

MYANMAR UPR
2020 FACTSHEET

Myanmar National Human Rights Commission



Brief Assessment of the Implementation of 1st and 2nd Cycle UPR Recommendations

During the reporting period, the Myanmar National Human Rights Commission (MNHRC) has persistently suffered a public legitimacy deficit with concerns over the transparency of the commissioner selection process, the closeness of commissioners to the previous military regime, a perceived lack of effectiveness, and lack of a human rights mindset. Additionally, there are many key areas of domestic law that do not comply with the Paris Principles and needs reform in order for the MNHRC to better promote and protect human rights. In January 2020, a complete new set of commissioners, with very little human rights experience and mostly former military or civil servants were appointed, replacing long-serving members, some of whom had served since 2011.

The below sections outline key challenges, as well as cases, facts, comments and corresponding recommendations for the 3rd Cycle UPR.

Selection and Appointment of Commissioners



Challenges: The selection and appointment mechanisms of the MNHRC lacks guarantees of transparency, impartiality and diversity.



Cases, Facts, Comments: During the 2nd Cycle of the UPR, Myanmar supported a recommendation by Chile to “*Grant the National Human Rights Commission autonomy and independence in accordance with the Paris Principles.*”¹ Yet, there is no guaranteed independence from the executive branch of government or the military. According to the MNHRC Law, the Selection Board adopts procedures for nominating prospective commissioners and submits a list of thirty nominees to the President. Those that have been selected during the reporting period have comprised of appointees aligned with either the government or the military, with links to the previous ruling regime. Additionally, civil society representation is inadequate and members face obstacles to be eligible, such as the requirement to work for a registered organization. To be registered in Myanmar requires overcoming cumbersome legislative requirements, while increased scrutiny from the authorities is particularly problematic for those human rights organizations that stand firmly on their human rights values and principles.

In the wake of a scandal involving the mishandling of a case of tortured domestic workers, four commissioners resigned in 2016. The selection of the new members was announced on Facebook, without any transparency on the selection process. This contravenes the Paris Principles, which states that there must be “*a clear, transparent, merit-based and participatory selection and appointment process.*”²



Recommendations

- Establish a quota for different criteria to ensure pluralism, such as by specifying that at least a third of both the body’s membership and staff are women and are from ethnic and religious minorities respectively, as well as from civil society with human rights experience.
- Ensure the selection process is transparent, follows due process, with a requirement to publicize the members of the Selection Board.
- Expand the composition of the Selection Board to include civil society representatives from non-registered NGOs.

1 Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13 – Para. 143.183 Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>.

2 General Observations of the Sub-Committee on Accreditation (SCA), Section 1.8. Global Alliance of National Human Rights Institutions. February 2018. Available at: https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf.

- Remove executive influence from the formation of the Selection Board by including ensuring that the two parliament representatives of the Selection Board are selected by the Parliament itself rather than the President.

MNHRC Performance in Situations of Armed Conflict and Unrest



Challenges: A major challenge to the MNHRC legitimacy, is its inability to call out human rights abuses during armed conflict and unrest, and active measures taken to absolving the military of wrongdoing, thereby shielding perpetrators of human rights abuses.



Cases, Facts, Comments: During armed conflict and unrest, a National Human Rights Institution should operate with heightened vigilance and independence, being a pillar for the promotion and protection of human rights. Yet, during the reporting period, the MNHRC have consistently undercut and failed in its duty to call out grave human rights abuses. During the Rohingya crisis, the MNHRC failed to condemn the most horrific human rights abuses committed against Rohingya, nor have the Commission acknowledged their identity. The UN-mandated Fact-Finding Mission on Myanmar found evidence that the Myanmar military leaders should be investigated and prosecuted for genocide for a wave of violence in late 2017.³ The MNHRC did not call for an independent investigation or address systemic discrimination against Rohingya, despite this being within their mandate.

In May 2019, in the context of armed conflict between the Arakan Army (AA) and the Myanmar military in Rakhine State, six ethnic Arakanese men, who were part of a mass detention of 275 men from Kyauk Tan Village in Rathedaung Township, were shot and killed by the Myanmar military.⁴ An initial statement by the MNHRC merely echoed the Myanmar military's narrative, that the six men were shot in self-defence after they tried to grab the soldier's guns.⁵ The CSO Working Group on MNHRC Reform, a group of 22 civil society organizations advocating for an effective, independent and transparent national human rights institution, decried the MNHRC's lack of effective action with a statement urging an independent investigation.⁶ This created public pressure and the MNHRC *did* respond by investigating the case. Ultimately, the MNHRC continued to unquestioningly follow the mil-

3 Report of the Independent International Fact-finding Mission on Myanmar. A/HRC/39/64. Human Rights Council. 27 August 2018. pp.408-409. Available at: <https://www.ohchr.org/en/hrbodies/hrc/myanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>.

