



**"YOU'RE
THE DEVIL
IN DISGUISE"**

**THE DUPLICITOUS,
OBSOLETE MNHRC**

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You're the Devil In Disguise: the duplicitous, obsolete MNHRC

This report, produced by the CSO Working Group on MNHRC Reform and the Asian NGO Network on National Human Rights Institutions (ANNI), is the extended Myanmar chapter of "ANNI Report 2020 on the performance and establishment of National Human Rights Institutions in Asia". The full report can be found here: https://www.forum-asia.org/uploads/wp/2021/12/ANNI-Report_Pages.pdf

About the CSO Working Group on MNHRC Reform:

The CSO Working Group on MNHRC Reform consists of 22 diverse Myanmar civil society organizations that works to advocate for the reform of the MNHRC so it is an effective, independent, and transparent NHRI that promotes and protects the rights of all people of Myanmar in line with the Paris Principles – the international standards for NHRIs.

About ANNI

About the Asian NGO Network on National Human Rights Institutions (ANNI) The Asian NGO 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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CSO Working Group on
Myanmar National Human Rights Commission Reform

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#ReformMNHRC



01

INTRODUCTION

This paper seeks to examine the performance of the Myanmar National Human Rights Commission (MNHRC or Commission) reflecting international standards of the Paris Principles and the General Observations of 2018. Additionally, this paper will utilise desk research and coordination with civil society on the ground in Myanmar, which covers the period of late 2019 through to the beginning of 2021.¹ The desk research consists of document analysis of MNHRC statements, its founding law, its own capacity assessment, media reports, and reports by civil society. This paper is authored by the members of the CSO Working Group on MNHRC Reform (Working Group), a membership-based network of 22 Civil Society Organizations jointly working to reform the MNHRC, which was founded in January 2019 and the Asian NGO Network on National Human Rights Institutions (ANNI). This will also build on previous ANNI reports that employed field research in the form of key stakeholder interviews.

Tracing the events throughout the reporting period, this chapter shows how the endemic flaws in the structural integrity of the MNHRC's legal framework led to its eventual capitulation in the aftermath of 1 February 2021, when the Myanmar military attempted to seize power through a brutal attempted coup d'état following the 2020 general elections where the National League for Democracy (NLD), once again, won a landslide victory. Since then, the MNHRC has been an active participant with and unwavering in its loyalty to the military junta, failing the people of Myanmar by relinquishing its mandate and basic function to promote and protect human rights. Furthermore, they have been cooperating, meeting with and taking orders from the military junta, bowing to unlawful seizure of power by the military and ignoring democratic norms.² For the purpose of this chapter, the evaluation of the MNHRC's performance is mainly focused on the latter half of 2019 to the end of 2020, but this will undoubtedly

1 The research in this report was compiled by Progressive Voice on behalf of the CSO Working Group on MNHRC. The MNHRC Working Group consists of 22 diverse Myanmar civil society organizations that work to advocate for the reform of the MNHRC so it is an effective, independent, and transparent NHRI that promotes and protects the human rights of all people in Myanmar in line with the Paris Principles – the international standards for NHRIs." : info@progressive-voice.org / reformmnhrc@gmail.com

2 'Union Minister Dr. Thet Thet Khine Received Officials from MNHRC,' The Global New Light of Myanmar, 19 May 2021. Available at <https://www.gnlm.com.mm/#article-title-thet-thet-khine-receives-officials-from-mnhrc/#article-title>

be coloured by the events of the attempted coup d'état. During the first half of 2021, a period in which 1,303 people were killed, 10,727 arrested, 7,796 still in detention, over 75 children killed³ and the escalation of conflict in ethnic areas occurred has resulted in over 230,000 displaced persons, the MNHRC has remained deadly silent and ultimately complicit in these horrific human rights violations.⁴ Crucially, the site of conflict has spread all throughout Myanmar — Kachin, Karen, Karenni, Shan and Chin states, as well as Sagaing, Bago, Magway and Mandalay regions.

In a statement, civil society organizations strongly called upon the MNHRC to denounce the coup attempt and stand with the people of Myanmar but these calls were also met with silence, with the commission continuing business-as-usual while the people of Myanmar suffer.⁵ The acts and omissions of the Commission in the wake of attempted coup d'état may not come as a great surprise given the flaws of MNHRC Law, the mindset of the commissioners, lack of independence and partial treatment of the Myanmar military.

3 Assistance Association for Political Prisoners, 'Daily Brief in Relation to the Military Coup'. Available at <https://aappb.org/?p=16085>

4 'Nearly 230,000 Displaced in Fighting Between Junta and Militias, Ethnic Armies Since Military Coup', Radio Free Asia, 9 June 2021. Available at <https://www.rfa.org/english/news/myanmar/displaced-06092021204154.html>

5 'Myanmar Nation Human Rights Commission: Denounce the Coup, Stand with the People of Myanmar,' CSO Working Group on MNHRC Reform, 11 February 2021. Available at <https://progressivevoicemyanmar.org/2021/02/11/myanmar-national-human-rights-commission-denounce-the-coup-stand-with-the-people-of-myanmar/>

02

OVERVIEW

The MNHRC was established by presidential decree in 2011⁶ and its 2014 enabling law – the Myanmar National Human Rights Commission Law – set its formal mandate.⁷ It currently has 11 Commissioners and has gone through one round of accreditation by the Global Alliance of National Human Rights Institutions’ (GANHRI) Sub-Committee on Accreditation (SCA). It was awarded with ‘B’ Status in November of 2015, indicating that it failed to reach the standard of full compliance with the Paris Principles.⁸ In reference to the GANHRI-SCA report of 2015, this paper will analyse the aspects of the MNHRC which the report flagged as problematic:

a) Selection and Appointment of Commissioners – The GANHRI-SCA pointed to the selection and appointment process as a key concern for the MNHRC, especially in terms of guaranteeing independence from the reaches of the executive or military. The

composition of the Selection Board are mostly members of government, includes a military appointee, and only two representatives from ‘registered’ NGOs selected by the President.⁹ This does not ensure a transparent and participatory selection process, especially given the cumbersome registration process and restrictive laws which automatically exclude a large proportion of civil society organizations, in Myanmar, particularly rights-based and those critical of the military, and this process has been repeatedly conducted outside the public view. One of Selection Board members is a military appointee, the Minister of Home Affairs. Additionally, the Selection Board must be comprised of two members of parliament, which could be drawn from the unelected military officials, which fill 25 percent of parliament seats as prescribed by the deeply flawed military-drafted 2008 Constitution. The Constitution has subsequently been abolished

6 President Thein Sein, ‘Formation of Myanmar National Human Rights Commission’, 5 September, 2011, available at <http://www.burmapartnership.org/2011/09/formation-of-myanmar-national-human-rights-commission/>.

7 The Myanmar National Human Rights Commission Law, 28 March 2014, Section 3, available at http://www.burmalibrary.org/docs23/2014-03-28-Myanmar_Human_Rights_Commission_Law-21-en.pdf.

