

**PRESENTATION ON RECENT DEVELOPMENTS ON MYANMAR
NATIONAL HUMAN RIGHTS COMMISSION (MNHRC)
COMPLAINTS HANDLING, INVESTIGATIONS AND COOPERATION
WITH THE SPECIAL PROCEDURES OF THE UNITED NATIONS**

Introduction

My presentation has two parts;

First part has to do with significant developments of the MNHRC in 2012. A second concern how the protection works, that is the complaint handling, are being carried out and what are the difficulties that are, in our view, impeding the progress in this aspect.

Developments

The year 2012 has been an eventful one. We had many developments. Mostly they were encouraging. A few, however, were not so encouraging and even made us wonder what we should do. For instance, the session of the Pyidaungsu Hluttaw held on 16 March 2012 decided on the cancellation of designation of Myanmar National Human Rights Commission as central level organization and its expenditure proposal in 2012-2013 fiscal year Union Budget. This had many implications for the work of the Commission. The Commission could not start the recruitment of its staff as planned. Fortunately, within three months, the

President Office was able to find ways around these difficulties and managed to give us a quarterly grant of an amount (US \$72,812) adequate for the Commission's expenditures. As a result, we have recruited 14 of our own staff and planning to recruit more

Following the budget issue, the Commission had to assure the public, through a statement, of the continued functioning of the Commission.

During last year, the Commission could enhance its international relations. The outside interest in the work of the commission remained unabated and 81 delegations representing foreign organizations and countries visited the Commission and held discussions on the work of the Commission and on how its capacity could be built to make the Commission more effective. Some offered assistance for that purpose. They sometimes suggested areas where the Commission should pay more attention. Through these interactions with foreign organizations and countries, the Commission was able to make progress in implementing its mandate of promoting and protecting human rights. Our interaction with the Raoul Wallenberg Institute of Sweden, for instance, has led to the adoption of a joint capacity development plan for 2013. To enhance public awareness of

human rights and its knowledge about the commission's activities are some objectives of the plan. Under this plan, we have agreed to hold several seminars, to organize training for the Commission Staff as well as for the officials of the Ministries concerned with the implementation of human rights instruments Myanmar has acceded to. Also included in the plan are:

- The creation of a Commission Website;
- Setting up an electronic library;
- To engage in the translation of important human rights materials into Myanmar language, and
- To send a Commission staff for a Master degree in human rights laws at the Lund University of Sweden.

Our relations with regional human rights organizations have finally paved the way for the Commission to become an active partner in the promotion and protection of human rights in the region. The South East Asian National Human Rights Institutions Forum (SEANF) expressed its support for the establishment of the Commission and subsequently visited the Commission for two days to observe first hand the work of the Commission. When it held its Ninth Annual Meeting in Thailand in September, 2012, it

invited the Commission. At its meeting on 5 September, SEANF decided to accept the Commission as its 6th Member. Similarly the Asia Pacific Forum also visited the Commission and provided very useful suggestions on the work of the commission and on its membership of the APF. The visit was followed up with a high-level dialogue between the APF and the Commission on 31 July and 1 August, 2012 where substantive issues on National Human Rights Institutes (NHRIs) were addressed. The APF Secretariat extended the necessary assistance for application for the APF Membership. The Commission was invited to the APF Business meeting held during the 11th International Conference of the ICC in Amman, Jordan, in November, 2012 and accepted as an Associate Member of the APF

It will be my dereliction if I do not mention the Commission's sustained cooperation and coordination with the Office of High Commissioner for Human Rights, Bangkok on matters related to human rights. The OHCHR, Bangkok has consistently engaged with the members of the Commission in these matters and also provided advice on the work of the Commission. I wish to take this opportunity to congratulate the OHCHR for organizing the present workshop for the civil society whose role in Myanmar has been clearly recognized by the President himself. The Commission

is grateful to be given an opportunity to participate in this workshop. For its part, the Commission is going to resume, starting from this month, its talks with the domestic NGOs on the activities of the Commission which were suspended in the wake of budget issue and also due to technical reasons. These talks are aimed at informing the NGOs of the details of our important works and also to listen to their views for use in the Commission's work as appropriate.

