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Burma's NHRC: An Empty Gesture

The international community should call on the regime to take the necessary steps to make the commission a truly independent and effective mechanism

On 5 September 2011, Burma's regime announced that it had established a National Human Rights Commission (NHRC) charged with promoting and safeguarding the fundamental rights of citizens in accordance with the 2008 Constitution.

While the creation of a NHRC could be seen as a positive step, many welcomed the development with skepticism.

We know very little about Burma's new NHRC. No official information about the procedure, mandate, and responsibilities of the commission has been made accessible to the public and, in particular, victims of human rights violations. The information gathered is piecemeal, collected from a number of different statements and interviews. The entire process of establishing the NHRC has been everything but transparent, lending support to the argument that this is nothing more than an empty gesture designed to placate the international community at a time when the regime is seeking to have sanctions lifted.

Moreover, while Win Mra, Chairman of the NHRC, claims that the NHRC was established according to the Paris Principles,¹ the little information we have managed to collect is sufficient to create strong reservations about the commission's independence and autonomy, and demonstrates that there are clear violations of the Paris Principles.

We, therefore, call on the international community to continuously raise, with the regime and Burma's NHRC, the issues of concern addressed in this briefer until it has proven to be functional and independent, and it complies with the Paris Principles.

¹ "[We won't be influenced by the govnt](#)", The Myanmar Times, 19 September 2011

Burma's NHRC does not comply with the Paris Principles

The Paris Principles² were approved by the UN General Assembly in 1993 and today are broadly accepted as the international standards that are used to determine a national human rights institution's (NHRI) independence and effectiveness. NHRIs include national institutions of many forms, such as ombudsmen and national human rights commissions (NHRC). The Paris Principles are the minimum conditions that must be met for a NHRI to be considered credible by its peer institutions and the UN system. The UNDP-OHCHR Toolkit³ for collaboration with NHRIs published in December 2010 outlines how the requirements for effectiveness and independence expressed in the Paris Principles may be satisfied.

A clearly defined broad mandate set forth in a constitutional or legislative text

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According to the UNDP-OHCHR Toolkit, it is important for an institution's mandate to be set out in a constitution or in legislation as it enhances the institution's permanence and independence.

Moreover, having a NHRI's mandate set out in legislation that has been approved by the nation's elected officials also improves visibility and transparency. The public can refer to a text that details what that institution is meant to do, as well as what powers it has.

Summary:

The establishment of the NHRC appears to be nothing more than part of a public relations strategy aimed at winning over the international community.

The mandate of Burma's NHRC is not clearly defined and is based on the 2008 Constitution, a document which violates human rights standards and ensures impunity for human rights violations committed by regime officials.

The NHRC was established by Government Notification 34/2011 and its mandate articulated by a notification from the NHRC itself.

The NHRC members were appointed by President Thein Sein in another government notification. All members are "retired" civil servants and have a past history of defending the military regime's record of human rights violations.

None of the information about the NHRC is reasonably accessible to the public and victims of human rights violations.

All of these elements are clear violations of the Paris Principles, which are designed to guarantee the independence and autonomy of NHRCs.

Therefore, the international community should continuously raise, with the regime and Burma's NHRC, the issues of concern addressed in this briefer until it has proven to be functional and independent and it complies with the Paris Principles.

² 48th Session of the United Nations General Assembly, [A/Res/48/134](#), 20 December 1993

³ [UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions](#), December 2010

In Burma, there are no references to the NHRC in the 2008 Constitution. The NHRC was established by Government Notification No. 34/2011⁴ and its mandate detailed by a notification issued by Burma's NHRC itself. This clearly contradicts the International Coordinating Committee of NHRIs (ICC) Sub-Committee on Accreditation, which in its general observations states, "Creation by an instrument of the Executive is not adequate to ensure permanency and independence."⁵

No legal steps have been taken by the parliament towards the NHRC's creation or the definition of its mandate. No consultative meeting has been organized by the regime. Therefore, as its activities will most probably not be undergirded by public legislation, it is hard to believe that the commission will be able to act independently and transparently, contravening the essential elements of what a legitimate NHRC should be.

"A clearly defined broad mandate [...]"