8 Report and Recommendations of the Session of the Sub-Committee on Accreditation’, GANHRI, November 2015, Section 2, available at https://www.nhri.ohchr.org/EN/AboutUs/GANHRI/Accreditation/Documents/SCA_FINAL_REPORT

9 Article 5(h) MNHRC Law

by the legitimate governing body of Myanmar, the National Unity Government, following the attempted coup d'état.¹⁰

The MNHRC members were reconstituted on 14 January 2020 without the procedural safeguards to ensure merit-based selection, independence, transparency and pluralism. This was despite calls from civil society organizations for a transparent process, in the months preceding the reconstitution when the Selection Board was convened.¹¹ In September 2019, 7 of the 10 commissioner's terms expired, and without warning all 10 commissioners were dismissed and replaced with 11 new commissioners – none of whom have received formal education, or have necessary experience related to human rights.¹² This was made public through a short statement on the Facebook page of the President's Office, with no details regarding the selection process.¹³ The GANHRI-SCA emphasised how the MNHRC should publicise vacancies broadly, promote broad consultation in selection process, assess applicants on an individual basis of pre-determined objection criteria, and include selection of candidates from a wide range of societal groups and education qualifications.¹⁴ One of the root impediments to the MNHRC fulfilling its mandate to promote and protect human

rights is the background and commitment to human rights of the commissioners – similar to previous commissioners, the commissioners who were chosen lack basic human rights experience.

b) National Institutions Operating in Situations of Internal Unrest or Internal Armed Conflict

– The GANHRI-SCA referenced the concerns of Myanmar civil society organizations and the Human Rights Council regarding ongoing armed conflict and internal unrest. During such times, an NHRI is expected to *“conduct themselves with a heightened level of vigilance and independence.”*¹⁵ Disruptions to peace and security do not nullify or diminish the responsibility of the NHRI.¹⁶ Thus, their activities in response to internal unrest, coup d'état or internal armed conflict should include, but is not limited to: monitoring and documenting human rights violations; issuing public statements and releasing regular reports on human rights violations publicly; rigorous and systematic follow-up activities; and advocate for implementation of findings and recommendation to ensure the protection of victims of human rights violations and access to effective remedies to combat impunity.¹⁷

- 10 After the arrest of Myanmar's leadership, the remaining members of parliament formed 'The National Unity Government' as the executive body for Myanmar, and 'The Committee Representing the Pyidaungsu Hluttaw' as the legislative body – reflecting 76% of the elected members of parliament from the 8 November 2020 Elections. They abolished the military drafted 2008 Constitution and replaced it with an interim Federal Charter. 'Myanmar Military Should End its Use of Violence and Respect Democracy', Statement by 123 Civil Society Organisations, 1 February 2021. Available at <https://progressivevoicemyanmar.org/2021/02/01/myanmar-military-should-end-its-use-of-violence-and-respect-democracy/>
- 11 'Civil Society Organizations Call for the Selections Process of New Commissioner for The MNHRC to be Transparent' Statement from the Working Group on MNHRC Reform, 10 December 2019. Available at <https://progressivevoicemyanmar.org/2019/12/10/civil-society-organizations-call-for-the-selection-process-of-new-commissioners-for-the-mnhrc-to-be-transparent/>
- 12 Nyein Nyein, "Reform of Myanmar Human Rights Commission Lacks Transparency, Critics Say", The Irrawaddy, 15 January 2020. Available at <https://www.irrawaddy.com/news/burma/reform-myanmar-human-rights-commission-lacks-transparency-critics-say.html>. 'Commissioners', MNHRC. Available at <http://www.mnhrc.org.mm/en/about/commissioners/>
- 13 Order No. 3/2020 of the President's Office, Republic of the Union of Myanmar. Available at <https://web.facebook.com/myanmarpresidentoffice.gov.mm/photos/pcb.2618351631545890/2618349634879423/>
- 14 'Report and Recommendations of the Session of the Sub-Committee on Accreditation', GANHRI, November 2015, Section 2, available at https://www.nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA_FINAL_REPORT_-_NOVEMBER_2015-English.pdf.
- 15 Ibid
- 16 'General Observations of the Sub-Committee on Accreditation' GANHRI, 21 February 2018, Section 2.5. Available at https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf
- 17 'Report and Recommendations of the Session of the Sub-Committee on Accreditation', GANHRI, November 2015, Section 2, available at https://www.nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA_FINAL_REPORT_-_NOVEMBER_2015-English.pdf.

During the reporting period, conflict within Kachin, Karen, Rakhine, Chin and Shan States, predominantly between the Myanmar military and ethnic armed organisation (EAOs) has escalated to unprecedented levels. Increased militarisation, isolated military attacks and burmanisation policies to oppress ethnic communities have also escalated, especially in Karen, Mon and Karenni States.¹⁸ However, the MNHRC has been unresponsive to gross human rights violations resulting from conflict, including potential atrocity crimes and resulting humanitarian crises.

c) Pluralism – The GANHRI-SCA emphasised the importance of diversity for the MNHRC, among both commissioners and staff. Four of the 11 commissioners appointed are women, and while an improvement from the previous composition of the commission, a gender balance has not been reached. Furthermore, the commissioners do not reflect the diversity of Myanmar, in terms of age, qualifications, disability, social class, ethnicity, religion, sexual orientation, gender identity or gender expression, among others. It appears that not one of the commissioners selected in January 2020 has any formal human rights training, work within civil society or other experience – apart from the Chairperson who represents Myanmar on the ASEAN Intergovernmental Commission on Human Rights.¹⁹ Many are well educated but have strong links with previous

military regimes, government or within the upper echelons of the ruling elite. One commissioner, U Tin Aung, was a General within the Myanmar military during the Rohingya Genocide and Rakhine conflict – which should be a disqualifying factor.²⁰

d) Adequate Funding and Financial Independence –

The GANHRI-SCA noted the MNHRC needed adequate funding to ensure its independence and its ability to freely determine its own priorities and activities. Since then, in a positive development, the MNHRC has subsequently submitted its budget to parliament for allocation instead of the executive but this is not codified in law. Additionally, in the MNHRC's Strategic Plan Report for 2020-2024, it willingly admitted to shortfalls in staffing and budget allocations.²¹

e) Monitoring places of deprivation of liberty –

The GANHRI-SCA noted that while the MNHRC can visit prisons and detention centres, it cannot do so unannounced. It is recommended that the MNHRC have the agency to visit unannounced on an ad hoc basis to limit the opportunities for authorities to conceal human rights abuses and instead provide greater scrutiny. During the reporting period, the MNHRC has been making regular visits to prisons and detention centres, publishing on their website and within the news media.²²

18 'Terror from the Skies' Karen Peace Support Network, May 2021. Available at https://www.karenpeace.org/wp-content/uploads/2021/05/Terror-from-the-Skies_Briefing_KPSN_English.pdf 'KNU: Burma Army Militarization Forces Karen to Flee Villages – Government Used National Ceasefire Agreement to Increase its Troops in Brigade 5 and 7', Karen News, 2 June 2020. Available at <http://karennews.org/2020/06/knu-burma-army-militarization-forces-karen-to-flee-villages-government-used-national-ceasefire-agreement-to-increase-its-troops-in-brigades-5-and-7/> 'NayPyiDaw's Weaponization of the Ceasefire in Karenni State', Karenni Civil Society Network, 14 December 2020. Available at <https://progressivevoicemyanmar.org/2020/12/14/naypyidaws-weaponization-of-the-ceasefire-process-in-karenni-state/> 'Newly Elected NLD-led Government Must Work to End Burmanization', Progressive Voice, 26 November 2020. Available at <https://progressivevoicemyanmar.org/2020/11/26/newly-elected-nld-led-government-must-work-to-end-burmanization/>

19 'Commissioners', MNHRC. Available at <http://mail.mnhrc.org.mm/en/about/commissioners/>

20 'U Tin Aung', MNHRC. Available at <http://www.mnhrc.org.mm/en/commissioner/u-tin-aung/>

21 'Strategic Plan Report 2020-2024', MNHRC, 23 October 2019. Available at <http://128.199.112.250/en/publication/sp-eng/>

22 'The Myanmar National Human Rights Commission (MNHRC) on its inspection of prisons, jails and lock-ups in Myanmar 2020,' The Global New Light of Myanmar, 13 August 2020. Available at <https://bit.ly/3yRFuay>.

