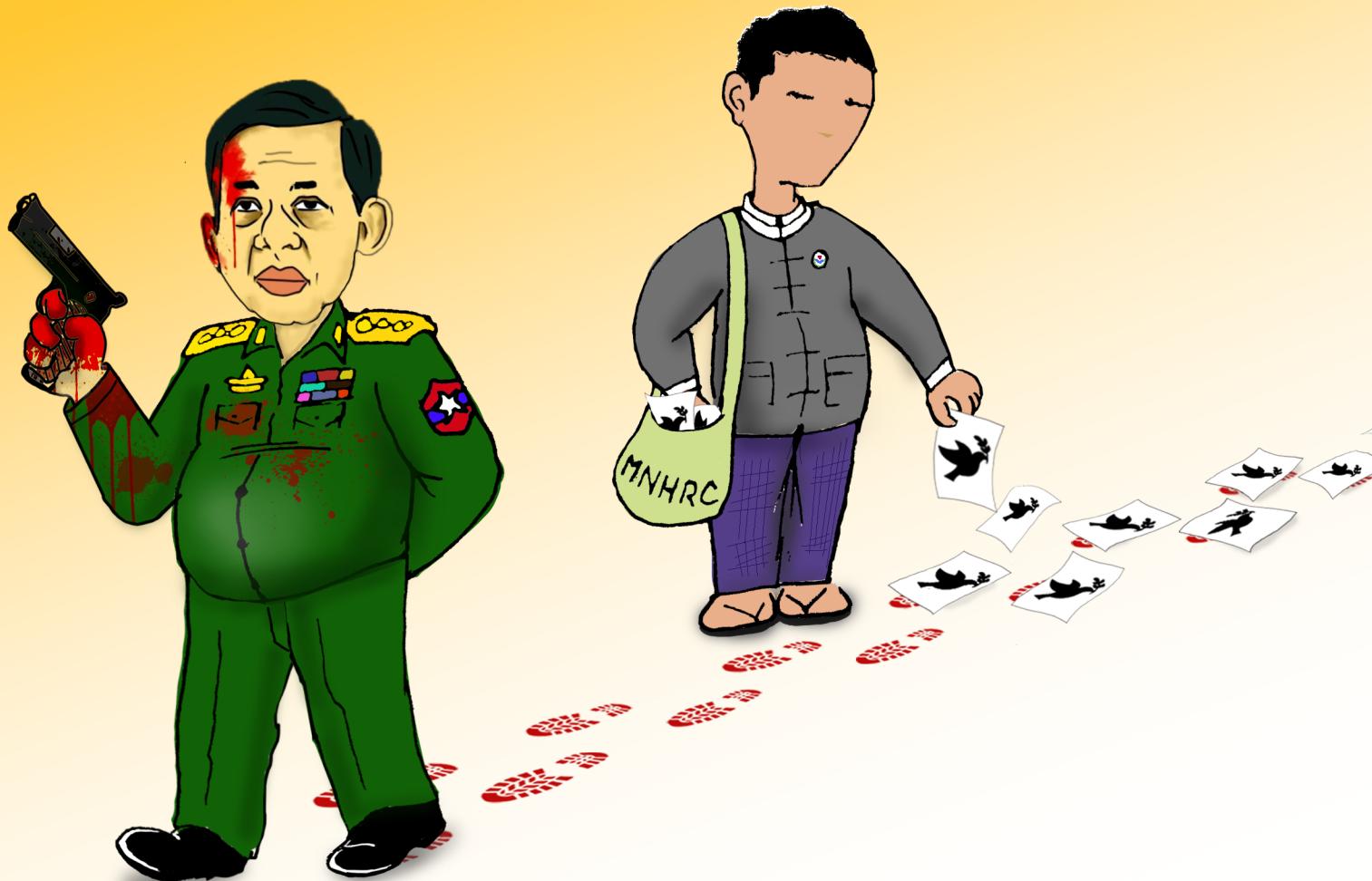


Accessory to the Junta's Crimes

Analysis of the Myanmar National Human Rights Commission's

Complicity with the Military Junta

Since the Failed Coup d'état of 1 February 2021



February 2023

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About the Working Group:

The CSO Working Group on Independent National Human Rights Institutions (Burma/Myanmar) (“Working Group”), formerly known as the CSO Working Group on Myanmar National Human Rights Commission Reform, was formed in 2019. Its original objective was to advocate for the Myanmar National Human Rights Commission (MNHRC) to become an independent, transparent, and effective commission that truly protects and promotes the rights of the people of Myanmar in accordance with the Paris Principles, the international standard that guides national human rights institutions. With that aim, the Working Group has consistently worked for the reform of the MNHRC since it was founded and until the Myanmar military attempted a coup d'état on 1 February 2021.

Following 1 February 2021, due to the MNHRC’s stance and lack of actions despite the human rights and political crises facing the people of Myanmar, rather than reforming the MNHRC, the Working Group reviewed its objectives and currently working towards the establishment of a new independent human rights commission that is in line with the Paris Principles. Together with this change, the Working Group was renamed the “CSO Working Group on Independent National Human Rights Institution (Burma/Myanmar)” in March 2022. The Working Group currently consists of 20 civil society organizations from diverse backgrounds. Facebook: <https://www.facebook.com/WGonNHRIBurma>

About 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). The Asian Forum for Human Rights and Development (FORUM-ASIA) has served as the Secretariat of ANNI since its establishment in 2006. <http://l.forum-asia.org/ANNI>

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01 Introduction

This analysis paper seeks to evaluate the actions and complicity of the Myanmar National Human Rights Commission (MNHRC or Commission) in the failed coup attempt launched by the Myanmar military junta since 1 February 2021. The intention of this paper is to inform regional and international actors, particularly regional National Human Rights Institutions (NHRIs), Asia Pacific Forum (APF), Southeast Asia National Human Rights Institution Forum (SEANF) and Global Alliance of National Human Rights Institutions (GANHRI) of the complete irreparable state of the MNHRC, complicity in the military junta's war of terror and atrocity crimes against Myanmar people and the need to support the CSO Working Group on Independent National Human Rights Institution (Burma/Myanmar) ("Working Group")'s blueprint for the establishment of a new national human rights institution under Myanmar's legitimate government, the National Unity Government (NUG).¹ The defining argument this paper puts forward is that supporting the Myanmar people's fight for a genuine federal democracy is the most sustainable solution for promoting and protection of human rights in Myanmar and thus is best achieved through the international community completely disengaging with the MNHRC.

This analysis paper builds on the work of the Myanmar chapter of the 2020 ANNI Report on the Performance of National Human Rights Institutions in Asia ("ANNI Report"),² and the extended chapter of the ANNI Report produced by the Working Group in late 2021.³ Furthermore, this paper critically reflects on the actions and omissions of MNHRC set against the obligations of a National Human Rights Institution (NHSI) as prescribed by the Paris Principles.⁴ It traces the key landmark events that have shaped the MNHRC's rapid decline in the wake of the attempted coup, starting with complicity in the military's failed coup attempt, followed by their continued silence as the military committed mass atrocities throughout 2021 and 2022, and ending with the MNHRC's statement in support of the military junta's prison release in November 2022. At the very heart of it, the MNHRC does not and never has truly represented the people of Myanmar or advocated for their human rights – thus the need for the emergence of a new human rights commission is critical and urgent.

