

Recommendations on Reform of the Myanmar National Human Rights Commission Law

By the CSO Working Group on MNHRC Reform

This briefing paper outlines the CSO Working Group on MNHRC Reform's recommendations to amend the MNHRC Law which was promulgated in March 2014 and reconstituted the commission in September 2014. The CSO Working Group on MNHRC Reform was formed in 2019 and consists of 24 members. It advocates for reform of the MNHRC so it is an effective, independent, and transparent national human rights institution that promotes and protects the rights of all people of Myanmar in line with the Paris Principles.

The briefing paper is the product of consultation meetings of the CSO Working Group on MNHRC Reform and analyzes the nine chapters and 70 articles of the MNHRC Law making recommendations on amendment, removal and/or replacement of problematic sections that are not in line with international standards, in particular the Paris Principles. The analysis is organized around eight categories identified by the CSO Working Group on MNHRC Reform: Selection and Appointment Procedures of MNHRC's Members; Dismissal Procedure of MNHRC's Members; Operational Independence and Powers of the MNHRC; Funding of the MNHRC; Accountability and Publication of Findings and Reports; Engagement with Civil Society; Inspection of Prisons, Jails, Detention Centers and Places of Confinement; and MNHRC's Staff.

Selection and Appointment Procedures of MNHRC's Members

Article 5 states that the President shall establish a selection board in charge of developing a shortlist of candidates from which the President will make the final selection and appointment.

The selection and appointment mechanism is one of the most important ways to guarantee the independence and pluralism of national human rights institutions (NHRIs). It must afford necessary guarantees to ensure representation of the diversity of society and must be implemented in a transparent and inclusive process so the public can access information on how candidates were selected.

The current selection board, as established by **Article 5** of the legislation, does not offer such guarantees for multiple reasons. Firstly, one of the ten members of the selection board is the military-appointed, Union Minister of the Ministry of Home Affairs, proving problematic as many reported human rights violations are committed by the military itself. This includes removing the representative of the Myanmar Women's Affairs Federation, an organization with close ties to the military. **Article 5(b)** must be amended so that the composition of the selection board does not include military-affiliated members. Secondly, while **Article 5(f)** stipulates that two selection board members are from the Parliament, it does not specify who the two Parliament representatives should be and how they will be selected. Thus, **Article 5(f)** must be amended to ensure that the two Parliament representatives are selected by the Parliament itself rather than the President and that they represent the different political forces in the legislature. Furthermore, they must be elected Members of Parliament, not military appointed MPs. Thirdly, **Article 5(h)** requires that two representatives of a registered non-governmental organization (NGO) be part of the selection board. This is too restrictive. Civil society is not limited to registered NGOs but includes also journalists, individuals, union

members and academics. The language of **Article 5(h)** must be changed to an “independent members of civil society.”

Article 7(c) states that the selection board must seek to ensure the equitable representation of men and women and of national races. To secure pluralism, the legislation should specify a significant number. Thus, **Article 7(c)** should be amended so that it clearly requires that at least two thirds of the total number of the commissioners are representatives of women, ethnic nationalities, LGBTIQ, persons with disabilities, and religious minorities. Furthermore, **Article 6 (b)** requires commissioners to be over 35 years of age. This should be omitted to ensure there are no restrictions on youth representation.

The selection board members should not be those who commit, condone and/or are responsible for human rights violations. Thus, following the principle of “no man should be a judge in his own cause” found in the concept of natural justice, an article should be added so that no selection board member comes from the defense and security services.

In addition, **Article 8** states that the selection board shall adopt “procedures for nominating prospective Members of the Commission.” International standards recognize that it is of critical importance that the terms and conditions for selection and appointment are transparent and set out in the founding law of NHRIs. Thus, the procedures for nominating potential members of the MNHRC should not be left to be developed by the selection board but should be set out in the law. They should include broad consultations with civil society throughout the process and broad advertisement of vacancies and the standard criteria for commissioners. We recommend **Article 8** to be removed and replaced with procedures for nominating prospective members.