However, this reporting period has been marred with instances of torture, mistreatment, and death in custody, particularly in conflict-affected areas – most of which remain unacknowledged by the MNHRC.²³

f) Interaction with the international human rights system –

The GANHRI-SCA encourages the MNHRC to cooperate with international human rights bodies independently of the Government, “*in their own right*”.²⁴ The MNHRC engaged in the 3rd Universal Period Review (UPR) at the Human Rights Council in November 2020, nevertheless much of their submission echoed the Government’s positioning, unobjectively glossed over or ignored grave human rights violations committed during the UPR period covering 2015 - 2020, including the Rohingya Genocide.²⁵ The MNHRC did make a submission to the Committee on Persons with Disabilities for Myanmar’s country review in July 2019 but did not furnish a submission to the review of Myanmar by the Committee on the Elimination of Discrimination Against Women (CEDAW).²⁶

g) Annual Report –

The GANHRI-SCA recommends that annual reports be presented to parliament to be examined, discussed and then published widely. Currently, the MNHRC Law requires these reports to be produced annually and submitted through

the parliament and President’s Office.²⁷ The MNHRC has not furnished a report for 2018, 2019 or 2020 publicly, raising concerns within civil society over deteriorating functionality of the MNHRC.²⁸

In terms of track record, many of these issues were raised by civil society when the MNHRC Law was drafted in 2013, by the GANHRI-SCA in 2015 and since then. Yet, these flaws have not been remediated. While the MNHRC has acknowledged and sought to address some of these concerns such as in relations to seeking adequate and independent funding, other issues regarding a lack of pluralism and how it operates in politically fraught situations or situations of internal unrest or armed conflict remain fundamentally neglected and unresolved. One consistent problem, not mentioned by GANHRI-SCA but required by the Paris Principles, is the MNHRC’s failure to communicate and publicise opinions, reports and recommendations openly, especially when the government and military are involved.²⁹ This problem has manifested due to the fundamental lack of a human rights mindset at the Commission, starting with the commissioners.

23 Assistance Association for Political Prisoners, 2020 Chronology. Available at <https://aappb.org/?cat=103>

24 Report and Recommendations of the Session of the Sub-Committee on Accreditation’, GANHRI, November 2015, Section 2., available at https://www.nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA_FINAL_REPORT_-_NOVEMBER_2015-English.pdf.

25 ‘The Submission of the Myanmar National Human Rights Commission to the Third Cycle of the Universal Periodic Review (UPR) of the United Nations Human Rights Council’, Available at https://www.upr-info.org/sites/default/files/document/myanmar/session_37_-_january_2021/mnhrc_upr37_mmr_e_main.pdf

26 ‘A Report to the United Nations Committee on the Rights of Persons with Disabilities,’ Submitted by the MNHRC, 12 July 2019. Available at <http://128.199.112.250/app/uploads/2019/07/MNHRC-Independent-Report-on-CRPD.pdf>

27 Section 22(b)(i) MNHRC Law

28 ‘Publications’ MNHRC Webpage. Available at <http://mail.mnhrc.org.mm/en/publication/>

29 Principles relating to the Status of National Institution (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993, Methods of Operation (c). Available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

Since the previous ANNI report in 2019, civil society organizations have been actively advocating for the reform of the MNHRC, reflecting the recommendations of GANHRI-SCA and the Paris Principles.³⁰ The MNHRC has identified some of the issues and shortcomings discussed above within their Capacity Assessment Report 2018, Operational Plan 2020 and Strategic Plan 2020-2024, facilitated with the assistance of the United Nations Development Programme, Asia Pacific Forum and the Office of the High Commissioner of Human Rights.³¹ The Strategic Plan 2020-2024, the most relevant of these publications as it subsumes the other two, identifies six strategic goals:³²

1. Inspire greater public trust and confidence in MNHRC

- » **Indicator:** advocating for amendments to the MNHRC Law, accessibility for all vulnerable people to the MNHRC and advocacy and communications.

2. Create a human rights culture in Myanmar through education and awareness raising

- » **Indicator:** Nationwide education strategy with multi-language materials, especially in schools.

3. Reduce human rights violations in Myanmar

- » **Indicator:** (a) Monitoring visits of prisons and detentions centres, conflict zones, IDP Camps, Mental Hospitals, age care facilities and training schools and orphanages; (b) Conduct an inquiry on grave and large scale human rights violations with public reports; (c) Review existing complaints mechanisms, including building public confidence; (d) Put in place a follow-up mechanism to monitor Government implementation of MNHRC recommendations; (e) Establish a data base on human rights violations; (f) Develop a National Human Rights Action Plan; and (g) Providing advice to Legislature, Executive and Judiciary on human rights.

4. Protect and promote human rights through ratification of international human rights treaties

- » **Indicator:** Review international human rights treaties not ratified by Myanmar and support government to ratify them.

30 'Civil Society Organizations Call for the Selections Process of New Commissioner for The MNHRC to be Transparent' Statement from the Working Group on MNHRC Reform, 10 December 2019. Available at <https://progressivevoicemyanmar.org/2019/12/10/civil-society-organizations-call-for-the-selection-process-of-new-commissioners-for-the-mnhrc-to-be-transparent/> 'CSO Working Group on MNHRC Reform Call on the Myanmar Government to Deliver on Commitments Made During its Human Rights Review,' Statement from the Working Group on MNHRC Reform, 23 September 2020. Available at <https://progressivevoicemyanmar.org/2020/09/23/cso-working-group-on-mnhrc-reform-call-on-the-myanmar-government-to-deliver-on-commitments-made-during-its-human-rights-review/>

31 Publications' MNHRC Webpage. Available at <http://mail.mnhrc.org.mm/en/publication/>

32 'MNHRC Strategic Plan 2020-2024'. Available at <http://mail.mnhrc.org.mm/en/publication/sp-eng/>

5. Protect and promote human rights through engagement with international human rights mechanisms and organizations

- » **Indicator:** Engage with the UN Universal Period Review, and UN Special Procedures, Rapporteurs, Working Groups, Treaty Bodies, and play a role in international and regional human rights fora.

6. Develop a team of staff of well-qualified committed personnel at all levels of MNHRC

- » **Indicator:** Develop human resources, recruit qualified staff to full capacity of 305 by 2023, increase staff involvement in planning, and increase budget and technical assistance from international partners.

The MNHRC openly consulted with civil society on the drafting of the Strategic Plan 2020-2024, but the time frame for submission was very short for an important and long-term strategy and many criticism by CSOs remain unaddressed.³³ The MNHRC describes many key indicators that would need to be actualised for these goals to be achieved. Unfortunately, there is an appreciable gap between these goals and the actions and activities conducted by the MNHRC, and in many cases there is a clear regression away from these goals and the Paris Principles. The mindset of the commissioners and the flaws in the law restrict them from fully carrying out these goals. From late 2019 when the Strategic Plan was published until the beginning 2021, the activities conducted by the MNHRC has slowed almost to a standstill.

33 "5 Gaps in MNHRC's Draft Strategic Plan," Statement, Freedom of Expression Myanmar, 19 August 2019. Available at <https://progressivevoicemyanmar.org/2019/08/19/5-gaps-in-mnhrcs-draft-strategic-plan/>

03

MNHRC'S PERFORMANCE IN PROTECTING AND PROMOTING HUMAN RIGHTS

An appreciable gap exists between the mandate of the MNHRC and the effectuation of the mandate, and an even larger gap between requirements of an NHRI under the Paris Principles and effectuation of these principles by the MNHRC. Specific instances of this will be selected to highlight the duplicity of the MNHRC. Generally, the focus of the MNHRC leans on less politically sensitive promotion of human rights, with protection falling to the wayside. While many of the activities conducted by the MNHRC are commendable in and of themselves, within the wider context of the human rights situation in Myanmar as these issues are low hanging fruit.