4 'Myanmar: Deaths in Army Custody Need Independent Inquiry,' Human Rights Watch, 6 May, 2019, available at: <https://www.hrw.org/news/2019/05/06/myanmar-deaths-army-custody-need-independent-inquiry?fbclid=IwAR039bIxpVrCbVBzuvqiY6s4Nizrssx6j2Dg6EcEiEfAeDnmQaFUTtK8i0>.

5 'Statement of MNHRC,' MNHRC. 3 May, 2019. Available at https://www.facebook.com/myanmarnhrc/?epa=SEARCH_BOX

6 'MNHRC Must Take Stand on Extrajudicial Killings of Rakhine Villagers,' CSO Working Group on MNHRC Reform, 14 May, 2019, available at: <https://progressivevoicemyanmar.org/2019/05/14/mnhrc-must-take-stand-on-extrajudicial-killings-of-rakhine-villagers/>.

itary's narrative, and absolved the soldiers of responsibility.⁷ This is despite statements from villagers and witnesses who say that the military fired upon the villagers without provocation.



Recommendations

- Explicitly mandate the MNHRC to investigate human rights violations in conflict zones and to allow it unrestricted access to active conflict and ceasefire areas.
- Amend the 2008 Constitution to bring the military under civilian control, end impunity and include the MNHRC as a constitutional body to enshrine its mandate of independence and impartiality to protect human rights.

Pluralism



Challenges: Diversity of voices within the MNHRC, particularly in the representation of commissioners is severely lacking, with women, religious and ethnic minorities underrepresented.



Cases, Facts, Comments: Myanmar is a hugely diverse country in terms of religion, ethnicity, language and culture. Yet, diversity within the MNHRC is lacking and while the law sets out requirements for the diversity of commissioners, it is not followed in practice. After public outcry over the MNHRC's handling of the domestic workers case (see above), four commissioners resigned, including the only two female commissioners. It took eighteen months for three new commissioners to be appointed, which included just one woman. A recent round of appointments in 2020 has resulted in a total of four out of the eleven commissioners being women.⁸ The plurality of the commissioners such as gender balance, ethnic and minority representation, and human rights experience must also be added as a requirement for all staff.



Recommendation

- Establish a quota for different criteria to ensure pluralism, such as by specifying that at least a third of both the body's membership and staff are women and are from ethnic and religious minorities respectively, as well as from civil society with human rights experience.

7 Wai Mar Tun, Ye Tike, and Tin Aung Khine, 'Myanmar Human Rights Commission Backs Army's Story of Kyauktan Shootings,' Radio Free Asia, 13 June 2019, available at: <https://www.rfa.org/english/news/myanmar/story-06132019170639.html>.

8 Myanmar President Office Facebook Page, accessed 12 January, 2020, <https://www.facebook.com/myanmarpresidentoffice.gov.mm/posts/1624255190955544>.

Adequate Funding and Financial Independence



Challenges: A significant challenge to the MNHRC is its autonomy over its finances and adequacy of its funding. In order to guarantee its independence and determine its priorities and activities, the MNHRC must be provided adequate resources.



Cases, Facts, Comments: During the 2nd Cycle of the UPR, Myanmar supported the recommendation of Republic of Korea to “*Provide all necessary assistance in order that the national human rights institution is able to operate at full capacity and continue judicial reforms, including the increased capacity building of judicial institutions.*”⁹

The MNHRC Law states that “*The State shall provide the Commission with adequate funding*”¹⁰ yet the commission believes it is underfunded, especially as regards staffing with Vice-Chair, Sitt Myaing claiming in 2017 that they needed 300 staff to fulfil their mandate, but only could afford to hire 57.¹¹ Additionally, regional offices need to be opened to ensure marginalized groups in ethnic areas are able access justice through the MNHRC mechanisms.



Recommendations

- Establish an independent mechanism for dismissal of Commissioners with clear procedural rules and criteria to determine if commissioners are unable to fulfil their mandate.
- Specifically stipulate that the funds for the MNHRC should be allocated through parliamentary vote.
- Ensure that the budget is transparent and publicly available, for instance by adding a line in the national budget for the MNHRC budget.
- Open more branch offices in the rural areas with sufficient resources to educate marginalized, vulnerable, particular ethnic and religious minority communities about the MNHRC’s mandates to protect and promote human rights.

Interaction with the International Human Rights System



Challenges: Despite the MNHRC’s assertion that they did submit independent reports to CEDAW and the UPR, questions have been raised over their autonomy and impartiality.

9 Report of the Working Group on the Universal Periodic Review, UN Human Rights Council, A/HRC/31/13 – Para. 143.48 Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/290/35/PDF/G1529035.pdf?OpenElement>.

10 The Myanmar National Human Rights Commission Law, Section, 46.

11 ‘MNHRC failing to protect human rights, says NGOs,’ DVB, 4 December, 2017. Available at <http://www.dvb.no/news/mnhrc-failing-to-protect-human-rights-say-ngos/78709>.