¹ Asia Pacific Forum. Available at <https://www.asiapacificforum.net/>, Southeast Asian National Human Rights Forum (SEANF), available at <https://seanf.asia/> and Global Alliance of National Human Rights Institutions (GANHRI), available at <https://ganhri.org/>

² The Asian NGO Network on National Human Rights Institutions (ANNI), in collaboration with ANNI members, produces the ANNI Report on the Performance of National Human Rights Institutions to critically assess the performance of NHRIs against the Paris Principles. Available at <https://www.forum-asia.org/?p=36231>

³ The CSO Working Group on NHRI (Burma/Myanmar) formerly known as the CSO Working Group on MNHRC Reform. The Working Group consists of 20 civil society organizations from diverse backgrounds to reflect the new mission of establishing a new NHRI that is in line with the Paris Principles – the international standards for NHRIs. For more information, <https://www.facebook.com/WGonNHRIBurma>

⁴ The Paris Principles, the Principles relating to the Status of national human rights institutions, adopted by General Assembly resolution 48/134 on 20 December 1993. Available at <https://ganhri.org/paris-principles/>

This paper utilizes desk research and coordination with local Myanmar civil society organizations, particularly members of the Working Group. The desk research draws on previous ANNI reports, UN reports, observations of the GANHRI and the M NHRC's online resources. This paper is authored by The Asian NGO Network on National Human Rights Institutions (ANNI) and the Working Group.

02 Background

The M NHRC, since its inception in 2011, has treaded a deeply troubling path.⁵ Throughout the last decade, the M NHRC has not been able to reach full compliance with the Paris Principles, achieving only a 'B' status accreditation (partial compliance with the Paris Principles) by GANHRI Sub-Committee on Accreditation (GANHRI-SCA), which has serious misgivings about the M NHRC's independence and composition.⁶ Since 2011, many actors within Myanmar civil society had hoped that with institutional support, changes to the M NHRC law, pluralism of the commissioners and staff, the M NHRC could be reformed, strengthened and become independent.⁷ The sustained support for the reform of the M NHRC by Myanmar civil society endured, despite the M NHRC's crucial failings to call out conflict in ethnic areas, the Rohingya genocide, sexual and gender-based violence in ethnic areas and many other institutional failings.⁸ Yet, the rapid decline of the M NHRC since 2020, and after the failed coup attempt had dashed any hopes the M NHRC could be salvaged.

The collective human rights expertise within the Commission itself has always hampered it, with pro-military elites, some tied to previous juntas and former military personnel – including Tin Aung, a former general involved in the Rohingya genocide – as commissioners.⁹ Their mentality is firmly rooted in the upper hierarchy of civil service in Myanmar, which demands loyalty and placation to the military or government, and not an independent and human rights-focused mentality. None of the commissioners

⁵ In 2011, President Thein Sein issued a Presidential Decree that established the Myanmar National Human Rights Commission ('M NHRC'). Its 2014 enabling law—the Myanmar National Human Rights Commission Law—articulated the organization's formal mandate. Myanmar National Human Rights Commission, <https://mnhrc.org.mm/about-us>
<https://www.facebook.com/myanmarnhrc>; The Myanmar National Human Rights Commission Law, 28 March 2014
https://www.burmalibrary.org/docs23/2014-03-28-Myanmar_Human_Rights_Commission_Law-21-en.pdf

⁶ GANHRI, Report and Recommendations of the Session of the Sub-Committee on Accreditation', Section 2, November 2015. Available at <https://previous.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20FINAL%20REPORT%20-%20NOVEMBER%202015-English.pdf>

⁷ This was the focus of the previous iteration of the Working Group, the CSO Working Group on Myanmar National Human Rights Commission Reform. Also, see the previous Myanmar chapters of the ANNI Reports, including "2017 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia," 2017. Available at <https://forum-asia.org/uploads/wp/2017/12/ANNI-Report-Final.pdf>

⁸ "CSO Working Group on M NHRC Reform Call on Myanmar Government to Deliver on Commitments Made During its Human Rights Review," CSO Working Group, 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/>

⁹ "Myanmar: You're the Devil in Disguise – The Duplicitous, Obsolete M NHRC," Chapter 5 of the ANN Report 2020. Available at <https://forum-asia.org/?p=36231>. Also, the Working Group's Extended Chapter of the ANNI Report. Available at <https://progressivevoicemyanmar.org/2021/12/14/youre-the-devil-in-disguise-the-duplicitous-obsolete-mnhrc/>

have strong ties or experience within Myanmar civil society and were selected without transparency, inclusive dialogue, or consultation with civil society and the Myanmar public.¹⁰ During the failed peace process in the 2010s, many of Myanmar's international donors, governments and INGOs fruitlessly spent time and money providing capacity building for the MNHRC. While the MNHRC conducts activities promoting human rights, such as lecturing police and military on human rights standards, much of these activities lack substance, measurable outcomes and follow-up mechanisms, and most importantly a genuine conviction and commitment in human rights principles.¹¹ They have consistently fallen far short on protection of human rights as a national human rights institution, shunning this duty to protect those in power from international criticism for human rights violations.

The MNHRC from its shaky beginnings has aligned itself with those in power in dereliction of their obligations under the Paris Principles and duty to the people of Myanmar – highlighted in years of ANNI reports that assessed the performance of NHRIs in the region.¹² At times this dereliction favored the National League for Democracy-led government, but overwhelmingly the MNHRC has created a smokescreen for, and aligned itself, with the Myanmar military. Since the failed attempted coup, the MNHRC has, both actively and through omissions in a very public and brazen manner, disengaged with the reality of the human rights situation in Myanmar and aligned itself fully with the military junta. The military junta uses the MNHRC's engagements with regional and international forums as propaganda, as fodder through their media mouthpiece to claim legitimacy as a regime, and as a false cover to show engagement with human rights.¹³ The MNHRC's commissioners play the role of accessory to the junta's crimes, ignoring the most grievous and inhumane acts and actively blocking progress towards justice and accountability.¹⁴

¹⁰ CSO Working Group, "Selection Process of New Commissioners for the MNHRC Must be Transparent and Inclusive," 25 July 2019. Available at <https://forum-asia.org/?p=29344>

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>

¹¹ MNHRC News and Events. Available at <https://mnhrc.org.mm/all-news>

¹² ANNI Reports. Available at https://forum-asia.org/?page_id=19132

¹³ "Myanmar National Human Rights Comission joins 19 Annual Meeting of Southeast Asia National Human Rights Forum (SEANF)," Global New Lights of Myanmar, 2 December 2022. Available at <https://www.gnlm.com.mm/myanmar-national-human-rights-commission-joins-19th-annual-meeting-of-southeast-asia-national-human-rights-institutions-forum-seanf/>

¹⁴ One key indicator of this are the statements from the MNHRC compared to the wealth of evidence of atrocity crimes reported from the ground by Myanmar civil society, UN and INGOs.

MNHRC Statements. Available at <https://mnhrc.org.mm/statements>

"Nowhere to Run: Deepening Humanitarian Crisis in Myanmar," 7 September 2021, Human Rights Foundation of Monland, Kachin Women's Association Thailand, Karen Human Rights Group, Karen Peace Support Network, Karen Women's Organization, Karenni Civil Society Network, Karenni National Women's Organization, Pa-O Women's Union, Progressive Voice and Ta'ang Women's Organization. Available at <https://progressivevoicemyanmar.org/wp-content/uploads/2021/09/No-Where-To-Run-Eng.pdf>.

"Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews," Human Rights Council, 28 February – 1 April 2022, A/HRC/49/76. Available at <https://reliefweb.int/report/myanmar/report-special-rapporteur-situation-human-rights-myanmar-thomas-h-andrews-ahrc4976#:~:text=The%20Special%20Rapporteur%20is%20inspired,member%20states%20to%20take>.