Although the Commission recognizes the importance of its relations with the State and the Parliament, it has been an area where the Commission has not been able to work effectually for various reasons beyond its control. Our formal relations with the Ministries are only through the Office of the Union Government. Ours with the Parliament is non-existent at present. Despite the fact that there has been tremendous amount of interest shown by foreign countries and organizations in how effectively the Commission is working and what are the challenges facing it. On the 11th of this month, the delegation from the Human Rights Watch in Washington met with us and discussed these questions. In quite contrast such an interest has not been demonstrated so far by the legislative side. To us the reason is clearly the demands of other important matters. The Commission, however, is

determined to foster these relations when circumstances become appropriate.

As part of its promotion work, the Commission is going to hold a Training Workshop on Business and Human Rights from 28 to 29 January, 2013 at the Inya Lake Hotel in Yangon in cooperation with the RWI and SIDA, and most participants are from the business sectors.

During the period covered under the presentation, the Commissioners and a few staff of the Commission actively participated in 24 meetings related to human rights held in the region and elsewhere

Complaint handling

Being the first institution of its kind, the Commission started to receive a lot of human rights violations immediately after its establishment. The Commission therefore in early October made an announcement in the newspapers on how the complaints could be sent. The announcement says the following requirements must be met for a complaint to be admissible-

- Any citizen may send complaint to the Myanmar National Human Rights Commission when his or her

fundamental rights in the Constitution of the Republic of the Union of Myanmar are violated. The following facts must be stated completely in the complaint:-

- (a) Complainant's name, full address and contact address (If any, phone, fax and e-mail).
 - (b) Full account of how the Complainant's rights were violated, and
 - (c) Signed admission that the facts stated in the complaint are true.
- The complaint, attached with copy of the Complainant's national registration card, must be addressed to the Secretary of the Myanmar National Human Rights Commission and may be either sent by registered mail or delivered to the Commission in person.
 - The facts under above-mentioned paragraph 2 (a), (b) and (c) are necessary to be mentioned completely so that the Commission will be able to deal with the complaint effectively.
 - Matters that have been brought before a court or under the proceedings of a court of law and matters that have

been finally decided by a court are not relevant under this announcement.

- In its examination of the complaints which are received, the Commission will, if and when necessary, interview the complainant.
- 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.

Drawing on the internationally accepted standards, the Commission started to draft its own rules procedures for use in its handling of complaints and set up at the same time a sustainable mechanism for addressing the complains. The mechanism is a daily meeting attended by at least 4 members according to pre-adopted schedule. Being open-ended, it can also be attended by other members. The complaint received through announced channels are registered systematically by the assigned staff under the supervision of the responsible Commissioner and submitted to the said daily meeting. The complaints are normally considered in order of the time they are received. This, however,

does not preclude the possibility of considering an urgent complaint on the suggestion of the relevant Commissioner or other Commissioners in case they have sufficient ground to so suggest.

On the admissible complaints being addressed by the meeting, any of the following decisions may be taken:

- (1) The complaint is simply noted because it does not concern human rights violations or is a court case or the complaint is merely a copy to the Commission. However, seriousness of a case may compel the Commission to take action on a complaint sent as a copy.
- (2) To invite the complainant to verify the facts in the complaint or to seek more information on the complaint.
- (3) To ask for more evidence from the complainant or information from other concerned parties before the referral of the complaints to the concerned authorities.
- (4) To investigate the complaint, visiting the relevant location

- (5) To refer the complaint to the Office of the Union Government for onward transmission to the Ministry or body identified by the commission as responsible.
- (6) To write to the complainant to seek more appropriate redress measures in case of non-human rights complaints.

