network

- Campaign for amendment of the enabling law to enhance effectiveness of the MNHRC
- Help victims of human rights violations to engage with the MNHRC, such as with submitting complaints
- Hold the MNHRC accountable by highlighting situations where its work would be appreciated or where it is failing to meet its mandate, such as by bringing issues to the attention of the media and international human rights mechanisms

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