"Myanmar: Abuses Mount Since Military Coup," Human Rights Watch, 12 January 2023. Available at <https://www.hrw.org/news/2023/01/12/myanmar-abuses-mount-military-coup>

Since the coup attempt was launched on 1 February 2021, the Myanmar military has waged an all-out war on the people of Myanmar and the country is on a path towards full-blown civil war. This military junta has reached unprecedented depths of cruelty, including targeted killings of civilians, massacres, airstrikes, arbitrary arrests, extra-judicial killings, sexual and gender-based violence, persecution of political figures and human rights defenders.¹⁵ As of 24 February 2023, over 3000 people have been mercilessly killed by the junta (including 292 children), almost 20,000 have been arbitrarily arrested, over 16,000 remain in detention and around 100 people are on death row.¹⁶ War crimes and crimes against humanity are being committed at will against civilians, including children, with targeting places of worship, school and hospitals.¹⁷

The Special Rapporteur on the situation of human rights in Myanmar, Tom Andrews, repeated his determination to the UN Human Rights Council in June 2022, that the junta's daily attacks amount to war crimes and crimes against humanity.¹⁸ These war crimes and crimes against humanity include the junta's brutal airstrikes targeting innocent civilians in ethnic areas and in Myanmar's Dry Zone; recent horrific instances include the mass killing of 80 people during a concert in Hpakant Township, Kachin State in November; and vicious airstrikes on a school in Let Yet Kone, Depayin Township, Sagaing Region, brutally killing at least 11 children and three teachers, with 15 children missing and 14 students injured. This attack came without warning while the children attended classes, and is illustrative of the junta's deliberate attacks on schools, places of worship and hospitals.¹⁹ These incidents are few of the countless attacks on civilians, which has triggered over a million people to be displaced in urgent and dire need of humanitarian assistance.²⁰ Urgent actions are also needed to support the protection of civilians, as the junta continues fierce airstrikes at the start of 2023, particularly in Karen and Chin States.²¹ The National

¹⁵ "Launch of a Briefing Paper Humanitarian Crisis in Myanmar's Dry Zone," Progressive Voice, 31 August 2022. Available at <https://progressivevoicemyanmar.org/2022/08/23/media-advisory-launch-of-a-briefing-paper-on-the-humanitarian-crisis-in-myanmars-dry-zone/>
"Anatomy of Impunity – UN Must Finally Establish a Jurisdiction for Grave Crimes in Myanmar," Progressive Voice, 10 March 2022. Available at <https://progressivevoicemyanmar.org/2022/03/10/anatomy-of-impunity-un-must-finally-establish-a-jurisdiction-for-grave-crimes-in-myanmar/>

¹⁶ "Daily Briefing in Relation to the Military Coup," Assistance Association for Political Prisoners, 24 February 2023. Available at <https://aappb.org/?p=24276>

¹⁷ "Launch of a Briefing Paper Humanitarian Crisis in Myanmar's Dry Zone," Progressive Voice, 31 August 2022. Available at <https://progressivevoicemyanmar.org/2022/08/23/media-advisory-launch-of-a-briefing-paper-on-the-humanitarian-crisis-in-myanmars-dry-zone/>

¹⁸ "UN Expert Releases New Report Documenting Military Junta's Impact on Myanmar's Children, Urges Immediate Coordinated Action to Prevent "A Lost Generation," Press Release and Report, OHCHR, 14 June 2022. Available at <https://www.ohchr.org/en/press-releases/2022/06/un-expert-releases-new-report-documenting-military-juntas-impact-myanmars>

¹⁹ "Setting the Tinderbox Alight – The Humanitarian Crisis in Myanmar's Dry Zone," Progressive Voice, 31 August 2022. Available at <https://progressivevoicemyanmar.org/2022/08/31/setting-the-tinderbox-alight-the-humanitarian-crisis-in-myanmars-dry-zone/>

"Nightmare in Kachin as Airstrikes Constitute Deadliest Single Junta Attack," Progressive Voice, 7 November 2022. Available at <https://progressivevoicemyanmar.org/2022/11/07/nightmare-in-kachin-as-airstrikes-constitute-deadliest-single-junta-attack/>
"Eleven Children Killed, Many Injured as Myanmar Junta Helicopter, Troops Attack Monastery," The Irrawaddy, 19 September 2022. Available at <https://www.irrawaddy.com/news/burma/eleven-children-killed-many-injured-as-myanmar-junta-helicopter-troops-attack-monastery.html>

²⁰ "Humanitarian Update No.25," United Nations Office for the Coordination of Humanitarian Affairs, 30 December 2022. Available at <https://www.unocha.org/myanmar>

²¹ "For the Myanmar Junta, Peace Means War," Progressive Voice, 21 January 2023. Available at <https://progressivevoicemyanmar.org/2023/01/21/for-the-myanmar-junta-peace-means-war/>

Unity Government, formed on the outcome of the 2020 general elections according to the will of the people of Myanmar, has confirmed that 460 people have been killed in aerial bombing since the failed coup attempt on 1 February 2021, with the actual figure likely to be higher.²² All the while, the M NHRC continues to remain a silent co-conspirator in the junta's crimes.

In the wake of the failed coup attempt, regional and Myanmar civil society called on the M NHRC to investigate all allegations of human rights violations and exercise its mandate and powers to ensure that the rights of the people are respected during a critical period, but to no avail.²³ After this fell on deaf ears and after years of attempting to strengthen and support the M NHRC, Myanmar and regional civil society and networks called on international actors to disengage with the M NHRC completely.²⁴ Myanmar civil society then repeated and emphasized these calls to SEANF, APF and GANHRI for disengagement with the M NHRC – which threatens these organizations' credibility and ability to fulfil their respective mandates. Myanmar civil society wrote open letters or statements concerned with these organizations' engagements with the M NHRC; SEANF (11 March 2021, 5 May 2021), APF (11 March 2021, 20 May 2021, 30 June 2022) and GANHRI (11 March 2021, 30 June 2022), in addition to the information shared with these organizations through the ANNI reports.²⁵

Myanmar's Spring Revolution, a direct repudiation of the failed attempted coup through different forms of resistances including mass protests and the civil disobedience movement, has shown the strength of the people's desire for fully-fledged democracy and resilience for protection of human rights. In support of a genuine federal democracy, Myanmar civil society has accelerated and continued its valuable work,²⁶

²² Hein Htoo Zan "Myanmar Junta Jet Bombs Church, Killing Child, Mother and 2 Pastors," *The Irrawaddy*, 13 January 2023. Available at <https://www.irrawaddy.com/news/burma/myanmar-junta-jets-bomb-church-killing-child-mother-and-2-pastors.html>

²³ 'Myanmar National Human Rights Commission (M NHRC) Must Denounce the Military Coup and Uphold Fundamental Rights of Peoples', ANNI, 16 February 2021. Available at <https://forum-asia.org/?p=33900>

²⁴ 'International Partners Must End All Cooperation with the Myanmar National Human Rights Commission', CSO Working Group and 56 Local and Regional CSOs and Networks. Available at <https://progressivevoicemyanmar.org/2021/03/11/international-partners-must-end-all-cooperation-with-the-myanmar-national-human-rights-commission/>

²⁵ 'International Partners Must End All Cooperation with the Myanmar National Human Rights Commission', CSO Working Group and 56 Local and Regional CSOs and Networks. Available at <https://progressivevoicemyanmar.org/2021/03/11/international-partners-must-end-all-cooperation-with-the-myanmar-national-human-rights-commission/>

"SEANF Must Suspend M NHRC Until NUG Reconstitutes a New Human Rights Commission," CSO Working Group, ANNI and 13 Regional Civil Society Organizations, 5 May 2021. Available at <https://progressivevoicemyanmar.org/2021/05/05/seanf-must-suspend-mnhrc-until-nug-reconstitutes-a-new-human-rights-commission/>

"Open Letter: Myanmar Junta Participation in the Environmental Rights and Climate Change Workshop," 30 June 2022, Working Group. Available at <https://progressivevoicemyanmar.org/2022/06/30/open-letter-myanmar-junta-participation-in-the-environmental-rights-and-climate-change-workshop/>

"Myanmar: You're the Devil in Disguise – The Duplicitous, Obsolete M NHRC," Chapter 5 of the ANN Report 2020. Available at <https://forum-asia.org/?p=36231>.