Legislation

Under article 22(b)(i), the MNHRC is mandated with protecting human rights through reviewing the legislative functions of government, drafting laws and existing laws for their consistency with international human rights law. The MNHRC

participated in the UPR, making two submissions, one reviewing the government's performance and the other on freedom of expression.³⁴ While the MNHRC has openly recommended the government accede to the ICCPR and CAT, it has omitted ICERD – discrimination on the basis of race is a pervasive problem in Myanmar and highlighted by States in successive UPR review.³⁵ The MNHRC has pushed for the deeply flawed draft Prevention and Protection of Violence Against Women Bill to be passed by the government,³⁶ which is inconsistent with CEDAW, and which falls abundantly short of adequately addressing the issue of violence against women.³⁷ Also, the MNHRC supports the government's National Camp Closure Strategy – which would, among other rights violations, deny internally displaced persons the right to return home and the right to property and housing rights restoration restitution under the Pinheiro Principles. However, in reality, hundreds of thousands of people remain in horrific conditions without basic necessities.³⁸

34 The Submission of the Myanmar National Human Rights Commission to the Third Cycle of the Universal Periodic Review (UPR) of the United Nations Human Rights Council (the MNHRC UPR Submission), January 2021, Accessed at https://www.upr-info.org/sites/default/files/document/myanmar/session_37_-_january_2021/mnhrc_upr37_mmr_e_main.pdf; 'How much freedom of expression is enjoyed in Myanmar', MNHRC, January 2021, available at https://www.upr-info.org/sites/default/files/document/myanmar/session_37_-_january_2021/1._myanmar_national_human_rights_commission_stmt.pdf

35 'Recommendations', Human Rights Council Universal Periodic Review, Myanmar Review 2015. Available at www.upr-info.org/en/review/Myanmar/Session-23---November-2015/Responses-to-Recommendations#top

36 The Submission of the Myanmar National Human Rights Commission to the Third Cycle of the Universal Periodic Review (UPR) of the United Nations Human Rights Council (the MNHRC UPR Submission), January 2021, Accessed at https://www.upr-info.org/sites/default/files/document/myanmar/session_37_-_january_2021/mnhrc_upr37_mmr_e_main.pdf

37 Samira Sadeque, 'Myanmar's Protection Bill Falls Short of Addressing Violence against Women', IPS NEWS, 28 July 2020, available at <http://www.ipsnews.net/2020/07/myanmars-protection-bill-falls-short-of-addressing-violence-against-women/>.

38 Guiding Principles on Internal Displacement and the United Nations Principles on Housing and Property Restitution for Refugees and Internally Displaced Persons 'Pinheiro Principles'. Available at <https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html> and https://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf

The MNHRC has generally painted a rosy picture of the government's performance during the UPR reviewing period, covering up the genocide of the Rohingya, crimes against humanity, war crimes and countless untold abuses – none of which the MNHRC covered in the UPR. Additionally, during the reporting period many blatantly discriminatory laws continued to be enforced, with the MNHRC not willing to push the government to seek reform, including the four highly discriminatory set of Race and Religion Laws and the 1982 Citizenship Law used to disavow Rohingya and other Muslim minorities the right to citizenship, vote and religious freedom.

Education on Human Rights and CSO engagement

Much of the MNHRC's focus is placed on conducting seminars, informal gatherings and workshops on human rights issues, including a one-day disability inclusion training for 30 commissioners and staff members,³⁹ donating books on anti-corruption,⁴⁰ International Human Rights Day online event and online Facebook quiz to engage the general public on human rights issues.⁴¹ The MNHRC went to educational institutions to give speeches on human rights, including Defence University students, Yangon Police Academy students, Fire Department Training School and primary schools.⁴² It is unclear if the MNHRC monitors the outcomes or seek to review the effectiveness of such activities. What is

clear is that many of these activities do not enable the participants to experience human rights in practice, as the flow on effect of the MNHRC's unwillingness to engage in all aspects of human rights promotion and protection.

The MNHRC had little engagement with civil society during the reporting period, centred mostly around CSOs based in Yangon and more commonly with CSOs the MNHRC has an existing working relationship with.⁴³ Other than these groups, there has been no other publicly reported collaboration between the MNHRC and civil society for the furtherance on human rights. While the MNHRC often touts its activities and connections with civil society, often these do not bear fruit in terms of meaningful change or MNHRC run projects – such as with the LGBTQI community (see below).⁴⁴ The MNHRC's mandate and the Paris Principles requires a close link to civil society to strengthen rights.⁴⁵

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

The MNHRC is consistently and actively conducting prison visits, which they report publicly. In 2020 the MNHRC visited 12 prisons, 9 jails, 11 police detention facilities, 10 court lockups, 2 labour camps and 5 hospital lockup, interviewing a total of 404 detainees.⁴⁶ The MNHRC is required to inspect

39 'Disability Inclusion: Training on Disability Inclusion for Commission Staff Kicks Off', MITV, 3 July 2020. Available at <https://www.myanmaritv.com/news/disability-inclusion-training-disability-inclusion-commission-staffs-kicked>

40 'Donation of Anti-Corruption Books' Available at <https://www.facebook.com/myanmarnhrc/photos/pcb.641979063065873/641978793065900/>

41 'Donation of Anti-Corruption Books', 10 June 2020. Available at <https://www.facebook.com/myanmarnhrc/photos/pcb.641979063065873/641978793065900/>

42 Update to 'MNHRC speaks at Defense University (8 October 2020), Primary School (5 March 2020) and Police Academy (13 March 2020). Available at <https://www.facebook.com/myanmarnhrc/photos/pcb.588956801701433/588956581701455/> <https://www.facebook.com/myanmarnhrc/photos/pcb.588862481710865/588862211710892/> <https://www.facebook.com/myanmarnhrc/photos/pcb.586612725269174/586612168602563/>

43 Statement of Myanmar National Human Rights Commission on 72nd International Human Rights Day on 10 December 2020. Statement No. 15/2020. Available at <http://www.mnhrc.org.mm/en/s152020eng/>. The MNHRC recounts its CSO connections.

44 Ibid

45 Paris Principles and MNHRC Law. Available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx> and https://www.burmalibrary.org/docs23/2014-03-28-Myanmar_Human_Rights_Commission_Law-21-en.pdf

46 'Statements', MNHRC, 2020. Available at <http://www.mnhrc.org.mm/en/statements-2/>

places of confinement and interview detainees privately, especially when notified of a human rights violation.⁴⁷ According to the enabling Law, prior notification must be given to the prison or place of confinement before the visit, limiting the ability of the MNHRC to conduct a fair assessment.⁴⁸ Often they issue a brief statement of outcomes to the visits but very little provided in terms of substantive public-facing recommendations to improve conditions of those deprived of liberty, especially in light of credible reports from the Assistance Association for Political Prisoners and news outlets of torture in confinement, and rife impunity for these crimes.⁴⁹

One prominent example is of two youth, Pyae Phyo Maung and Khaing Zaw Tun, who were allegedly killed after being disciplined by two older inmates after attempting to run away, an accepted practice at the centre where older detainees discipline younger detainees.⁵⁰ MNHRC Commissioners visited the centre and referred the matter, which recommended the Ministry of Home Affairs and Ministry of Social Welfare, Relief and Resettlement to investigate the alleged killings and the actions of those responsible for overseeing the care of children. Mandalay Youth Center staff initially lied to the parents of the victims, saying they had drowned in order to escape culpability. The centre is woefully understaffed with around 500 detainees and approximately 25 staff members,

in a facility built to house 200 and on the day of the murders there were only 5 staff present.⁵¹ The Convention on the Rights of the Child (CRC), which Myanmar is a party to, requires special protections for children in the custody of the State including positive obligations to ensure the best interests of the child, the right to life, safety and wellbeing, suitable staffing and competent supervision – which were clearly not observed in this case.⁵²

This information was not available on the MNHRC website, and even though they chose to investigate the matter themselves – conclusions were made hastily after visiting the Mandalay Youth Center 7 August 2020 and rendering a decision on 12 August 2020. These conclusions made by the MNHRC were limited to the poor adherence to rules and regulations and insufficient staffing at the centre, without mentioning human rights standards (such as the CRC). Nor did they mention the fact that detention of Pyae Phyo Maung and Khaing Zaw Tun and children generally should be a last resort, not a punishment for a petty theft on a first offence - which was the case for these two young men. Additionally, none of their detailed recommendations or the referral were disclosed to the public or followed up with to our knowledge.⁵³

Since the killings the Commission has not visited other youth centres in Myanmar.⁵⁴ Additionally, the wider institutional failures of the government

47 Article 22(e), 43, 44 and 45 MNHRC Law

48 Article 44(a) MNHRC Law

49 Assistance Association for Political Prisoners, 2020 Chronology, available at <https://aappb.org/?cat=103>.

50 Ibid.

51 Khin Hnin Wai 'They Lied to Us' – families hit out at juvenile prison after murder of two inmates', Myanmar Now, 12 August 2020. Available at <https://www.myanmar-now.org/en/news/they-lied-to-us-families-hit-out-at-juvenile-prison-after-murder-of-two-inmates> Zami Mann 'Myanmar Human Rights Body: Killings at Mandalay Youth Centre Tied to Rule Breach, Staff Shortage', The Irrawaddy, 12 August 2020. Available at <https://www.irrawaddy.com/news/burma/myanmar-human-rights-body-killings-mandalay-youth-center-tied-rule-breaches-staff-shortage.html>