Burma's NHRC's mandate is far from being clearly defined as the only information available is a short notification issued by the NHRC itself which states that it can "receive complaints by individuals when his or her fundamental rights in the Constitution of the Republic of the Union of Myanmar are violated [...] if the commission concludes that the alleged violations of the fundamental rights in the Constitution against a citizen are true, it will take steps in accordance with its rules of procedure to promote and safeguard the fundamental rights."⁶ No additional information has been made public about further measures that have been taken to detail the NHRC's mandate, procedures, and responsibilities.

Article 3 of the Paris Principles sets forth a list of the minimum responsibilities and activities NHRIs should engage in for a broad mandate and the body's effectiveness. The activities listed include: to promote and ensure the harmonization of national legislation, regulations and practices, and encourage ratification of human rights instruments, etc. The mandate of Burma's NHRC is far from being sufficiently broad. According to the NHRC's notification, the only way in which it can act is through the receipt of complaints, preventing it from carrying out most of the items listed in the minimum responsibilities NHRIs are expected to undertake in order to be effective.

"A mandate based on universal human rights standards"

The UNDP-OHCHR Toolkit sets forth as a criterion for a fully functioning NHRI, a mandate based on universal human rights standards. Because the mandate of Burma's NHRC is based on the 2008 Constitution, it is not a mandate that is centered on the protection of people's fundamental human rights. The 2008 Constitution itself violates the rights of the people of Burma and is an instrument used by the regime to maintain power and oppress the population. For instance, article 445 of the Constitution grants immunity to any regime official who commits, or has committed, any crime while carrying out his or her official duties. Therefore the chief of intelligence who arrested

⁴ ["Myanmar National Human Rights Commission formed"](#), The New Light of Myanmar, 6 September 2011

⁵ ICC Sub-Committee on Accreditation, [General Observations](#), June 2009

⁶ ["The Republic of the Union of Myanmar: Myanmar National Human Rights Commission - Accepting of complaint"](#), The New Light of Myanmar, 7 October 2011

and tortured political dissidents and the army commander who used forced labour for construction projects would enjoy impunity, and be free to continue committing such heinous crimes without fear of being prosecuted or held responsible by the NHRC.⁷ Therefore, the NHRC will not be in a position to address any human rights violations committed by regime officials, the primary perpetrators of such abuses in Burma.

It is now clear that Burma's NHRC has a mandate that is neither clearly defined nor broad, nor set forth by legislation, nor based on universal human rights standards and which, therefore, violates the Paris Principles.

Operational and financial independence

According to UNDP-OHCHR Toolkit, operational independence means that the institution has the authority to draft its own rules of procedure, which should not be subject to an external authority's approval or require prior review. However, in Burma, when Chairman Win Mra spoke about the process of drafting the NHRC's terms of reference, he explained:

“After we write the terms of reference we will send it to the government and get approval, after which we can start accepting complaints. Our terms of reference need to be officially approved by the authorities to become active.”⁸

Another criterion to check the operational independence of a NHRI is for the body to report to the country's parliament. Considering that Burma's parliament was neither involved in the creation nor in the selection of the NHRC's members it is very unlikely that the commission will report to the parliament. Up until today, the parliament hasn't taken up the issue of the NHRC and the NHRC hasn't mentioned its relationship to the institution. Moreover, it is important to keep in mind that the current parliament is dominated by MPs from the military-backed Union Solidarity and Development Party and appointed military officials.

In terms of financial independence, the Paris Principles require that funding be sufficient to allow the NHRI to have its own premises and staff in order to be independent of other government bodies. No information has been made available thus far on the funding of Burma's NHRC, strengthening the belief that Burma's NHRC is nothing more than an attempt at window dressing and is not intended to become a functional institution.

Independent, transparent and inclusive appointment process and a pluralist composition

When determining the independence and effectiveness of a NHRI, the Paris Principles look at the nomination process for the commission's members and the pluralism of its composition. The critical importance of the selection and appointment process as a guarantee of independence and efficacy was also outlined in the General Observations of the ICC Sub-Committee on Accreditation.

⁷ [“Revealing Burma's System of Impunity”](#), Burma Lawyers' Council, September 2011

⁸ [“We won't be influenced by the govnt”](#), The Myanmar Times, 19 September 2011

According to the Paris Principles and the UNDP-OHCHR Toolkit, the terms and conditions that govern appointment and dismissal of members should be transparent and, therefore, set out in the law that established the NHRI. These terms and conditions should address: the method of appointment, the criteria for appointment, the duration of terms of appointment and the dismissal process. None of this information has been made available and the appointment of the members of Burma's NHRC was made in the same government notification that announced its creation with no explanation of the method followed to select its members.