²⁶ "Nowhere to Run: Deepening Humanitarian Crisis in Myanmar," 7 September 2021, Human Rights Foundation of Monland, Kachin Women's Association Thailand, Karen Human Rights Group, Karen Peace Support Network, Karen Women's Organization, Karenni Civil Society Network, Karenni National Women's Organization, Pa-O Women's Union, Progressive Voice and Ta'ang Women's Organization. Available at <https://progressivevoicemyanmar.org/wp-content/uploads/2021/09/No-Where-To-Run-Eng.pdf>. Included among the numerous groups reporting on human rights abuses are Karen Women's Organization, Karen Human Rights Group, Karen Peace Support Network, Women's Peace Network, Kachin Women's Association Thailand, Human Rights Foundation of Monland, Kachin Women's Association Thailand, ND-Burma, Women's League of Burma, Assistance Association for Political Prisoners, Karenni Civil Society Network, Shan Human Rights Organizations, Equality Myanmar, Athan, Free Expression Myanmar, Karenni National Women's Organization, Pa-O Women's Union, Progressive Voice and Ta'ang Women's Organization.

documenting and bearing witness to the mass atrocities and human rights abuses committed by the military junta – much of what the M NHRC should be doing. In addition to this, Myanmar civil society is responding to the overwhelming humanitarian crisis by facilitating the distribution of basic necessities such as food supplies, medication, shelter and sanitation goods.²⁷ These civil society actors – in response to overwhelming human rights abuses and the unsalvageable state of the M NHRC – have proposed the establishment of a new commission through the Union Human Rights Commission Law.²⁸ For SEANF, APF and GANHRI to continue to entertain the M NHRC as a viable and credible NHRI, is tantamount to allowing the junta to continue to commit grave violations of human rights of Myanmar people, boldly and with complete impunity. These organizations continue engagement with a proxy of a military that for decades has perpetrated the most grave human rights abuses in modern history is harmful to Myanmar people's struggle for a genuine federal democracy. Additionally, it erodes the work of civil society organizations invested in these institution.

03 The Performance of M NHRC

While the M NHRC was accredited with a 'B' status by GANHRI's GANHRI-SCA, this was in 2015 and is no longer current or reflective of the present situation on the ground in Myanmar. Since then, many horrific human rights abuses and atrocities have been completely absolved by the M NHRC. During the 2015 accreditation process, GANHRI-SCA listed seven aspects of the Commission and its mandate that were problematic: a) selection and appointment, b) performance in situations of civil unrest or armed conflict, c) pluralism, d) adequate funding and financial independence, e) monitoring places of deprivation of liberty, f) interaction with the international human rights system, and g) annual report.²⁹ This paper will examine some of these below to shed light on the current performance of the M NHRC. Since 2015, the M NHRC has a litany of failings, including failure to acknowledge the Rohingya genocide or recognize their identity;³⁰ issued a statement in support of Daw Aung San Suu Kyi's appearance at the International

²⁷ Ibid.

²⁸ "Time for the Emergence of a New National Human Rights Commission Representing the People of Myanmar," 7 August 2022, CSO Working Group and 32 Myanmar Civil Society Organizations. Available at <https://progressivevoicemyanmar.org/2022/08/07/time-for-the-emergence-of-a-new-national-human-rights-commission-representing-the-people-of-myanmar/>

"Myanmar Civil Society Proposes New Union Human Rights Commission Law Amid Ongoing Campaign of Terror by the Myanmar Military Junta, Urges Its Swift Adoption," 14 December 2021, CSO Working Group on M NHRC Reform and Asian NGO Network on National Human Rights Institutions. Available at <https://progressivevoicemyanmar.org/2021/12/14/myanmar-civil-society-proposes-new-union-human-rights-commission-law-amid-ongoing-campaign-of-terror-by-the-myanmar-military-junta-urges-its-swift-adoption/>

²⁹ Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA), Section 2.3. International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, 16-20 November, 2015. Available at: https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_FINAL_REPORT_-_NOVEMBER_2015-English.pdf

³⁰ Joint Submission to the UN Human Rights Council Universal Period Review (37th Session of the Working Group): Myanmar National Human Rights Commission, 9 July 2020. Available at https://progressivevoicemyanmar.org/2020/07/09/burma-myanmar-joint-submission-to-the-un-universal-periodic-review-37th-session-of-the-working-group-myanmar-national-human-rights-commission/#_edn10

Court of Justice (ICJ) where she denied the Rohingya genocide; continued denial of the rights of ethnic communities, religious groups, LGBTQI+ people; failure to call out the Myanmar military's continued armed conflict against ethnic communities and many more countless examples.³¹

While the M NHRC has actively and deliberately ignored these extreme human rights abuses on the ground since 1 February 2021, they have been issuing statements of support to the military junta, including a statement in support of prisoner release – an attempt to erase the fact these arrests were arbitrary executed by the military junta in violation of fundamental freedoms, and prisoners face routine torture, sexual and gender-based violence, executions, extrajudicial killings, deprivation of food and water, and cramped and unsanitary conditions.³² Since the attempted coup, the M NHRC has continued prison inspections and after a cursory review has concluded these prisons have overall complied with human rights despite overwhelming evidence-based reports of torture, ill-treatment and murder of prisoners – widely displayed both in news media and civil society.³³ The military will then put articles in their media mouthpiece, showing the so-called “successful” prison inspections by the M NHRC.³⁴ The M NHRC is in effect endorsing the military junta’s and in some case military troops administration of prisons and condoning human rights violations. The junta attempts to conceal their crimes by having a human rights institution inspect and report on prisons – parading this in front of the international community to fend off probes and criticism.³⁵

The M NHRC has also been meeting in person with the junta and coordinating their statements and responses in line with the military junta’s narratives.³⁶ This pattern of echoing narratives of military and government, despite stark evidence to the contrary, is not new. During the Third Cycle of the UN’s Universal Periodic Review (UPR), the M NHRC made a submission which echoed the NLD-led government and Myanmar military’s positioning. The submission was unobjectively reviewed and ignored grave human rights violations committed during the UPR period covering 2015 – 2020,

³¹ “Myanmar: You’re the Devil in Disguise – The Duplicitous, Obsolete M NHRC,” Chapter 5 of the ANN Report 2020. Available at <https://forum-asia.org/?p=36231>.

³² “Political Prisoners Experience in Interrogation, Judiciary, and Incarceration Since Burma’s Illegitimate Military Coup,” Assistance Association for Political Prisoners, 23 March 2022. Available at <https://aappb.org/?p=20734>. “Detained but Not Forgotten,” Progressive Voice, 28 March 2022. Available at <https://progressivevoicemyanmar.org/2022/03/28/detained-but-not-forgotten/> “Statement of the M NHRC on the inspection visits of prisons, jails, detention centres and police lock-ups from January to May 2022, Statement No. (3/2022),” 1 June 2022. Available at <https://mnhrc.org.mm/statements/en/print/49>, “Myanmar National Human Rights Commission Statement No. (1/2023),” 7 January 2023. Available at <https://mnhrc.org.mm/statements/en/print/81>

³³ Ibid.