Article 9 also affects the independence of the commission as it gives too much power to the executive in the selection process. We recommend that this be removed and replaced with a stipulation that means that the Union Parliament votes on the selection of commissioners and the criteria for making that decision is made publicly available.

Lastly, an article should be added to ensure a timely selection process for any vacant positions. The selection board must be convened no longer than three months before the end of the incumbent commissioners’ terms and the selection process must be completed within this period and new commissioners appointed to their post within 60 days of being selected. Furthermore, if a vacant position arises such as the resignation or dismissal of a commissioner, this position must be filled within 60 days.

Dismissal Procedure of MNHRC’s Members

Freedom from arbitrary dismissal is crucial to an NHRI’s independence. Since the MNHRC will have the authority to comment on the government’s actions in respect to human rights, its members must be protected from retaliation. For this reason, the founding legislation should specify in detail the circumstances under which a member may be dismissed. Dismissal should be limited to serious wrongdoing, clearly inappropriate conduct or serious incapacity. In addition, mechanisms for dismissal should be independent from the executive.

Article 18 does not offer these guarantees. It states that it is the President, in coordination with the speaker of the Upper and Lower Houses of Parliament, who has the authority to dismiss a member of the MNHRC. It is imperative that Article 18 be amended so that it establishes an independent mechanism for dismissal.

International guidelines suggest a two-third majority vote of the Parliament or an independent board of judges. However, in the specific context of Burma/Myanmar, it is important to note that the Parliament's composition (25% military-assigned seats) and the judiciary do not offer these guarantees of independence either. Given this context, we recommend that approval by the Union Parliament is enough. **Article 18(b)** is also exclusionary when it comes to the Myanmar context as many human rights defenders and activists can be arbitrarily charged and imprisoned for their human rights activities. It is possible to conceive a future commissioner being charged for, criminal defamation for example, if a complaint is filed by a disgruntled government agency. This provision should be amended. Finally **Article 18(d)** should be amended so that a condition for removal of commissioners is not due to failure "to comply with the regulations laid down by the Commission" but failure to implement the duty and mandate of the commission in order to prevent the arbitrary removal of a perceived outspoken commissioner.

Operational Independence and Powers of the MNHRC

The Paris Principles require that NHRIs have access to all documents and all persons necessary for it to conduct an investigation. The MNHRC should have the power to investigate all three pillars of the State – the Government, the Legislature, and the Judiciary. This includes the power to compel the production of documents and witnesses. We welcome the fact that **Article 35** grants the MNHRC such powers. **Article 36(a) and (b)** further list limitations to such powers. While we acknowledge the necessity to protect classified documents for national security reasons as **Article 36(a)** outlines, **Article 36(b)** mentions "classified documents in the departments and organizations of the government." The language used is extremely broad and does not explain what are departments and organizations of the government. Such limitations could be used to seriously limit the commission's investigative powers. Thus, we recommend that **Article 36(b)** be removed.

Article 30 stipulates that "an individual may lodge a complaint with the Commission on his/her own behalf...concerning any alleged violation of human rights." Given the threat of reprisals from abusive actors, the complainants, witnesses, and people providing information to the MNHRC should have guarantees from that no reprisals shall occur as a result of their engagement with the MNHRC. This includes having the option of remaining anonymous.

Article 37 states that the commission shall not inquire into any complaint that involves current proceedings before the court. To acknowledge the complementarity of the commission and the court system and to broaden the powers of the MNHRC, **Article 37** should be amended so that the commission, with authorization of the court, can inquire into matters pending before it while **Article 37(b)** should be removed so that cases that have already gone through the court process can be investigated.

Article 38 explains that any government department or organization should reply to the commission's recommendation "within thirty days." In addition, we would like to suggest adding an article that would give the commission the power to take actions if the answer given by authorities is not satisfactory. Without such mechanisms the commission's power to compel authorities to address human rights violations would be seriously limited. Thus, an article that gives the power to the MNHRC to submit reports directly to the President and/or the Parliament if a department or organization does not take satisfactory actions to address human rights violations must be added.

Article 22 (b) (ii) gives the mandate to the MNHRC to make recommendations to Parliament on "existing laws and proposed bills" so they comply with international human rights instruments "through the

Government.” In order to maintain the independence and impartiality of the MNHRC, “through the Government” should be removed.