Moreover, the method of appointment should involve the parliament and ensure that representatives of civilian society have a meaningful say in the process. As Win Mra, the Chairman of the NHRC, stated in an interview, "The current members were chosen by the President."⁹ The parliament, civil society groups and media knew nothing about the establishment of the NHRC and its membership before the government issued the notification establishing the body, in total disregard for the Paris Principles.

Finally, according to the Paris Principles, the quality of members is vital to the NHRI's reputation and effectiveness, and they should be appointed based upon clear procedures that judge them on merit. Burma's 15-member body includes former State Peace and Development Council (SPDC) ambassadors who have a very good understanding of international human rights, as well as retired civil servants with little prior knowledge of human rights. There are no representatives of NGOs, trade unions or professional associations in the commission, as required by the Paris Principles. Looking at the composition of the NHRC makes it clear that, considering who the members of the NHRC are and how they were appointed, it will only serve as a tool for whitewashing Burma's appalling record of human rights abuses.

Win Mra (Chairman)

Win Mra is a retired career diplomat. He served as the Permanent Representative of Burma to the United Nations from May 1994 until 2001. In his capacity as the regime's former Ambassador to the UN in New York, Win Mra spent seven years routinely defending the regime against allegations of human rights violations.

For instance, in his Statement to the Third Committee of the 52nd Session of the UNGA on the Draft Resolution on the Situation of Human Rights in Burma, in November 1997, he blatantly denied the occurrence of human rights violations in Burma:

"I would like to reiterate here that, as a matter of policy, Myanmar does not condone human rights violations as it is committed to the principles enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights."¹⁰

⁹ ["We won't be influenced by the govnt"](#), The Myanmar Times, 19 September 2011

¹⁰ [UNGA, 52nd session, Statement by H.E. U Win Mra, Permanent Representative of the Union of Myanmar to the UN, on the Draft Resolution A/C.3/52.L. 63 "Situation on Human Rights in Burma", 24 November 1997](#)

He continued, stating that there is no impunity in Burma:

“No perpetrators of offences punishable under law enjoy impunity in Myanmar. To suggest that such privilege exists in Myanmar for government agents is outrageous and is totally unacceptable.”

Impunity in Burma for army generals and regime officials who perpetrate human rights violations is infamous. The establishment of the NHRC generated hopes that it could become an institution that would actually hold violators responsible for their abuses. However, if the Chairman of the institution itself denies the mere existence of impunity in the country, it clearly shows that the commission cannot carry out its responsibilities independently.

Another sad example of Win Mra’s constant denial of the occurrence of human rights abuses in the country happened in June 2001, during the annual session of the International Labor Conference in Geneva, when he denied the existence of forced labour in Burma.¹¹ Moreover, in May 2004, during a session of the UN Committee on the Rights of the Child, he stated that there was no religious discrimination and no racial group known as Rohingya in Burma.¹² Article 3 of the Paris Principles states that among its responsibilities NHRIs should “publicize human rights reports and efforts to combat all forms of discrimination, in particular racial discrimination [...]”

Kyaw Tint Swe (Vice-Chairman)

Kyaw Tint Swe is also a former career diplomat and succeeded Win Mra as the regime’s former Ambassador to the UN in New York from 2001 to 2010. While serving in this position, he claimed on several occasions that Burma was a victim of a “systematic disinformation campaign.”¹³ In his statement to the Third Committee of the UN General Assembly on the draft resolution on the situation of human rights in Burma, in November 2003, he denied that the regime had any involvement in the Depayin Massacre.¹⁴ In the same speech he stated, with respect to allegations of rape and other abuses against civilians carried out by the Burma Army in Shan and other states, “I again reiterate that these allegations were maliciously fabricated by two well-funded NGOs.”