³⁴ “M NHRC Member Inspects Prisons, Court Detention Centres in Kengtung, Tachilek,” *Global New Light of Myanmar*, 13 January 2022. Available at <https://www.gnlm.com.mm/mnhrc-member-inspects-prisons-court-detention-centres-in-kengtung-tachilek/>

³⁵ “Myanmar National Human Rights Commission Press Release on complaints submitted to the Commission and inspection of prisons and detention centres, Press Release No. 1/2022,” 8 February 2022. Available at <https://mnhrc.org.mm/statements/en/print/16> Also see, Statement No. 10/2021 (<https://mnhrc.org.mm/statements/en/print/27>),

³⁶ Union Minister Dr. Thet Thet Khine Received Officials from M NHRC,’ 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> “Myanmar: You’re the Devil in Disguise – The Duplicitous, Obsolete M NHRC,” the Working Group’s Extended Chapter of the ANN Report. Available at <https://progressivevoicemyanmar.org/2021/12/14/youre-the-devil-in-disguise-the-duplicitous-obsolete-mnhrc/>

including the Rohingya genocide, crimes against humanity and war crimes committed in ethnic areas such as Karen, Shan, Kachin, Rakhine and Chin States. Recently, the M NHRC has released statements in support of actions of the military junta, supporting the military's so-called "Year of Peace"³⁷ and supporting two military prison amnesties – despite gross human rights violations occurring in prison, as highlighted throughout this paper.³⁸

The failures of the M NHRC reach well beyond the era of Min Aung Hlaing's 1 February 2021 failed coup attempt but represent a continuous downward spiral and ultimately aiding of a terrorist junta by providing them a shield for decades of human rights abuses, thereby abdicating the fundamental duty of an NHRI to promote and protect human rights.

04 Paris Principles

This section will touch on some main failures of the M NHRC directly related to the Paris Principles. This section will clearly show how the actions and omissions of the M NHRC since the failed coup attempt has led to their complete non-compliance with the Paris Principles, warranting significant actions from SEANF, APF and GANHRI. The main pillars of the Paris Principles are discussed below:

a. ***Selection and appointment of commissioners*** – in January 2020, the composition of the M NHRC's commissioners was changed behind closed doors and without procedural safeguards to ensure a merit-based selection, independence, transparency and pluralism.³⁹ During the 2015 accreditation process, GANHRI-SCA and Myanmar civil society organizations were very concerned about the upcoming selection of new commissioners in September 2019. Seven of the 10 commissioners' terms expired, and without warning all 10 commissioners were dismissed and replaced with 11 hand-picked commissioners – none of whom have received formal education, or have necessary experience related to human rights.⁴⁰ The commissioners do not reflect the diversity of Myanmar, in terms of age, qualifications, disability, social background, ethnicity, religion, sexual orientation, gender identity or gender expression, among other groups. The GANHRI-SCA emphasized how the M NHRC should publicize vacancies broadly, select members based on their individual acumen not their affiliation to an organization or other entity, promote broad consultation in the selection

³⁷ "Statement of the Myanmar National Human Rights Commission on the peace initiative, Statement No. (2/2022)," 28 April 2022. Available at <https://mnhrc.org.mm/statements/en/print/17>

³⁸ Ibid.

³⁹ "Myanmar: You're the Devil in Disguise – The Duplicitous, Obsolete M NHRC," the Working Group's Extended Chapter of the ANNI Report. Available at <https://progressivevoicemyanmar.org/2021/12/14/youre-the-devil-in-disguise-the-duplicitous-obsolete-mnhrc/>

⁴⁰ 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', M NHRC. Available at <https://web.archive.org/web/20200424033349/http://www.mnhrc.org.mm/en/about/commissioners/>

process, assess applicants on an individual basis of predetermined objective criteria, and include selection of candidates from a wide range of societal groups and education qualifications.⁴¹

- b. **Performance in situation of civil or political unrest** – according to the recommendations by GANHRI-SCA in their General Observations of the Paris Principles, NHRIs must conduct themselves with heightened vigilance and independence, ‘...to promote and ensure respect for human rights of all individuals in all circumstance, and without exception.’⁴² Yet, the MHNRC has blatantly ignored and whitewashed the ongoing conflict since its inception and in spite of recommendations from GANHRI-SCA in 2015, including the failed attempted coup, ongoing attacks by the Myanmar military on ethnic areas, and the Rohingya genocide.⁴³ GANHRI-SCA explicitly addressed its concerns with the MHNRC’s performance during conflict, referring the MHNRC to GANHRI’s General Observations on this matter. However, no corrective steps were taken by the MHNRC.⁴⁴
- c. **Pluralism** – the Paris Principles requires a pluralistic composition within an NHRI, so that the diversity of Myanmar society is reflected within the Commission. Yet, the Commission does not reflect the diversity of Myanmar within their composition or work, often marginalizing minority communities and ethnic groups through failing to do community outreach; failing to provide materials in ethnic languages; and following the *bamar* Buddhist majority worldview.⁴⁵
- d. **Independence** – it affects all other criteria listed here, if an NHRI is not independent of government or outside influences. The MHNRC has completely neglected its duty to be independent, by shielding the military junta.
- e. **Monitoring of places of deprivation and liberty** – while the MHNRC monitors the places of deprivation and liberty, this is done in a performative and superficial manner. The MHNRC will complete checklists of an inspection in prisons, in which they must notify the prison of their visit in advance. These prisons are notorious for the abuse of prisoners, including torture, sexual abuse, incarceration and abuse of children as young as three.⁴⁶
- f. **Interaction in the international human rights system** – the MHNRC only engages on a superficial level, often echoing the positioning of government and military. One clear example is during the

⁴¹ ‘Report and Recommendations of the Session of the Sub-Committee on Accreditation’, GANHRI, November 2015, Section 2. Available at https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_FINAL_REPORT_-_NOVEMBER_2015-English.pdf

⁴² ‘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

⁴³ “Myanmar: You’re the Devil in Disguise – The Duplicitous, Obsolete MHNRC,” Chapter 5 of the ANN Report 2020. Available at <https://forum-asia.org/?p=36231>. Also, the Working Group’s Extended Chapter of the ANNI Report. Available at <https://progressivevoicemyanmar.org/2021/12/14/youre-the-devil-in-disguise-the-duplicitous-obsolete-mnrc/>

⁴⁴ ‘Report and Recommendations of the Session of the Sub-Committee on Accreditation’, GANHRI, November 2015, Section 2. Available at https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_FINAL_REPORT_-_NOVEMBER_2015-English.pdf

⁴⁵ Ibid.