Funding of the MNHRC

Financial autonomy guarantees the overall freedom of NHRIs to determine their priorities and activities. International standards recommend that public funds should be provided through a mechanism that is not under direct government control. **Article 46** of the MNHRC Law states that the “State shall provide the commission with adequate funding.” This is too vague and could potentially undermine the commission’s independence and autonomy if this funding is then allocated through the government. Thus, we recommend that Article 46 be amended so that funds are allocated through a vote in Parliament in order to foster the MNHRC’s financial autonomy.

In addition, the budget and the financial policy of the commission should be made public to guarantee transparency. The law should require that a specific line in the national budget be added for the MNHRC’s budget.

Accountability and Publication of Findings and Reports

To increase the independence, transparency and credibility of the MNHRC it should be accountable to the President, the Parliament and the public in general. NHRIs’ reports should be made widely available. The public and other stakeholders should be able to know about the work of the commission including complaints received and investigated, monitoring and advice to the government.

Thus, to ensure regular, wide and systematic publication of the MNHRC’s reports and findings and therefore foster its transparency and credibility we recommend that the word “as appropriate” be deleted in **Article 22(j)** and **Article 45**. We further recommend that in **Article 22(m)** the requirement for submission should not be limited to the President and that the Parliament and the public should be added while the public should also be added to **Article 22(l)**. Finally, we recommend that in **Article 39** the conditions of publication “as may be necessary” be deleted as well.

Engagement with Civil Society

The Paris Principles recognize that relationships with civil society can help NHRIs to protect their independence and pluralism and enhance their effectiveness by deepening their public legitimacy. We welcome the power given to the MNHRC to consult and engage with civil society organizations. However, we recommend that **Article 22(f)** specifically emphasize that the consultation and engagement should be “every two months.”

Inspection of Prisons, Jails, Detention Centers and Places of Confinement

We welcome the powers granted to the MNHRC under **Article 43, 44** and **45** relating to the inspection of prisons, jails, detention centers and places of confinement. We take note that in **Article 44(a)** and **Article 22 (e)** the MNHRC has the power to visit such places. However, NHRIs should have the power to enter any place of detention without prior warnings. Thus, we recommend that the requirement for the MNHRC to

notify the relevant authorities of the time of its visits in **Article 44(a)** and **22(e)** be removed. Another section that should be amended is that the MNHRC must ensure that prisoners or detainees do not face any reprisals or negative consequences after having been interviewed by the MNHRC. **Article 44(c)** should be amended to reflect this.

MNHRC's Staff

Pluralism and diversity of the commission can also be enhanced if the staff composition also reflects the diversity of society. Thus, we recommend that the requirements set out in **Article 7** for the commission's members such as gender balance, ethnic and minority representation, and human rights experience be also added as requirement for staff under **Chapter VIII**. In addition, the law should require for the staff recruitment procedure to be open and transparent and the positions published in order to avoid nepotism.

The CSO Working Group on MNHRC Reform consists of the following members:

1. Action Committee for Democracy Development – ACDD
2. Assistance Association for Political Prisoners – AAPP
3. Association of Human Rights Defenders and Promoters – HRDP
4. Athan – Freedom of Expression Activist Organization
5. Burma Monitor (Research and Monitoring) – BM
6. Equality Myanmar – EQMM
7. Future Light Center – FLC
8. Genuine People's Servants – GPS
9. Generation Wave – GW
10. Human Rights Education Network – HREN
11. Human Rights Foundation of Monland – HURFOM
12. Kachin Women's Association Thailand – KWAT
13. Karen Human Rights Group – KHRG
14. Karenni Human Rights Group – KnHRG
15. Loka Ahlinn (Social Development Network)
16. Metta Campaign – Mandalay
17. Myanmar People's Alliance (Shan State)
18. Pa-O Youth Organization – PYO
19. Progressive Voice – PV
20. Smile Education and Development Foundation – Smile
21. Synergy (Social Harmony Organization)
22. Ta'ang Women's Organization – TWO
23. The Seagull
24. Yangon Watch