52 Articles 3(1)-(3), 6, and 9 The Convention on the Rights of a Child.

53 Khin Hnin Wai 'They Lied to Us' – families hit out at juvenile prison after murder of two inmates', Myanmar Now, 12 August 2020. Available at <https://www.myanmar-now.org/en/news/they-lied-to-us-families-hit-out-at-juvenile-prison-after-murder-of-two-inmates> Zami Mann 'Myanmar Human Rights Body: Killings at Mandalay Youth Centre Tied to Rule Breach, Staff Shortage', The Irrawaddy, 12 August 2020. Available at <https://www.irrawaddy.com/news/burma/myanmar-human-rights-body-killings-mandalay-youth-center-tied-rule-breaches-staff-shortage.html>

54 'Police in Mandalay have arrested five staff members in connection with the murder of two youths with serious injuries while detained at a youth training school' Eleven News, 29 August 2020. Available at <https://news-eleven.com/article/189837>

in overseeing the care of children in custody have not been brought to bear, at least publicly, by the MNHRC under their mandate to check the human rights government's obligations under the CRC or the rights enshrined in ICESCR (the right to education and adequate housing).

While the MNHRC consistently inspects and monitor prisons and places of confinement, they are not proactive in ensuring prisoners are safe from torture or substandard conditions. While the above case reflects an intervention by the MNHRC, albeit muted, many instances go without investigation. For instance, the military consistently targets, abducts and uses torture to interrogate civilians, often at random or purportedly for connections to EAOs.⁵⁵ On 4 March 2020, the Myanmar military arrested and interrogated Maung Phyu Htun, 73, and seven others, as he they travelled home from Mala village by boat after selling bamboo. Maung Phyu Htun later died as a result of torture at the Kyauktaw Interrogation Center in Rakhine State, and was one of 44 people arbitrary arrested and interrogated by the Myanmar military in Rakhine State in March 2020.⁵⁶

The MNHRC rarely visited or discussed IDP Camps during the reporting period, places that are often home to the most squalid living conditions amounting to violations of the rights to food, adequate shelter, clean water, education, livelihood, freedom of movement, voting rights,

access to healthcare, property, and right to life.⁵⁷ For those IDPs in Kachin and Karen States, progressively dwindling aid and the COVID-19 pandemic have exacerbated these issues, with IDPs locked down inside camps unable to seek outside sources of income.⁵⁸ Additionally, the Myanmar military burned down COVID-19 check points and drove out villagers from three villages in Mutraw (Papun) District, Karen State, and the MNHRC did not condemn these acts. Many IDP camps fail to uphold basic human rights standards and fall well below Myanmar's international human rights obligations under ICESCR, CRC and Guiding Principles on International Displacement.

Over 500,000 people were internally displaced in Myanmar at the end of December 2020 due to conflict or violence from previous years and an additional 70,000 were newly displaced from conflict between the Myanmar military and the Arakan Army, with hundreds of thousands more displaced fleeing conflict and the military persecution since the the attempted coup d'état of 1 February 2021.⁵⁹

For the MNHRC to monitor and call out these human rights abuses, they would have to acknowledge root causes of displacement, the Myanmar military's continuous persecution of civilians in ethnic areas and the NLD-led government's complicity in their crimes – which they are unwilling to do.

55 Assistance Association for Political Prisoners, February 2020 Chronology. Available at <https://aappb.org/?p=10490>

56 'In Rakhine State, some people have died after being capture by the Tatmadaw', Radio Free Asia, 12 March 2020. Available at https://www.rfa.org/burmese/program_2/army-torture-rakhine-civilians-missing-die-03122020064811.html

57 Human Rights Watch "An Open Prison with End – Myanmar's Mass Detention of Rohingya in Rakhine State" October 2020.pp.123. Available at <https://www.hrw.org/report/2020/10/08/open-prison-without-end/myanmars-mass-detention-rohingya-rakhine-state>

58 'Left Behind – Ethnic Minorities and Covid-19 Response in Rural Southeast Myanmar', Karen Human Rights Group, May 2021. Available at <https://khrhg.org/2021/05/left-behind-ethnic-minorities-and-covid-19-response-rural-southeast-myanmar>. Fishbein, E. 'Despite Covid-19 Setbacks, Displaced Kachin Women Keep their Families Afloat', 2 July 2020, The New Humanitarian. Available at <https://www.thenewhumanitarian.org/photo-feature/2020/07/02/Myanmar-Kachin-displaced-women-coronavirus-conflict>

59 'Myanmar Country Profile', Internal Displacement Management Centre. Available at <https://www.internal-displacement.org/countries/myanmar>. 'Further Displacement and Humanitarian Crisis Marks World Refugee Day', Progressive Voice, 24 June 2021. Available at <https://progressivevoicemyanmar.org/2021/06/24/further-displacement-and-humanitarian-crisis-marks-world-refugee-day/?platform=hootsuite>

Complaints Handling and Case Studies

One of the main functions of a NHRI is to hear and consider complaints in a merit-based and impartial manner.⁶⁰ A NHRI should provide a place to air human rights violations and grievances. Article 30 of the MNHRC Law allows any individual to lodge a complaint with the Commission concerning any alleged violation of human rights. Article 22(c) and (d) provides for the Commission to verify and conduct inquiries into complaints and alleged violations of human rights, with includes visiting the scene of violations. Article 32 compels the Commission to conduct an inquiry into a complaint, unless the complaint is: (a) Not made in good faith; (b) Not within the competence of the Commission; or, (c) A more appropriate remedy or reasonable channel of complaint is available.

As will be shown below, the MNHRC does not disclose the grounds on which it declines to inquire complaints nor how they reach those decisions, leaving complainants in the dark. A further constraint is Article 37 of the MNHRC law which prohibits the Commission from inquiring into any complaint that involves current proceedings before any court or a matter decided by any court.⁶¹ Yet, the Paris Principles do not preclude this, and GANHRI-SCA has encouraged the MNHRC to reform the law on this point.⁶² An effective

NHRI should be able to inquire into human rights violations linked to police investigations, court martial or court proceedings. The presumptive reason for this restriction, is to muzzle the MNHRC from inquiring into the human rights violations of the military, police and judiciary, and limit their reach on fair trial rights.

The MNHRC has an abysmal track record with processing and handling with complaints, in terms of the independence, impartiality and transparency. The ratio of complaints lodged to those responded to are as follows: 2017 (1,125:1)⁶³, 2018 (3,281:4)⁶⁴, 2019 (undisclosed:204)⁶⁵ and 2020 (2,336:245).⁶⁶ Note, the MNHRC does not disclose how many cases they investigate or adjudicate upon, only the number of cases in which they responded to the complainant and advised the complainant of the outcome. When the MNHRC does disclose its numbers, they are often misleading and phrased in confusing language. For instance, between 14 January 2020 to 31 March 2020 the Commission's inquiry team purported to have "examined" 693 complaints over 14 meetings (377 complaints from 2020 and 316 backlogged complaints from 2019), but investigated only 3 complaints, with 371 of the 693 cases still to be examined.⁶⁷ So in reality, they only examined 322 cases, for which only 3 complaints were investigated.

60 'General Observations of the Sub-Committee on Accreditation', GANHRI, 21 February 2018, pp. 28, 49-50. Available at https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf

61 The Myanmar National Human Rights Commission Law, 28 March 2014, Section 3.

62 Report and Recommendations of the Session of the Sub-Committee on Accreditation', GANHRI, November 2015, Section 2, available at https://www.nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA_FINAL_REPORT_-_NOVEMBER_2015-English.pdf.