⁴⁶ “Myanmar: No Safe Place for Children,” Progressive Voice, 8 April 2022. Available at <https://progressivevoicemyanmar.org/2022/04/08/myanmar-no-safe-place-for-children/>

UPR, in which the MNHRC mirrored the unbalanced national report of the NLD-led government. The MNHRC over-emphasized the government's human rights performance during 2015-2020 in line with the NLD-led government, and then ignored the grave human rights abuses committed against Rohingya, ethnic communities and human rights defenders during the reporting period.⁴⁷

g. Funding and financial independence – while it is uncertain how the MNHRC is being funded, it is presumed the military junta is funding them pursuant to the order by the junta's illegal State Administration Council.⁴⁸

The actions of the MNHRC since the failed attempted coup, illustrate how the absence of a diverse and unbiased selection process has had massive ramifications, leading in part to the current crisis. Similarly, the lack of independence – both as an external aggravator on the part of the junta, and internally with the Commission, has plagued the Commission since its inception. The MNHRC's complaints process is non-transparent and they have ordered complainants to divulge personal details and provide their ID - which is unnecessary and can be potentially used for nefarious purposes.⁴⁹ The MNHRC complaints process is flawed, without transparent reviews of complaints, and does not ensure the protection of witnesses from reprisals in practice and within the MNHRC Law.⁵⁰ For international and regional human rights institutions and entities to support such a Commission, seriously risk assisting the junta in gathering information on those seeking redress for human rights abuses. The MNHRC Law itself was drafted by a previous military regime, and many of its flaws, as highlighted by civil society and ANNI, have not been addressed. Thus, the time has come for a new NHRI law and commission under the NUG, one that aligns with the Paris Principles and fully respects human rights.⁵¹

The MNHRC has a history of aligning with and being subordinate to the military, as the commissioners are part of the ruling elite and upper echelons of the military. There is rarely a diversity and plurality among the commissioners, without allyship for ethnic communities, religious diversity, LGBTQI+ community and those with disabilities. A key criticism of the GANHRI-SCA during the 2015

⁴⁷ "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Myanmar," Human Rights Council, 2 November 2020. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/278/46/PDF/G2027846.pdf?OpenElement>

'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/documents/2021-02/mnhrc_upr37_mmr_e_main.pdf

⁴⁸ State Administration Council Order (No.4/2021) "Appointment and Duty Assignment of Chairman, Vice-Chairman and members of Myanmar National Human Rights Commission", posted in Global New Light of Myanmar.

Available at <https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/GNLM2021-02-02-red.pdf>

⁴⁹ Post of CSO Working Group, Twitter, 12 January 2023.

Available at https://twitter.com/WG_MMNHR/status/1613446331481354240

⁵⁰ "Myanmar: You're the Devil in Disguise – The Duplicitous, Obsolete MNHRC," Chapter 5 of the ANN Report 2020. Available at <https://forum-asia.org/?p=36231>. Also, the Working Group's Extended Chapter of the ANNI Report. Available at <https://progressivevoicemyanmar.org/2021/12/14/youre-the-devil-in-disguise-the-duplicitous-obsolete-mnhrc/>

"Return to Sender" - MNHRC Enabling Law Must be Returned to Parliament for Structural Reform," Myanmar Chapter, 2018 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia. Available at https://forum-asia.org/wp-content/uploads/2018/12/2018_ANNI-Report_FINAL.pdf

⁵¹ Ibid.

accreditation process of the M NHRC was its inability to protect human rights, particularly during conflict.⁵² Such concerns are even more amplified as the military attempts to gain legitimacy within the region and internationally, while committing grave atrocity crimes against the people of Myanmar in an attempt to rule by brutal force.

What sets the M NHRC apart from other wayward NHRIs is its allegiance to a military junta that is committing the most grievous atrocity crimes imaginable. The M NHRC has no genuine good faith towards the full promotion and protection of human rights, but has forged a solid allegiance to the military junta.

05 International and Regional NHRI Bodies: GANHRI, APF and SEANF

The response to the M NHRC falling under the control of the military junta and abandoning its responsibility towards upholding human rights, has been abysmal and continues to harm the integrity of APF, SEANF and GANHRI. APF, SEANF and GANHRI have continued to invite the M NHRC to their meetings and events, despite Myanmar civil society's persistent objections, open letters, and statements. APF's mission is to strengthen NHRIs and promote and protect human rights, so that everyone is able to enjoy human rights backed by a robust NHRI.⁵³ Yet, when confronted with the challenge of the attempted coup and the voices of Myanmar civil society, APF has not delivered on their mandate, ultimately tarnishing their integrity and credibility. Tangible actions must be taken to prevent the M NHRC from covering up military's atrocity crimes and thus doing more harm to the people, including GANHRI removing blocks to reviewing the accreditation of 'B' Status NHRIs, and for APF, SEANF and GANHRI to remove NHRIs from membership for persistent non-compliance with the Paris Principles.

The Working Group has sent an open letter regarding these issues, but APF continues to tacitly endorse the military junta by allowing the M NHRC to continue to be a member and actively participate in their events. For instance, allowing M NHRC Chairperson Hla Myint to speak at an APF hosted event, in collaboration with the New Zealand Human Rights Commission on workplace discrimination;⁵⁴ a workshop for Southeast Asian NHRIs on environmental rights and climate change in Bangkok from 21

⁵² 'Report and Recommendations of the Session of the Sub-Committee on Accreditation', GANHRI, November 2015, Section 2. Available at https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_FINAL_REPORT_-_NOVEMBER_2015-English.pdf

⁵³ Asia Pacific Forum. Available at <https://www.asiapacificforum.net/>

⁵⁴ "APF Visual Dialogue Series: Discrimination in employment and the role of National Human Rights Institutions," 30 September 2022, available at www.asiapacificforum.net/news/apf-members-discuss-discrimination-employment-and-role-nhris/

– 23 June 2022;⁵⁵ APF Secretariat meeting with the MNHRC, accompanied with a public article on the meeting in which APF did not mention the failed attempted coup or mass human rights abuses;⁵⁶ and most recently, APF co-hosting of an event with the MNHRC on Climate Change, which the junta flaunted in their media mouthpiece as propaganda.⁵⁷

SEANF hosts an annual meeting with all its members, and twice yearly technical working group meetings.⁵⁸ SEANF has continued to allow the MNHRC to join their events throughout 2021⁵⁹ and 2022, including their 19th Annual Meeting on 28 and 29 November 2022.⁶⁰ This has directly correlated to the military junta posting on their media mouthpiece in an attempt to uphold the pretense of legitimacy.⁶¹ SEANF has not acknowledged or called out the MNHRC's complicity in the failed coup attempt or mass atrocities committed by the Myanmar military. Yet, past human rights violations have been called out including in a statement by SEANF (in their dual capacity as SEANF and APF members) expressing grave concern at violence against peaceful protesters by the Myanmar military in 2007 during the Saffron Revolution.⁶² This is an important precedent to showcase that NHRIs have actively provided interventions in Myanmar. While it is noted that at that time, the MNHRC was not yet formed, it was a landmark step for the NHRIs within SEANF and APF. Whereas, since the MNHRC was formed and became a member the SEANF and APF have taken dangerous path of shielding the MNHRC and thus shielding the military crimes.