Before the present procedure, the Commission referred the complaints it had considered for action to the Ministry or the body concerned directly. The time taken when sent directly was much less and responses from the relevant Ministries or bodies are quicker. The present procedure through the Office of the Union Government has caused undue delay due to the time consumed and for other bureaucratic reasons. To make changes in this procedure has been a challenge for the Commission as regards complaint handling. We will submit a recommendation to that effect to the President in our Annual Report for 2012. Another challenge is the limited human resources and lack of legal expertise of the staff which gives rise to practical difficulties for the Commission to undertake verification work on the complaints. As a result, when the complaints are investigated by the Ministry or the body identified as responsible, they are occasionally found to be invalid. The Commission needs to strengthen its verification

capability in terms of human and financial resources and needed skills. In the meantime, the Human Rights Protection Division has been strengthened with more staff than other divisions and the Commission selected more law degree holders in its recent recruitment.

Status of complaint handling and investigations missions

Now let me touch on the status of complaint handlings in the year under reference.

In 2011, the Commission had received 1037 complaints since its establishment. At the end of year, 382 remained pending and from 1 January 2012 to 1 February 2012, the Commission held additional meetings for 17 times to address the pending complaints while regular daily meetings for complaints addressed the newly received complaints. Out of 1037, 102 were referred to the Office of the Union Government and the Offices of the relevant State and Division Governments. The 35 individual complainants were informed of the action they could resort to through other channels. 245 complaints were simply recorded for the following reasons;

- addressed to the Commission as a copy

- violations took place many years before the Commission's establishment
- complaint was not human rights violations and only breach of contracts between individuals or between an individual and a company
- a court case that has been decided or is pending
- facts provided in the complaint were, in the view of the Commission, were not valid even after due verification
- the complaint was revisited after being resolved to the mutual satisfaction.

In 2012, the Commission received a total of 2866 complaints and they were examined by the Commission at its 167 meetings. The cases found to be valid for referral were dispatched to the Office of the Union Government. Certain complaints do not need to be referred to the Government and consequently simply need other alternative means. In such cases, the complainants were informed accordingly to enable them to seek solutions through other means. Some complaints required interviews with the complainant or visits to the scene of violations. These visits to the scenes were usually arranged with the cooperation of the local

authorities. The majority of the complaints were found to be falling out of the mandate of the Commission, or they were simply personal matters or individual economic matters and consequently had to be put on records. These invalid cases affect the precious time and the limited resources of the Commission and it also is a challenge for the Commission to educate the public on the specific mandate of the Commission. The awareness campaign of the Commission has to take into consideration this challenge.

Out of 2866 complaints, 830 were referred to the Office of the Union Government while 147 complaints had to be conveyed back to the complainants to seek other means to find solution, sometimes giving some indication of the proper channels for them. The cases recorded for the above-mentioned reasons came to 1889.

Now I wish to present the details on the nature of the complaints. The complaints could be categorized as follows;

- (1) **Complaints related to land;** these complaints concerned ownership of different types of land such as farmland, pasture land, garden land, alluvial land and virgin land. Usually the complainants had been working on the land

in question for so many years without holding any ownership rights. Some could present certain deeds or tax receipts. Complaints happened when these land were confiscated by the Government or the Army for certain projects or by private companies for commercial farming or for setting up businesses. Complaints were about compensation much lower than the prevailing amount or for repossession of the land that remained unused after confiscation. Looking at the sources of these complaints, these land cases are found to be widespread and involve the livelihoods of many people with little choice.

- (2) **Complaints related to the judiciary;** these cases concerned matters that had been decided by a law court or before the court. Complaints were about the lack of due process of law or about the impartiality or the unfairness of the deciding judge. Although the Commission's procedure precludes the court cases, the Commission considers such cases if justice has been denied to the complainant.
- (3) **Complaints related to local authorities;** these complaints were about the malpractices and injustices

committed by the local authorities. The usually involved were township administrative departments, village/ward administrators, city development committee, township land records department and township police force.