63 Khin Maung Lay, 'Myanmar National Human Rights Commission,' Focus June 2018, Volume 92, Asia-Pacific Human Rights Information Center. Available at <https://www.hurights.or.jp/archives/focus/section3/2018/06/myanmar-national-human-rights-commission.html>

64 A caveat to figures in 2018 – these reflects the number of cases they responded to in 2018. Khin Maung Lay, 'Myanmar National Human Rights Commission,' Focus June 2018, Volume 92, Asia-Pacific Human Rights Information Center. Available at <https://www.hurights.or.jp/archives/focus/section3/2018/06/myanmar-national-human-rights-commission.html>

65 'Human Rights Protection "in progress": MNHRC', Eleven Myanmar, 10 July 2019. Available at <https://elevenmyanmar.com/news/human-rights-protection-in-progress-mnhrc> Note: the MNHRC did not disclose the total number of complaints in 2019.

66 The Statement of the Myanmar National Human Rights Commission on the Status of its Handling of Complaints during 2020', Statement No.2/2021. Available at <http://www.mnhrc.org.mm/en/s22021en/>

67 'The Statement of the Myanmar National Human Rights Commission on the Handling of Complaints' Statement No. 2/2020, MNHRC. Available at <http://www.mnhrc.org.mm/en/s22020eng/>

In 2020, within the 245 complaints responded to, the MNHRC only investigated 7 cases at the site of human rights violations.⁶⁸ In total, the Commission did not inquire into 1,492 complaints, and *“placed on record are the cases that have already been handled by the Commission in accordance with its complaints handling procedure, the cases which are not in line with the criteria of complaint.”*⁶⁹ Details of the *“complaints handling procedure”* are not publicly known and are not prescribed within the remit of the MNHRC Law. A further 561 complaints appear have been triaged and referred to government departments or military with no inquiry made by the Commission but the MNHRC Law states that the Commission must inquire and provide recommendations before referral.⁷⁰ For example, the MNHRC received 18 complaints from Rakhine State regarding the killing of two children by the Myanmar military’s shelling and burning of 190 houses in Nyaung Kan Village in Myebon Township, then referred them to the military and the Office, but utterly failed to discharge their obligation to inquire and provide recommendations prior to referral.⁷¹ Local and international human rights organizations said the incident in Rakhine State amounted to war crimes, targeting civilians when the targeted military opponent, the Arakan Army, was not in this region of Rakhine State but the Commission had no comment to make on this incident, either to the complainants or to the press.⁷² Referring the complaints to the perpetrators of the crime, a matter well within the ambit of the Commission’s protection functions, is appalling, and well below

the standard expected of an NHRI.

There are considerable gaps in the disclosure of information to the public on the complaints process or to verifying the above figures, as there have been no complaints published on the Commission’s website since 2016.⁷³ The MNHRC is not obliged to respond to complainants and the criteria for investigating, deciding or declining cases is not prescribed adequately within the law or by the Commission. The MNHRC’s track record with mishandling cases⁷⁴ and lack of meaningful consideration of complaints, leaves complainants disillusioned. Even when complaints are considered they are unable to provide complainants with an effective remedy and often fail to adhere to the rules of natural justice. This is one of the major causes of the trust deficit between the MNHRC and the people of Myanmar, they lack credibility.

The COVID-19 Pandemic

The MNHRC received over 2,000 complaints related to COVID-19 restrictions.⁷⁵ Civil society organizations have voiced concerns over the lack of intervention by the MNHRC on COVID-19 COVID-19, including in areas related to healthcare for the most vulnerable and marginalised groups, protection of prisoners from COVID-19 and people effected by conflict and confined to IDP Camps. Yet, the MNHRC has been very slow to respond to the COVID-19 pandemic, and limited their discussion on the matter to supporting to government’s

68 Ibid

69 Ibid

70 Ibid

71 ‘Killing of Two Children in Rakhine a Potential War Crime, Says Save The Children’, 10 September 2020. Available at <https://www.myanmar-now.org/en/news/killing-of-two-children-in-rakhine-a-potential-war-crime-says-save-the-children>

72 Ibid. Also see, ‘CSO Working Group on MNHRC Reform Call on the Myanmar Government to Deliver on Commitments Made During its Human Rights Review’, CSO Working Group on MNHRC Reform, 23 September 2020. Available at https://progressivevoicemyanmar.org/wp-content/uploads/2020/09/Eng_Press-Release_MNHRC-UPR.pdf

73 ‘Complaint Activities’ MNHRC. Available at <http://mail.mnhrc.org.mm/en/activities-2/human-rights-protection/complaint-activities1/>

74 ‘2019 ANNI Report’, The Asian Forum for Human Rights and Development (FORUM-ASIA), as the Secretariat of the Asian NGO Network on National Human Rights Institutions (ANNI) October 2019. Available at <https://www.forum-asia.org/?p=29979&nhri=1>

75 Tint Zaw Tun ‘Over 2000 Complaints Lodged Amid Virus Restrictions’, Myanmar Times, 15 December 2020. Available at <https://www.mmtimes.com/news/over-2000-rights-complaints-lodged-amid-virus-restrictions.html>

decision to reopen schools amid the pandemic as an achievement to the right to education.⁷⁶ The MNHRC continued to commend the government's effort on COVID-19 in spite of genuine concerns for the healthcare system's ability to cope and the viability for tracing cases.⁷⁷ COVID-19 has severely affected those living on the edges of the poverty line, and government assistance is completely inadequate and does not meet the needs of the most vulnerable.⁷⁸ An NHRI should be advocating for marginalized and vulnerable groups and keeping watch over curtailment of civil and political rights by governments under the guise of COVID-19 restrictions.⁷⁹ During the pandemic, increased attacks on Human Rights Defenders and the continuing conflict in ethnic areas has been left unchecked by the MNHRC, issuing no statements on these pervasive issues.⁸⁰ As mentioned above, the Commission made no mention of the attack by the Myanmar military on a COVID-19 checkpoint in Karen State.

The 2020 Elections

Myanmar went to the polls on 8 November 2020 with hopes of free and fair elections. In the build up to the elections, the MNHRC worked with the

Union Election Commission (UEC) to assist in the furtherance of human rights during the election, including facilitating a program to ensure that people with disabilities are assisted in voting but many other human rights issues surrounding this election were ignored. For instance, the UEC denied Muslim and Rohingya candidates their right to run for office and vote, and failed to stop hate speech and anti-Rohingya campaigning.⁸¹ Also, voting was cancelled in many ethnic areas where conflict was present, denying millions the right to vote.⁸² It is a failure of the MNHRC to remain silent on issues of discrimination and disenfranchisement of ethnic and religious communities, denying these peoples their fundamental democratic rights.

LGBTQI Rights

One group that has been severely let down by the MNHRC is the LGBTQI community, who are marginalised, stigmatised and excluded from Myanmar society.⁸³ The Commission has remained silent on the rights of LGBTQI people, including colonial era laws that criminalise consensual same-sex relations,⁸⁴ police harassment through "Shadow Laws" used for the

76 The Statement of the MNHRC on reopening of Schools in July' Statement No. 5/2020. Available at <http://www.mnhrc.org.mm/en/s52020eng/>

77 'The Statement of the Myanmar National Human Rights Commission (MNHRC) on Covid-19 Second Wave' Statement No. 12/2020. Available at <http://www.mnhrc.org.mm/en/s-12-2020eng/>. 'Myanmar's Effort to Trace Covid-19 Spread Treads on Sensitive Territory', Radio Free Asia, 6 October 2020. Available at <https://www.rfa.org/english/news/myanmar/covid-19-spread-10062020174513.html>

78 'A Nation Left Behind – Myanmar's Weaponization of Covid-19', Progressive Voice, June 2020. Available at https://progressivevoicemyanmar.org/wp-content/uploads/2020/06/Final_PV-COVID-19_Report-2020.pdf

79 'National Human Rights Institutions' Responses to Covid-19', Asian NGO Network on National Human Institutions (ANNI) and Forum-Asia, February to October 2020. Available at <https://www.forum-asia.org/uploads/wp/2020/12/Report-ANNI.pdf>

80 Ibid. See 'Statements', MNHRC. Available at <http://www.mnhrc.org.mm/en/statements-2/>

81 'A Vote of No Confidence: Myanmar's 2020 general Elections and Rights of Ethnic and Religious Minorities', Progressive Voice, 26 October 2020. pp. 12. Available at <https://progressivevoicemyanmar.org/2020/10/26/a-vote-with-no-confidence-myanmars-2020-general-elections-and-rights-of-ethnic-and-religious-minorities/>