Currently on the ground in Myanmar, outside the gates of the MNHRC on the streets of Yangon and nationwide, the military junta is waging a terror campaign against the people of Myanmar. The Working Group wishes to express their deep regret that APF, SEANF, GANHRI and the individual members within these bodies keep silent on this horrific state of human rights in Myanmar and continue to allow the MNHRC a platform, harmful for their organizations and troubling that they are not willing to address the MNHRC's continued denials of grave human rights violations and atrocity crimes in Myanmar that

⁵⁵ “Open Letter: Myanmar Junta Participation in the Environmental Rights and Climate Change Workshop,” the Working Group, 30 June 2022. Available at <https://progressivevoicemyanmar.org/2022/06/30/open-letter-myanmar-junta-participation-in-the-environmental-rights-and-climate-change-workshop/>

⁵⁶ “The APF Secretariat has met with leaders of the Myanmar National Human Rights Commission as part of Leadership Solidarity Outreach program,” APF, 30 November 2021. Available at <https://www.asiapacificforum.net/news/apf-meets-myanmar-commission/>

⁵⁷ “APF Co-Hosts Virtual Dialogue on Human Rights and Climate Change,” APF, 15 December 2022. Available at <https://www.asiapacificforum.net/news/apf-co-hosts-virtual-dialogue-human-rights-and-climate-change/> “APF Virtual Dialogue on Climate Change and Human Rights: Role of NHRIs Meeting Held,” *Global New Light of Myanmar*, 12 November 2022. Available at https://cdn.myanmarseo.com/file/client-cdn/gnlm/wp-content/uploads/2022/11/12_Nov_22_gnlm.pdf

⁵⁸ SEANF ‘Activities’. Available at <https://seanf.asia/activities/>

⁵⁹ SEANF <https://www.facebook.com/myanmarnhrc/photos/pb.917801595483617/917801495483627/>

⁶⁰ ‘Myanmar National Human Rights Commission joins 19th Annual Meeting of Southeast Asian National Human Rights Institutions Forum,’ *Global New Light of Myanmar*, 2 December 2022. Available at <https://www.gnlm.com.mm/myanmar-national-human-rights-commission-joins-19th-annual-meeting-of-southeast-asia-national-human-rights-institutions-forum-seanf/>

⁶¹ Ibid.

⁶² “National Human Rights Institutions Express ‘Grave Concern’ over Burma,” 6 October 2007. Available at https://forum-asia.org/?p=7388%20Statement:%20https://apf-prod.s3.amazonaws.com/media/resource_file/myanmar.pdf?AWSAccessKeyId=AKIA57J6V557ISASX34R&Signature=D9AnzlbZ%2B4OgfBZ39qFFasObLfs%3D&Expires=1675847032

constitute crimes against humanity and war crimes. Without confronting the M NHRC's failings and allowing them a platform, these organizations fail to acknowledge the immense suffering of Myanmar's people on the ground and their international obligation as credible human rights bodies.

While civil society acknowledges and welcomes the statement by APF on 10 May 2021 to the coup attempt, not enough has been done since in response to the M NHRC's abrogation of the Paris Principles, and the APF continues to include the M NHRC in their meetings and workshops.⁶³ What APF has failed to acknowledge is that the M NHRC represents the interests and is under the authority of the military junta, and does not independently review human rights, denying the people of Myanmar a functional NHRI. The M NHRC has abided by the order handed down by an illegal military junta in the days following its failed coup attempt, despite it is illegitimate and illegal.⁶⁴

APF and SEANF have been unwilling to face the reality of the situation on the ground in Myanmar, and the M NHRC's response. In a statement issued by the APF's Chairperson on 15 July 2022, it stated "*We believe it is important that open and transparent lines of communication between the APF and the M NHRC remain in place. We are committed to providing support to the Commission and strengthening its capability to meet the expectations of an independent, credible and effective NHRI.*"⁶⁵ There are most definitely circumstances where an approach of continued engagement with a wayward NHRI is warranted, but by no means is this paper advocating this approach when it is abundantly clear there is no hope of resurrection. When an NHRI consistently and deliberately falls well below the standard expected of an NHRI under the Paris Principles, consequences must follow. It also follows that to continue to engage with an NHRI which props up an authoritarian regime only serves to embolden this behavior, and is utterly antithetical to the protection of human rights.

The two-year anniversary since the failed attempted coup has recently passed, preceded by years of unrectified failings by this M NHRC. The time has come for SEANF, APF and GANHRI to uphold their mandates, credibility and obligations, and suspend or expel the M NHRC. It is time to reassess their engagement with the M NHRC. These organizations must focus on human rights protection outcomes; if the intended outcome is to support human rights beneficiaries, then how are the people of Myanmar having their human rights strengthened through continued engagement with the M NHRC, a body that is complicit in the military junta's atrocity crimes and grave violations of rights of the people by taking side with and subordinate to the perpetrators of the serious international crimes?

The APF, in arguing for continued engagement with the M NHRC, fails to detail how this would be achieved – which brings to mind the old adage "flogging a dead horse." Supporting the Spring Revolution and the fight for a genuine federal democracy is best achieved through refusing to engage

⁶³ 'APF Chairperson's Statement on the Situation in Myanmar,' APF, 10 May 2021.
Available at <https://www.asiapacificforum.net/news/apf-chairpersons-statement-situation-myanmar/>

⁶⁴ Sebastian Strangio "Melissa Crouch on Myanmar's Coup and the Rule of Law," The Diplomat, 23 March 2021.
Available at <https://thediplomat.com/2021/03/melissa-crouch-on-myanmars-coup-and-the-rule-of-law/>

⁶⁵ "APF Statement on Myanmar Commission," APF, 15 July 2022.
Available at <https://www.asiapacificforum.net/news/apf-statement-myanmar-commission/>

with the MNHRC, a proxy for a military junta that is the root of human rights abuses in Myanmar. Ultimately, what matters is the protection and promotion of human rights for the people of Myanmar - this should be the common goal for APF, GANHRI and SEANF, in coordination and consultation with the people of Myanmar and Myanmar civil society organizations.

As has been clearly pointed out to APF, SEANF and GANHRI through statements, press releases and open letters by civil society organizations, the ANNI report, and this analysis paper, the MNHRC is completely unwilling to meet the expectations of an independent, credible and effective NHRI having sold their soul to the military junta. Their actions are not only concerned with self-preservation, but also with active participation in shielding the military from justice and accountability for their atrocity crimes, past and present. The commissioners do not have a human rights mindset but were selected through an untransparent selection process at the start of 2020 to be pliable to the will of the military and NLD-led government.⁶⁶ As mentioned, GANHRI-SCA and Myanmar civil society called for a transparent selection process prior to the selection, yet to no avail.⁶⁷ That is why it is more important than ever before for the GANHRI, APF and SEANF to take a stand as their efforsts all along have failed.

By allowing the MNHRC to participate in events held by SEANF, APF and GANHRI, these organizations undercut their message of strengthening human rights through NRIs in two distinct ways. The message to the people of Myanmar is that their human rights can be overlooked to allow for continued engagement with the MNHRC, despite vehement objections from Myanmar and regional civil society. Secondly, the message to other NRIs is that there will be no significant consequences for non-compliance with the Paris Principles, and window-dressing as a functional NRI is accepted – even when there are no genuine attempts towards human rights protection and promotion.

The MNHRC is becoming more problematic for APF, GANHRI and SEANF, as more and more international actors, governments and intergovernmental organizations shun the military junta and their proxies. If anything, APF, GANHRI and SEANF have a more of an onus than many other actors to shun a military proxy, given their mandates to upholding human rights. The military junta's failed coup attempt on 1 February 2021 was an illegal act, then followed by the junta's order for the MNHRC to continue their work under their control – also an illegal act. The gravity of the situation in Myanmar has not sunk in for SEANF, APF and GANHRI, and action needs to be taken urgently to remedy this situation.

⁶⁶ 'Report and Recommendations of the Session of the Sub-Committee on Accreditation', GANHRI, November 2015, Section 2. Available at https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_FINAL_REPORT_-_NOVEMBER_2015-English.pdf

⁶⁷ Ibid.

06

Suspension, Removal and Expulsion of the M NHRC from International and Regional NHRI Bodies

GANHRI and APF both have mechanisms within their founding documents to suspend, remove or expel an NHRI from their membership.⁶⁸ As for SEANF, they have a Charter outlining the principles by which SEANF members declare to adhere to, including, Article 2(1), “...*for the effective promotion, protection and fulfilment of human rights of the peoples of Southeast Asia region.*”⁶⁹ The M NHRC has clearly failed this, so consequences must follow.