- (4) **Complaints related to vehicular accidents;** these complaints were about compensations for the accidents leading to disability or loss of limbs or medical treatment. Invariably the targeted party was favoured by the authorities concerned or undue influence was exercised on responsible officials by individuals in a powerful position.
- (5) **Complaints related to the continued rental of welfare shops by government departments;** these were complaints about the welfare shops for the government employees. These shops were originally set up in the private buildings rented by government departments. Although the government no longer operates these shops, relevant local departments continue to keep these shops, causing complaints by the owners. The involved departments were Cooperative Department, City Development Committee, General administration

Dept of the Home Ministry and Fire Services Department. Some shops were found to be set up on the premises of Hindu Temples and Buddhist Stupas.

- (6) **Other complaints;** these complaints were about disputes between the tenants and landlords, malpractices at private clinics and hospitals, suspicious deaths resulting from operations and issues relating to organ transplants, compensations demanded by the owners of nationalized and confiscated lands, loss of pension rights by teachers, demand for increase in pension, maltreatment of students by school teachers and principals, pension claims by the former employees of the former Myanmar Socialist Programme Party, dismissal of government employees without the required Preliminary and Departmental enquiries dismissal from services at the private companies without severance pay, violations of workers' rights. Some complaints concerned allegations of various violations in Kachin State such as confiscation of household goods, forced recruitment of porters, torture , rape and other coercive practices.

The Commission received some complaints which were found to be unsubstantiated and unsigned.

Responses from the Office of the Union Government to the complaints

Out of the 830 complaints referred to the Union Government Office, only responses to 51 complaints have been received. Out of 51, actions have been taken by the relevant departments on 33 complaints according to these responses. It is learned that 17 complainants have withdrawn their complaints and that two cases have been closed. Considering the number of complaints received by the Commission, the responses were discouragingly low. The commission will continue to urge the authorities concerned to address the complaints in a spirit of cooperation.

Field trips and investigation missions

Taking into consideration the available resources of the commission and the urgency and seriousness of the complaints, the Commission took field trips and conducted investigations concerning serious complaints and the situations in conflict areas.

Concerning a complaint about forced labour and allegations of human trafficking in Tuntay Township in Yangon, a team from

the Commission led by an official visited the said township to observe first hand the situation. To investigate the complaint on the death of a student of the Dental College in Thingangyun Township in Yangon in a car accident under highly suspicious circumstances, a similar team visited the township and investigates actions that had been taken on the case.

Visit to the Kachin State

The Secretary of the MNHRC and two members of the Commission visited Myitkyina and Waingmaw of the Kachin state from 23 to 27 July 2012 for the second time, summoned and examined the witnesses in connection with the complaints, assumed to involve the violations of human rights and exchanged views with the Kachin state authorities on the prevailing situation in the Kachin State. In its statement issued after the visit, the Commission confirmed certain violations of human rights of the populations of villages by the armed groups and strongly urged not to violate human rights under any circumstances and to act in accordance with human rights standards. It also urged armed groups not to engage in forced recruitment of soldiers and to avoid torture in the interrogation of suspects.

Visit to the Rakhine state

A team from the Commission comprising the Secretary and 2 members visited Sittway, Maungtaw, Buthitaung and Yathaytaung Townships in the Rakhine State from 27 June to 1 July and held discussion with responsible persons, religious leaders and the victims. In its statement issued after the visit, the following recommendations were made;

- The measures to build the rule of law be strengthened and just and effective actions be taken in accordance with law against the perpetrators of the acts of violations that had occurred;
- Steps should be taken to build mutual trust for the physical and mental rehabilitation of the victims of the two groups of people;
- A special programme should be undertaken to enhance the basics education of the children in the affected areas; and
- More assistance and support be provided for the victims.