82 Ibid.

83 'UPR Factsheet on LGBTI issues in Myanmar (2020)', CAN- Myanmar Universal Periodic Review Submission to the United Nations Human Rights Council. Available at <https://www.upr-info.org/en/review/Myanmar/Session-37---January-2021/Civil-society-and-other-submissions#top>

84 Section 377 Penal Code 1861. Also see 'In the Shadows: Systemic Injustice based on Sexual Orientation and Gender Identity/Expression in Myanmar', Equality Myanmar. Available at <https://www.icj.org/wp-content/uploads/2019/11/Myanmar-In-The-Shadows-Advocacy-Report-2019-ENG.pdf>

purpose of criminalising LGBTQI people⁸⁵ and lack of Constitutional recognition.⁸⁶ In 2019, the MNHRC received a complaint by LGBTQI groups on behalf Ko Kyaw Zin Win who committed suicide after intense online bullying from colleagues at Myanmar Imperial University, and whose plight went viral.⁸⁷ Instead of taking this significant moment to promote and protect the rights of LGBTQI persons or recommending to the government to reform the law to ensure freedom from discrimination, the MNHRC released a statement saying no rights had been violated, dismissively victim blaming saying “the victim was mentally weak.”⁸⁸

This incident is indicative of psychological, verbal and violent harassment LGBTQI persons experience in the workplace, and society as a whole that was perpetuated by the MNHRC rather than handled in a human rights centred approach.⁸⁹

85 Section 35, Myanmar’s Police Act 1945

86 Section 348, Constitution of the Republic of the Union of Myanmar

87 Zarni Mann ‘National Human Rights Commission to Investigate LGBT Suicide’, The Irrawaddy, 27 June 2019. Available at <https://www.irrawaddy.com/news/burma/national-human-rights-commission-investigate-lgbt-suicide.html>

88 ‘UPR Factsheet on LGBTI issues in Myanmar (2020)’, CAN- Myanmar Universal Periodic Review Submission to the United Nations Human Rights Council. Available at <https://www.upr-info.org/en/review/Myanmar/Session-37---January-2021/Civil-society-and-other-submissions#top>

89 Ibid

04

ONGOING ARMED CONFLICT, INTERNATIONAL CRIMES AND DISINTEGRATING DEMOCRATIC SPACE IN MYANMAR

The previous section traced the contours of the MNHRC's promotion and protection of human rights during the reporting period, however it must be remembered that these activities were conducted within a wider context, one that is characterised by a disintegrating democratic space, and a myriad of human rights abuses at the hands of the Myanmar military and NLD-led government. During the reporting period, and for decades preceding the reporting period, Myanmar has been in perpetual cycles of conflict perpetrated by the Myanmar military in ethnic areas. GANHRI-SCA and the Paris Principles makes clear that NHRI's operating in situations of internal unrest, internal armed conflict and coup d'état are to conduct themselves with heightened vigilance and independence '*...to promote and ensure respect for human rights of all individuals in all circumstance, and without exception.*'⁹⁰ Thus, upholding human rights in conflict situations requires constant monitoring, issuing public statements, detail reports and follow-up mechanisms.

Rakhine and Chin States, Rohingya, and Muslims

Between late 2018 until the end of 2020, the Arakan Army and the Myanmar military have been engaged in heavy fighting resulting in over 200,000 people displaced in Rakhine and Chin States. The Myanmar military has conducted indiscriminate shelling and shooting targeted at civilians with impunity and perpetrating sexual and gender-based violence against women and girls, amounting to war crimes and crimes against humanity. The extremes of this conflict, and the clearance operation against the Rohingya preceding it, have resulted in a catastrophic humanitarian crisis.⁹¹ All the while, people are under the cover of a military ordered internet shutdown – denying the free flow of information and freedom of expression.⁹² Women and children are the most adversely affected groups, with sexual and gender-based violence routine and systematic during the Rohingya genocide, and a continuing hallmark of the

90 Report and Recommendations of the Session of the Sub-Committee on Accreditation', GANHRI, November 2015, Section 2, available at https://www.nhri.ohchr.org/EN/AboutUs/GANHRI/Accreditation/Documents/SCA_FINAL_REPORT

91 The Independent International Fact-Finding Mission on Myanmar concluded the of the Myanmar military should be investigated for genocide, war crimes and crimes against humanity. 'Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar', 18 September 2018. Available at <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>

92 San Yamin Aung 'Myanmar Military: Rakhine Internet Blackout Still Required to Protect Military Secrets', The Irrawaddy, 24 June 2020. Available at <https://www.irrawaddy.com/news/burma/myanmar-military-rakhine-internet-blackout-still-required-protect-military-secrets.html>

Myanmar military's operations in Rakhine State and throughout other ethnic areas.⁹³ Over 200 children were killed or maimed in the first three months of 2020 during conflict in Rakhine State and 90 children of a total of 637 civilians were killed in the first half of 2020.⁹⁴ In one incident, 21 children were injured when their school was shelled on Myanmar's Children's Day.⁹⁵ On 5 October 2020, the Myanmar military used farmers and several young boys as human shields to protect them from landmines and against attacks from the Arakan Army.⁹⁶ In Chin State, indiscriminate airstrikes by the Myanmar military in Paletwa Township between 7 April 2020 killed seven people – including a three-year-old child and a further nine people were injured.⁹⁷ Targeting civilians is considered a war crime under the Geneva Convention and involving children in conflict is an affront to the CRC.

The Commission's response has been muted, unwilling to confront the Myanmar military on these crimes and the resulting humanitarian crises. While they opened a regional office in Sittwe, Rakhine State to receive complaints, the opening of the office was delayed by a year with

no disclosure of their activities - a superficial answer to some of the gravest human rights abuses. The Rohingya genocide continues, with Rohingya permanently confined to IDP Camps which are 'open-air prisons', unable to access adequate healthcare, food, shelter, education, and livelihood.⁹⁸ Kaman and other Rakhine Muslims face similar discrimination and live in an apartheid-like state, denied by authorities the ability to return home after intercommunal violence in 2012 displaced them from their homes.⁹⁹ At no point has the MNHRC conducted a full and independent investigation in relation to the Clearance Operations or discrimination against Rohingya and other Muslim minorities, and denies their identity and never uses the term Rohingya.¹⁰⁰

The MNHRC's UPR submission references visits to IDP Camps in Kachin and Rakhine States during the UPR reporting period, and claims all their recommendations were implemented and remedied the situation – supporting the NLD-led government's deeply flawed National Camp Closure Strategy.¹⁰¹ Whereas, in reality, hundreds of thousands of people remain in horrific conditions

93 Ibid

94 'More Children being Killed and Maimed in Rakhine Amid 'Unprecedented Levels of Violence' – Rights Group', Myanmar Now, 15 September 2020. Available at <https://www.myanmar-now.org/en/news/more-children-being-killed-and-maimed-in-rakhine-amid-unprecedented-levels-of-violence-rights>

95 'Statement on Shelling of School on Myanmar's Children's Day', 126 Myanmar Civil Society Organizations. Available at <https://progressivevoicemyanmar.org/2020/02/15/statement-on-shelling-of-school-on-myanmars-children-day/?platform=hootsuite>

96 Manny Maung 'Myanmar's Military Still Using Children in Fighting', Human Rights Watch, 17 November 2020. Available at <https://www.hrw.org/news/2020/11/17/myanmars-military-still-using-children-fighting>

97 Nan Lwin Hnin Pwint 'Seven Civilian Killed by Airstrike in Myanmar Chin State', The Irrawaddy, 8 April 2020. Available at <https://www.irrawaddy.com/news/burma/seven-civilians-killed-airstrike-myanmar-chin-state.html>

98 'An Open Prison without End', Human Rights Watch, 4 October 2020. Available at https://www.hrw.org/sites/default/files/media_2020/09/myanmar1020_web.pdf