Cases, Facts, Comments: The MNHRC must be to provide information to international human rights mechanisms, and while it is appropriate to give information to the Myanmar government in preparation for reporting to human rights mechanism, this should be with clear boundaries.

The MNHRC has recommended that the Myanmar government accede to the International Covenant on Economic, Social and Cultural Rights which Myanmar did ratify in October 2017.¹² While this push to the government is welcome, given that Myanmar has only ratified the Convention on the Rights of the Child, CEDAW and the Convention on the Rights of Persons with Disabilities, the MNHRC must now continue to push for the ratification of the remaining core international human rights treaties, in particular the ICCPR and CAT as well as optional protocols.



Recommendations

- Ensure that the work of the MNHRC adheres to international agreements relevant to NHRIs such as the Paris Principles, the Merida Declaration, Marrakech Declaration and the Belgrade Principles.¹³
- Refrain from interfering in the MNHRC's investigations and demonstrate the political will to respect and undertake recommendations from the MNHRC.

Protecting Human Rights Defenders



Challenges: The MNHRC should be an ally to human rights defenders, ensuring they are protected while conducting their vital human rights work. The actions and omissions of the MNHRC show an unwillingness to challenge the government and military for attacks on human rights defenders.



Cases, Facts, Comments: During the reporting period, the leadership of the MNHRC decided to focus disproportionately on 'long-term' human rights promotion which comes at the expense of the type of protection needed. One example of this is the case of the two Reuter's journalists, Kyaw Soe Oo and Wa Lone, who were arrested for reporting on grave human rights atrocities against Rohingya in Rakhine State. After the pair were sentenced to seven years imprisonment, the MNHRC stated "*According to the Myanmar National Human Rights Commission Law, the Commission has no particular comment on the sentencing of the two journalists.*"¹⁴

12 The Myanmar National Human Rights Commission Annual Report 2016 (English).

13 The Merida Declaration describes the role of NHRIs in implementing the Sustainable Development Goals and the Belgrade Principles outline how NHRIs and legislative bodies should work together.

14 'Statement on the sentencing of journalists Ko Wa Lone and Ko Kyaw Soe Oo of Reuters News Agency,' MNHRC, 4 September, 2018, available at: <http://www.mnhrc.org.mm/en/statement-on-the-sentencing-of-journalists-ko-wa-lone-and-ko-kyaw-soe-oo-of-reuters-news-agency-statement-no-92018/>.



Given that the police set up the two journalists on orders from their superiors, and that this was a planned sting operation to stop them reporting on the atrocities against the Rohingya, the trial itself represents a grave miscarriage of justice. Any statement by the MNHRC should have, at the very least, pointed out the legitimacy of their work as journalists, and how the charges and subsequent trial and sentencing were a violation of their human rights including to freedom of expression and a fair trial. It also reflects on other concerns raised during the 2nd Cycle of the UPR, including freedom of expression, a recommendation made by New Zealand and supported by Myanmar, as well as Fair Trial Rights, as recommended by Singapore among others, and supported by Myanmar.



Recommendation

- Allow the 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.”

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During the reporting period, the Myanmar National Human Rights Commission (MNHRC) has persistently suffered a public legitimacy deficit with concerns over the transparency of the commissioner selection process, the closeness of commissioners to the previous military regime, a perceived lack of effectiveness, and lack of a human rights mindset.



This factsheet is based on a joint submission made to the UN Universal Periodic Review, 37th Session of the Working Group entitled “Myanmar National Human Rights Commission.” The submission is a joint submission by The CSO Working Group on MNHRC Reform (“The Working Group”). The Working Group was formed in January 2019 and advocates for reform of the Myanmar National Human Rights Commission 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 Working Group is comprised of 22 Myanmar civil society organizations from diverse backgrounds.

1. Action Committee for Democracy Development
2. Assistance Association for Political Prisoners
3. Association of Human Rights Defenders and Promoters
4. Athan – Freedom of Expression Activist Organization
5. Burma Monitor (Research and Monitoring)
6. Equality Myanmar
7. Future Light Center
8. Generation Wave
9. Genuine People’s Servants
10. Human Rights Educators Network
11. Human Rights Foundation of Monland
12. Kachin Women’s Association Thailand
13. Karen Human Rights Group
14. Karenni Human Rights Group
15. Loka Ahlinn (Social Development Network)
16. Metta Campaign – Mandalay
17. Myanmar People Alliance (Shan State)
18. Progressive Voice
19. Synergy (Social Harmony Organization)
20. Ta’ang Women’s Organization
21. The Seagull: Human Rights, Peace & Development
22. Yangon Watch

For further evidence and data, please access the joint stakeholder submission at the following links: <https://bit.ly/2Rqngsa>

For more information, please contact:

Nang Zun Moe, Executive Director, Progressive Voice, info@progressive-voice.org