He further continued saying:

“The draft resolution again mentioned unsubstantiated allegation of systematic violation of human rights in my country. This is at complete variance with reality. May I reiterate

¹¹ [New York Times \(04 Jul 01\) But Government Maintains No Abuses Exist: Burma Pledges to Help on Forced Labour Issue](#)

¹² [36th session, Summary Record of the 960th Meeting: Myanmar, 06 June 2004, UN Doc CRC/C/SR. 960](#)

¹³ [UNGA, 58th session, Statement by H.E. Kyaw Tint Swe, Permanent Representative of the Union of Myanmar to the UN, on the Draft resolution “Situation on Human Rights in Burma”, 23 November 2003 ; UNGA, 62nd session, Memorandum on the Situation of Human Rights in the Union of Myanmar, prepared by H.E. Kyaw Tint Swe under agenda item 70 \(c\), 5 November 2007](#)

¹⁴ [UNGA, 58th session, Statement by H.E. Kyaw Tint Swe, Permanent Representative of the Union of Myanmar to the UN, on the Draft resolution “Situation on Human Rights in Burma”, 23 November 2003](#)

that my government has been arduously working to promote the human rights of our people, including the right to development.”

He also denied allegations that the Burma Army recruited child soldiers saying, “There is neither a draft system nor forced conscription in Myanmar.”

According to Article 3 of the Paris Principles, the range of responsibilities that should be within the operational mandate of an institution includes, “To contribute to the reports which States are required to submit to the United Nations bodies and committees [...]” Knowing that the Chairman and Vice-Chairman of the NHRC consistently denied the occurrence of human rights violations in Burma and continuously defended the regime’s human rights violations in front of the UN, it is unlikely that the new NHRC will provide accurate and independent reports on the human rights situation of the country.

Other members of the NHRC include Hla Myint, a former Burma Army Brigadier General who started his military career in 1971, and Nyunt Swe, a former Burma Army General and State Law and Order Restoration Council (SLORC) Deputy Foreign Minister between 1994 and 1998. From 2006-2007, Nyunt Swe served as the military regime’s Deputy Ambassador to the UN in Geneva where, in 2007, in his statement at the 4th Session of Human Rights Council, he said:

“No forced recruitment is carried out and all soldiers joined the armed force of their own accord” and “Myanmar is not a nation in a situation of armed conflict.”¹⁵

There is little doubt that two former high-ranking officials in the Burma Army would be reluctant to investigate allegations of human rights violations committed by their peers. It is clear that the leading members have been part of the regime’s campaign to deny human rights violations and to defend the perpetrators of these abuses. All of them are today in charge of conducting the activities of the NHRC leaving little space for hope that it will ever be able to carry out its duties with autonomy and independence.

Burma’s NHRC: Cheerleader of the regime

Since the establishment of Burma’s NHRC, no detailed information about the NHRC’s mandate, responsibilities, effectiveness or finances have been released. Despite this lack of publicity, the NHRC assumed its activities by engaging in a media campaign aimed at relaying the regime’s discourse.

It released several statements since its establishment. On 10 October, 12 November and more recently on 30 December 2011, it called on the regime to release “what is referred to as prisoners of conscience”¹⁶ by the international community. However, the NHRC continues to use the

¹⁵ [Statement by the Deputy Permanent Representative U Nyunt Swe, the Union of Myanmar and Leader of the Myanmar Observer Delegation at the Fourth Session of the Human Rights Council, 23 March 2007, Geneva](#)

¹⁶ The Myanmar National Human Rights Commission submitted a request in open letter to President of the Republic of the Union of Myanmar, The New Light of Myanmar, 10 October and 12 November 2011

regime's number of 500 political prisoners without having carried out an independent investigation, adopting the regime's discourse as its own.

On 27 November, the NHRC welcomed ASEAN's decision to grant Burma the Chairmanship in 2014 saying, "The Commission has taken the position that Myanmar is willing and able to take up its role as Chairman of the Association."¹⁷ In doing so, the NHRC publicly backed the regime on an international political issue, not directly related to human rights. This clearly demonstrates how the NHRC is used as an international lobby tool by the regime.

On 10 December, the International Human Rights Day, the NHRC referred to the importance of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights but did not call on the regime to ratify these two fundamental instruments. This is the type of strategy often used by the regime and now by the NHRC. They employ international human rights language to mislead observers, but do not themselves comply with or make recommendations to meet those international human rights standards.