99 'Information Ecosystems – Paper 2 – Southern Rakhine' CASS Report, June 2020. Available at <https://cass-mm.org/category/weekly-update/page/2/>

100 '2019 ANNI Report', The Asian Forum for Human Rights and Development (FORUM-ASIA), as the Secretariat of the Asian NGO Network on National Human Rights Institutions (ANNI) October 2019. Available at <https://www.forum-asia.org/?p=29979&nhri=1>. 'Myanmar National Human Rights Commission', Burma/Myanmar Joint Submission to UN Universal Periodic Review 37th Session of the Working Group, Human Rights Council, 25 January 2021. Available at https://progressivevoicemyanmar.org/wp-content/uploads/2020/07/37_Session_UPR_MNHRC_FINAL_ENG.pdf

101 'The Submission of the Myanmar National Human Rights Commission (MNHRC) to the Third Cycle of Universal Period Review (UPR) of the United Nations Human Rights Council', MNHRC, 25 January 2021. Available at https://www.upr-info.org/sites/default/files/document/myanmar/session_37_-_january_2021/mnhrc_upr37_mmr_e_main.pdf

without basic necessities.¹⁰² Dishearteningly, the MNHRC praised the Myanmar military for being removed from the UN 'list of shame' for the recruitment and use of children in armed conflict, and lauding the government for ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, all the while failing to mention the hundreds of children who have been killed, injured and permanently effected by conflict in the UPR reporting period.¹⁰³ Additionally, 302 boys were recruited into the Myanmar military in the first half of 2020 - which the MNHRC ignored.¹⁰⁴ There was no acknowledgement of the Rohingya genocide, the MNHRC refusing to utter their name or acknowledge their existence makes them complicit in these crimes. At the time, the MNHRC even recommended more security and ammunition for the police in Rakhine State, thereby endorsing the government's approach on the issue.¹⁰⁵ Also, absent was a recommendation to reform discriminatory laws that affect the Rohingya and other Muslims, such as the 1982 Citizenship Law, 2008 Constitution and the Four Race and Religion Laws.

Disintegration of Human Rights and Complicity in Myanmar's Backslide into Military Rule

Since the end of 2020 and the start of the attempted coup in February 2021, the MNHRC has all but completely abdicated their duty to protect and promote human rights and are complicit in the unlawful seizure of government by the Myanmar military, following their orders.¹⁰⁶

Strangely enough, they continue with some activities, such as prison visits, issuing statements, dealing with complaints and conferencing with regional partners, seemingly wilfully ignorant to the nightmare outside Commission's gates, and completely failing to act as an ally of those who are working to defend human rights and democracy.¹⁰⁷

The unfolding escalation of armed conflict in ethnic areas, killing of over 1,303 peaceful protesters, execution of children, torture, forced disappearances, attacking journalists and human rights defenders, and the suppression of fundamental freedoms are in part a result of the Commission's historical unwillingness and inability to call out human rights abuses of the military, emboldening their impunity.

102 'Refugees and Internally Displaced Persons', Burma/Myanmar Joint Submission to UN Universal Periodic Review 37th Session of the Working Group, Human Rights Council, 25 January 2021. Available at <https://progressivevoicemyanmar.org/2020/07/09/burma-myanmar-joint-submission-to-the-un-universal-periodic-review-37th-session-of-the-working-group-refugees-and-internally-displaced-persons/>

103 The Submission of the Myanmar National Human Rights Commission (MNHRC) to the Third Cycle of Universal Period Review (UPR) of the United Nations Human Rights Council', MNHRC, 25 January 2021. Available at https://www.upr-info.org/sites/default/files/document/myanmar/session_37_-_january_2021/mnhrc_upr37_mmr_e_main.pdf 'The Statement of the Myanmar National Human Rights Commission (MNHRC) on the Report of the Secretary General of the United Nations for 2020 on Children and Armed Conflict', Statement No.6/2020. Available at <http://www.mnhrc.org.mm/en/statements-2/>

104 'Children and Armed Conflict', Security Council Report, 29 May 2021. Available at <https://www.securitycouncilreport.org/monthly-forecast/2021-06/children-and-armed-conflict-5.php>

105 Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, UN Human Rights Council, 18 September 2018, para 1617. Available at <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>.

106 'Myanmar National Human Rights Commission: Denounce the Coup, Stand with the People of Myanmar', Statement by the CSO Working Group on MNHRC Reform, 11 February 2021. Available at <https://progressivevoicemyanmar.org/2021/02/11/myanmar-national-human-rights-commission-denounce-the-coup-stand-with-the-people-of-myanmar/>

107 Activities of the MNHRC. Available at <http://www.mnhrc.org.mm/en/>

CONCLUSION AND RECOMMENDATIONS

The MNHRC was established nearly 10 years ago and, though flawed since its founding, has now further become complicit in window-dressing of the military's crimes and now in legitimising its brutal attempted coup. The commissioners fundamentally lack human rights expertise and a mindset to function to an acceptable standard for an NHRI, is in part due to the opaque selection process and flawed enabling law. Additionally, the MNHRC has progressively failed to disclose to the public their annual reports or publicise opinions and recommendations openly, and detail the criteria and process for submitting and accepting complaints. The duplicity of the MNHRC is plain to see in the glossing over of horrific abuses in its UPR report, while they conduct education workshops, make statements and create strategic plans but within a confined set of topics, superficially implemented. Overall, the MNHRC does not act independently outside of the influence of the government and military, compliant and in active partnership with such a human rights-abusing junta, and wilfully blind to some of the gravest human rights violations in living memory. While a critical and independent NHRI may not have been able to end human rights violations in Myanmar, it would have served as a strong ally to civil society and the people of Myanmar. Currently, they are operating under the orders of the military junta, cooperating with them on a business-as-usual basis amid a failing attempted coup d'état. The military has given up all pretence of civilian government, democratic transition and peace process, it has no use anymore for a NHRI to hide behind. Thus, the MNHRC is beyond the point of reform and must be completely reconstituted by the legitimate government of Myanmar.

RECOMMENDATIONS:¹⁰⁸

To the National Unity Government and Committee Representing the Pyidaungsu Hluttaw:

1. Conduct public consultation and debate on the abolishment of the MNHRC and the formation of a new NHRI and selection of new commissioners in line with the Paris Principles;
2. Abolish the 2014 MNHRC Law, and adopt a new NHRI Law in line with the Paris Principles and other relevant human rights standards pertaining to NHRIs such as the Belgrade Principles and the Merida Declaration; and
3. Ensure the new NHRI is an independent commission that upholds pluralism and independence as its core principles.

¹⁰⁸ These recommendations are based on the current situation in Myanmar in the wake of the attempted coup d'état.

TO THE MNHRC:

1. Release a statement on the resignation of the current Commission in solidarity with the people of Myanmar, as the Commission is unable to execute its functions as an NHRI under the junta.

TO THE MYANMAR MILITARY:

1. Immediately cease all attacks against the peoples of Myanmar, including within ethnic areas, end the crimes against humanity, release all those who have been arbitrarily detained, and come under the control of the National Unity Government (NUG) as the legitimate civilian government consisting of 76 per cent of parliamentarians elected in the last general elections, in line with the UN General Assembly resolution calling on the military to respect the will of the people.¹⁰⁹

TO THE INTERNATIONAL DONOR COMMUNITY, REGIONAL AND INTERNATIONAL NHRI NETWORKS:

1. Suspend all funding and technical support to the MNHRC, and cease communication with the MNHRC;
2. Suspend all memberships and activities with the MNHRC, and encourage other regional and international actors to follow suit; and
3. Recognize the NUG as the legitimate civilian government of Myanmar which represents the voice of its people and provide support including technical assistance to the NUG to form an NHRI that is fully Paris Principles-compliant.

¹⁰⁹ General Assembly Reappoints Secretary-General to Second Five-Year Term, Adopting Resolution Condemning Lethal Violence by Myanmar's Armed Forces', 18 June 2021, Available at <https://www.un.org/press/en/2021/ga12339.doc.htm>; The NUG was formed by The Committee Representing Pyidaungsu Hluttaw (CHRP) as the democratically-elected government of Myanmar.



You're the Devil In Disguise:
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