Visit to the Lepadaungtaung Copper Mine Project, Sabetaung and Kyesintaung mines

From 7 October to 12, the Secretary of the Commission and 3 members visited the Lepadungtaung Copper Mine and Sabetaung and Kyesintaung Mines in Salinggyi Township of Sagaing Division. The visit was well before the establishment of the current independent commission. The MNHRC Team examined the effects of the mines on the socio-economic lives of the people of the area and the actions being taken by the company to minimize the impact on the environment and the health.

Investigation of violations of human rights in Chin state

The information on the discriminatory restrictions and systemic violations of the rights to freedom of religion or belief of Chin Christians was brought to the attention of the Commission through the Ministry of foreign Affairs. The information was provided by the Special Rapporteur on the situation of human rights in Myanmar, Special Rapporteur on the rights to freedom of peaceful assembly and of association, Special Rapporteur on freedom of religion or belief, Independent Expert on minority issues, and Special Rapporteur on Contemporary forms of racism,

racial discrimination, xenophobia and related intolerance. According to the information, the following are alleged to have taken place or to be happening.

(1) Discriminatory restrictions on renovating and constructing churches.

(2) Closure of churches and “house churches”

(3) Destruction of religious symbols

(4) Forced labour, forced relocation and land confiscation to build Buddhist infrastructure.

(5) Violations of freedom of assembly for religious purposes.

(6) Arbitrary arrest, detention, torture of church workers, pastors and missionaries

(7) Induced or coerced conversion and forced assimilation through food or job security and education policies.

To investigate these allegations and, if allegations are accurate, to discuss with local authorities on the improvement of their situation, the Secretary of the Commission and 2 members went to the Chin State from 14 to 19 December. The Commission

Team went to Phalam, Harkhar, Titain, Bar and Lonbam villages and Kalay in Sagaing Division, met with the responsible departmental heads, Christian religious leaders and the villagers. Through interviews with these peoples and visits to the locations of violations, the team was able to examine the accuracies of the allegations. The detailed findings of the commission team have been conveyed to the President. Some findings of the Commission team should be mentioned to be able to access the real situation on the ground.

- 90 percent of the population is Christians, 9.1 percent are Buddhists and 0.9 are other believers. Accordingly, there are 1976 Christian churches
- According to Christian religious leaders, 12 Christian crosses were removed
- regarding the applications for land for the construction of churches, only 19 were permitted, However, the majority of the religious buildings were built without permission.
- churches were constructed without official permission on the land donated by private individuals. However, the authorities concerned acquiesce in these activities.

- permission for holding of religious gathering or celebrations were granted when applied for. Nevertheless, gatherings held without permission were never prevented.
- regarding forced conversions, the Chin and Naga youths attending the training schools organized by the Ministry of Religious Affairs had to participate in Buddhist religious services and worshipping. There were photo records of these instances.
- it was not true that at least 50 pastors were forced to sign documents promising not to hold Church services and that 100 Christians Churches were closed.

In view of the resentment still harboured by Chin nationals over the destruction of religious symbols like Christian crosses, the Commission team recommended to the local authorities that actions on such matters be taken in accordance with law and within the mandate. The team was able to explain to local that the authority to give permission for the construction of religious structures and land grants has been bestowed on the local authorities, the destruction of religious symbols are not likely to happen in future. The team also made the recommendations that

arrangements should be made for extension of mutual assistance to foster harmonious relationship between the two religions.

The Commission team, after investigation of the allegations, concluded that religious discriminatory restriction did happen as alleged why other allegations were not completely true. The advantage of the visit to the Chin State was having a chance to exchange views not only with the local authorities but also with the affected Christian population. Some of the allegations are found to relate to the past. In this regard, the Commission team was informed of the additional authorities given to the local departments which will be helpful in considering the applications for religious purposes. The visit's findings, in the team view, will dispel the doubts over the alleged restrictions on religious activities in Chin State.

Conclusion

The present procedure followed by the Commission requires to be streamlined in such a way as to encourage more responses from the responsible authorities. To realize the necessary changes requires more discussion and more exchange of views between the MNHRC and the concerned Ministries and bodies.