The GANHRI Bureau has the power to revoke the M NHRC’s membership and strip them of their ‘B’ status accreditation under Article 27 of the GANHRI Statute, for falling well below ‘partial compliance’ with the Paris Principles, pursuant to Article 24.2.⁷⁰ More importantly, GANHRI could end the recognition of the M NHRC as a functional NHRI, given they have grievously breached the Paris Principles - breaches that have been mounting well before the failed attempted coup in February 2021.⁷¹ A GANHRI-SCA ‘A’ status accredited NHRI can have its status reviewed under 16.2 of the GANHRI Statute at the discretion of the GANHRI Chairperson or any member of the GANHRI-SCA, but the discretion to review a ‘B’ Status NHRI, like the M NHRC, on regular basis is not as easily achieved. Rather, GANHRI-SCA can review a ‘B’ Status NHRI when an NHRI seeks accreditation or re-accreditation or the circumstances of the NHRI change in any way that may affect its compliance with the Paris Principles or as outlined above.⁷² GANHRI should seek to allow for ‘B’ Status NRIs to be reviewed in the same manner as ‘A’ Status, and in the case of the M NHRC should review them on the basis that an appreciable change has occurred, whereby the M NHRC is utterly failing to meet the threshold of even ‘partial compliance’ with the Paris Principles.⁷³ Based on this, if the M NHRC were to apply for accreditation on their current record, they would fall well short and would not be accredited.

In an open letter to APF and GANHRI on 30 June 2022, Myanmar civil society organizations pointed out that APF has the discretion to expel NRIs from its membership. It has been silent from APF, SEANF and GANHRI regarding the situation of human rights in Myanmar - surprising, given the M NHRC’s complete non-compliance with the Paris Principles and APF, SEANF and GANHRI rules. Under the APF Constitution, APF’s Forum Councillors can exercise their power under Clauses

⁶⁸ “SEANF Charter,” 28 June 2007. Available at <https://seanf.asia/seanf-charter/>.

⁶⁹ Ibid.

⁷⁰ “GANHRI Statute,” 5 March 2019. Available at <https://ganhri.org/governance/>

⁷¹ Ibid.

⁷² Accreditation,’ GANHRI. Available at <https://ganhri.org/accreditation/>

⁷³ Ibid.

11.5(a)-(b) and 12.1(a)-(b) to review and expel the M NHRC, as they are non-compliant with the Paris Principles.⁷⁴ Additionally, APF could disinvite the M NHRC to all future events pending the outcome of this review, as an interim measure.

07 Looking to the Future

APF, GANHRI and SEANF should follow the principled step of not allowing the junta, or in this case the junta's proxies, from attending their events or participating in their activities. While some international and regional actors have allowed the junta or non-political representation by the junta at events and forums, APF, GANHRI and SEANF, as human rights bodies have greater responsibility to ensure that their platforms are not used to aid and abet the junta's propaganda campaign, in an attempt to shield themselves from being held accountable and as a strategy to gain legitimacy. These organizations must also listen to Myanmar civil society organizations and the people of Myanmar, supporting human rights at a grassroots level and face up to the capitulation of the M NHRC. The problem of the M NHRC is not going away. In recognition of this, the Working Group has drafted, with the assistance of NHRI experts, a new law for the establishment of a NHRI and is advocating the NUG, National Unity Consultative Council (NUCC) and the Committee Representing the Pyidaungsu Hluttaw (CRPH) to establish a new NHRI.⁷⁵ These organizations and others jointly signed a statement on the 34th anniversary of the 1988 nationwide democracy uprising on 8 August 2022, to pay tribute to and honour people from different religious communities, ethnicities, and classes who sacrificed their lives for federal democracy and human rights in Myanmar. They called for the emergence of a new NHRI, stating that, "*In its stance, activities, and existence, the M NHRC undermines the federal democratic revolution in Myanmar.*"⁷⁶ Their desires, and the desires of the people of Myanmar, must be honored.

⁷⁴ "APF Constitution," 1 January 2018. Available at <https://www.asiapacificforum.net/resources/apf-constitution/>

⁷⁵ "Myanmar Civil Society Proposes New Union Human Rights Commission Law Amid Ongoing Campaign of Terror by the Myanmar Military Junta, Urges Its Swift Adoption," 14 December 2021, CSO Working Group on M NHRC Reform and Asian NGO Network on National Human Rights Institutions. Available at <https://progressivevoicemyanmar.org/2021/12/14/myanmar-civil-society-proposes-new-union-human-rights-commission-law-amid-ongoing-campaign-of-terror-by-the-myanmar-military-junta-urges-its-swift-adoption/>

⁷⁶ "Time for the Emergence of a New National Human Rights Commission Representing the People of Myanmar," 7 August 2022, CSO Working Group and 32 Myanmar Civil Society Organizations. Available at <https://progressivevoicemyanmar.org/2022/08/07/time-for-the-emergence-of-a-new-national-human-rights-commission-representing-the-people-of-myanmar/>

08 Conclusion

The severity of the M NHRC's decline into aiding and abetting a military junta committing mass atrocity crimes must be addressed and taken concrete actions with urgency by GANHRI, APF and SEANF – it is completely untenable for these organizations to continue with the status quo, as if they were a functioning NHRI. All these organizations and those working within them are putting a lot at risk, including their credibility, integrity and stake within the human rights ecosystem. A shift in approach has been called for by Myanmar civil society and GANHRI, APF and SEANF must respond based on the recommendations set forth.

- First, there must be a recognition of the M NHRC under control of the military junta, operating as a tool in the junta's propaganda arsenal.
- Secondly, consequences must follow for continued non-compliance with Paris the Principles, prior and after the failed attempted coup of 1 February 2021 as the M NHRC is completely under the junta.
- Thirdly, APF, SEANF and GANHRI must support Myanmar civil society organizations' efforts for the emergence of the new human rights commission.

At the very core, these organizations have a very clear mandate and moral obligation to make a choice, to be on the right side of history, choose human rights and support democracy over tyranny, hate and authoritarianism.

09 Recommendations

To International and Regional NHRI Bodies (SEANF, GANHRI and APF):

- Suspend or expel the MNCRC as a member of your organizations,
- Support the people of Myanmar as they work towards a genuine federal democracy and take the principled stance of disengaging with the MNCRC to avoid legitimizing the military junta and its grave violations of human rights and international crimes,
- At GANHRI's next annual general meeting, they must change their rules and allow 'B' status NRIs to be reviewed,
- Support Myanmar civil society organizations as they take steps to establish a new national human rights commission, and
- Start dialogues with and support the National Unity Government as they establish a new human rights commission.

To International Donors:

- Cease funding the MNCRC's projects or activities, both directly or indirectly through the MNCRC's partners,
- Urge GANHRI, SEANF and APF to suspend or expel the MNCRC from their membership, and
- Support the National Unity Government and civil society for establishing a new human rights commission.

To the UN and other international actors:

- Cease engagement or continue to disengage with the MNCRC and urge other actors to follow suit,
- Cease funding the MNCRC's projects or activities,
- Support the National Unity Government and civil society to establish a new human rights commission, and
- Support the Myanmar people's struggle for a genuine federal democracy and respect their calls by not lending legitimacy to the military junta, or its proxies or those that tacitly endorse the junta, including the MNCRC.

To the National Unity Government, Committee Representing the Pyidaungsu Hluttaw and National Unity Consultative Council:

- Abolish the 2014 MNCRC Law and adopt the new UHRC Law drafted by Myanmar civil society organizations for the establishment of a new national human rights commission, and
- Seek support from the UN including Human Rights Council, donor governments and international institutions for establishment of the new human rights commission, in consultation with civil society.

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