In that same statement, the NHRC further stated, "The Constitution adopted on 29 May, 2008 overwhelmingly by the people of the Republic of the Union of Myanmar also enshrines these fundamental human rights." This sentence alone is enough to clearly demonstrate that the NHRC is nothing more than a tool used to legitimize the regime. Firstly, the 2008 Constitution is an undemocratic military-drafted constitution adopted by a flawed referendum held days after Cyclone Nargis hit Burma, killing 138,000 people and leaving 2.4 million people struggling to survive. Secondly, the 2008 Constitution itself violates the rights of the people of Burma and is an instrument used by the regime to maintain power and oppress the population. Thirdly, if the NHRC was in a position to independently carry out its work, it would not blindly promote a constitution that enshrines human rights violations and protects perpetrators. Rather, an independent NHRC would call on the regime to amend the Constitution to be in compliance with international human rights standards.

On 13 December, the commission released another statement after four members visited Kachin State.¹⁸ It stated, "Under coordination by the Kachin State Government, humanitarian assistance [...] were systematically distributed to the population in the camps and their basic necessities were provided for." This directly contradicted numerous reports on the need for humanitarian assistance in Kachin State, where Internally Displaced Persons (IDPs) are in urgent need for food, clothes and health care.¹⁹ Moreover, the NHRC's statement called on the Kachin Independence Army "to strive for the restoration of security and stability to the region," but did not issue the same call to the regime or the Burma Army. With this statement, the NHRC, conveniently for the regime, made the ethnic armed group appear as being solely responsible for the humanitarian crisis. Finally, during this visit, the NHRC did not investigate allegations of war crimes or crimes against humanity committed by the Burma Army, while civil society organisations that have visited the conflict area have documented soldiers looting food from civilians, firing indiscriminately into villages and using

¹⁷ [Statement by the Myanmar National Human Rights Commission](#), 27 November 2011

¹⁸ [Statement by the Myanmar National Human Rights Commission](#), 13 December 2011

¹⁹ Human Rights Watch "[Ensure Aid Access to Kachin State](#)", 21 December 2011

villagers as human minesweepers and porters. Even more shocking is Chairman Win Mra's comment in an interview that he hadn't read the reports of crimes and dismissed the allegations.²⁰

The NHRC's latest statement was released on 30 December.²¹ In this statement, the NHRC refuted allegations by Amnesty International that authorities mistreated the prisoners who recently staged a hunger strike at Insein Prison. Moreover, the NHRC did not mention any of the problems of health, food, hygiene, torture and other mistreatment from which prisoners suffer in the prison. Again, the commission did not call on the regime to take any concrete actions, but rather recommended that meditation classes be offered to prisoners.

From the NHRC's statements and few actions taken, there is little doubt that Burma's NHRC is anything more than an institution created to mislead the international community and to relay and legitimize the regime's discourse.

Furthermore, in his report to the UN General Assembly, dated 16 September 2011, the UN Special Rapporteur on the situation of human rights in Burma, Tomás Ojea Quintana, recommended that the regime:

“[E]nsure that the new Myanmar Human Rights Commission is established in such a way as to comply with the international standards. The human rights institution should be established by a law adopted by the parliament that should provide for an inclusive and transparent selection process of the members, that includes a selection committee comprising all sectors of the society. The law should provide for functional and budgetary independence and meet other requirements of the Paris Principles.”²²

It is clear that Burma's NHRC does not yet meet any of these requirements. Therefore, we highly recommend that the international community adopts a very cautious engagement policy with Burma's NHRC. It should continuously raise, both with the regime and the NHRC itself, the issues of concern addressed in this briefer until it has proven itself to be functional, independent, and compliant with the Paris Principles.

At this point in time, there are significant reasons to doubt the independence and autonomy of Burma's NHRC, and clear indications that this body will be used as a tool to legitimize human rights violations rather than as an institution that would safeguard universal human rights. It would be detrimental to all independent NHRCs if the international community overlooks Burma's violations of the core elements of the Paris Principles.

²⁰ Voice of America, [“Burma's President Orders Ceasefire in Kachin State”](#), 14 December 2011

²¹ [Statement by the Myanmar National Human Rights Commission on its visits to the Insein Prison and HlayHlaw-Inn Yebet Prison Labour Camp](#), 30 December 2011

²² [“Report of the Special Rapporteur on the situation of human rights in Myanmar”](#), 16 September 2011