



BURMAPARTNERSHIP

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Strengthening Cooperation for a Free Burma

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EU Program to Help the Myanmar National Human Rights Commission Must Ensure Substantive Changes

On 5 September 2011, Burma's regime announced that it had established a national human rights commission charged with promoting and safeguarding the fundamental rights of citizens in accordance with the 2008 Constitution. While the establishment of the Myanmar National Human Rights Commission (MNHRC) is a positive step, we welcome this development with cautious optimism. There is still a long way to go for the MNHRC to become an independent, effective and transparent institution that protects and promotes the rights of the people of Burma.

The EU program must concentrate on securing the MNHRC's independence

President Thein Sein directly appointed the MNHRC's members. No information about the method and criteria of appointment was disclosed and no consultation with civil society or Parliament took place. Moreover, some of the leading members of the MNHRC used to serve as spokespersons for the former military junta to the United Nations where they constantly denied the occurrence of human rights violations in Burma.

The MNHRC reports directly to the President and may carry out tasks entrusted by the President himself. Furthermore, presidential authorization was required for prison visits, and interviews with prisoners were conducted in the presence of prison officials.

All these indicate that the MNHRC is not fully independent of the government, yet the Paris Principles clearly state that members and staff of National Human Rights Institutions (NHRI) should not receive instructions or be required to seek authorization from government ministers or other public officials. We believe independence is the key attribute for the legitimacy, credibility and effectiveness of a NHRI. Therefore, the issue of independence is a serious concern that must be addressed with Burma's regime and the MNHRC.

The EU Program must concentrate on increasing the MNHRC's transparency and accessibility

Burma's statement at the UN Human Rights Council mentioned that the MNHRC has so far received a total of 1,250 complaints and that findings on 283 cases were transmitted to the relevant government ministries.

However, no information has been provided regarding when such reports will be sent, not only to a body it is accountable to, but to the public as a whole. There should also be information regarding access to data about complaints received and investigated, and advice given to the government.

The MNHRC is currently drafting its enabling law in order for it to be established by an act of Parliament. The enabling law of the MNHRC is a crucial tool to guarantee its compliance with the Paris Principles, its independence and effectiveness. Therefore, the enabling law of the MNHRC must reflect all the Paris Principles' requirements including clearly setting out its role and powers, establishing a broad mandate based on universal human rights principles, ensuring pluralism of members, providing adequate financial resources and power of investigation, and encompassing representation of civil society.

However, despite the call of 54 civil society and community-based organizations and networks from Burma for transparency and inclusiveness in the drafting process of the enabling Law¹ the MNHRC is not consulting with any civil society organizations, neither did it release a draft of the law.

All these demonstrate that the MNHRC operates in secrecy. The MNHRC seems to be more accountable to the President than to the public yet the Paris Principles recognize that relationships with civil society can help NHRIs protect their independence and pluralism, and enhance their effectiveness by deepening their public legitimacy. The Paris Principles also encourage full and regular consultation at every stage, from planning, through implementation, to evaluation.

Therefore, EU support to the MNHRC must not be limited to increasing the skills of its personnel or it would only legitimize a dysfunctional institution that will best serve the government rather than the people of Burma. It must engage in the restructuring of the MNHRC to ensure it becomes an independent, transparent and effective institution.

EU's engagement with the MNHRC must concentrate on:

- securing a solid legal framework for the MNHRC that fully complies with the Paris Principles;
- encouraging an inclusive consultation process with all relevant stakeholders, including both registered and non-registered civil society and community-based organizations, grassroots people and communities throughout the country, especially those from ethnic areas and women's groups, as well as media;
- increasing transparency of the MNHRC's activities and how it functions;
- increasing accessibility of the MNHRC to victims of human rights violations;
- starting outreach programs about the MNHRC for victims of human rights violations to increase public awareness of its existence, functions and mandate.

¹ Statement Calling for a Transparent and Participatory Drafting Process of the Myanmar National Human Rights Commission's Enabling Law, <http://www.burmapartnership.org/2012/05/statement-calling-for-a-transparent-and-participatory-drafting-process-of-the-mnhr-enabling-law/>