



Burma: “Lost in Transition”

Burma Partnership¹
Human Rights Education Institute of Burma

I. General Overview

In 2012, Burma’s transition process continued with the government undertaking a series of noteworthy and necessary steps towards democratic reform. However, such developments have been stained by continuing grave human rights violations against ethnic and religious minorities and human rights defenders. In Kachin State,² armed conflict persisted with the Burma Army intensifying its offensive against the Kachin Independence Army (KIA) in December 2012, launching air strikes and firing cluster bombs in areas near Internally Displaced Persons (IDPs) camps and civilians. Meanwhile, in Arakan State, two serious outbreaks of communal violence between Arakanese Buddhists and Rohingya Muslims have occurred, leaving at least 100 people dead and over 100,000 displaced. Although the violence has been perpetrated by both communities, the government has failed to take any meaningful steps towards constructively addressing the systemic and institutionalized discrimination against the Muslim population.³ The anti-Muslim violence has since been spreading to other parts of the country.

The government continued to suppress the activities of dissidents, including through arbitrary arrests and detentions,⁴ and judicial harassment. At least 200 political prisoners still remain behind bars. For instance in December 2012, security forces resorted to Burma’s old-fashioned way of dealing with protesters, using incendiary devices against peaceful protesters opposing the Letpadaung copper mine in Sagaing Region. These serious human rights violations are taking place in Burma in a context where there is still no rule of law or an independent and impartial justice system.

In light of these grave human rights violations, the Myanmar National Human Rights Commission (MNHRC) has been worryingly silent. The Commission hasn’t investigated or released statements on any of the cases of violence or judicial harassment against human rights defenders, nor has it called for the repeal of old oppressive laws or for compliance with international human rights standards. Some Commissioners visited both Kachin State and Arakan State, releasing statements⁵ after their visit. The statements only focus on humanitarian needs and fail to address the perpetuation of human rights violations

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- 1 Prepared by Khin Ohmar, Coordinator of Burma Partnership
 - 2 Burma Must End Offensives and Dialogue with Ethnic Armed Groups for a National Political Settlement, Burma Partnership, 14 January 2013, available at <http://bit.ly/18Acgik>
 - 3 “All You Can Do is Pray”: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State, Human Rights Watch, April 2013, available at <http://bit.ly/18Achl>
 - 4 Burma/Myanmar: New Forms of Control and Threats to Freedoms of Expression, Assembly and Association Amidst Reforms Fanfare, Forum Asia, March 2013, available at <http://bit.ly/18AcqC5>
 - 5 List of statements by the Myanmar National Human Rights Commission available at <http://bit.ly/NGo1Eo>

and discrimination against religious minorities and ethnic nationalities. This raises questions about the willingness of the Commissioners to actively promote and protect human rights, and their freedom of expression and independence from President Thein Sein, who established the Commission and nominated the Commissioners.

In 2012, the MNHRC also started a transition from a presidential commission towards one established by the Parliament. On 16 March 2012, the Parliament refused to allocate to the MNHRC the budget requested by the government as part of the 2012-13 National Planning Bill. The decision was based on the fact that the Parliament considered the MNHRC's establishment as not being consistent with the 2008 Constitution. On 27 March 2012, the MNHRC released a statement⁶ announcing that as a consequence of the Parliament's decision, it had begun drafting an Enabling National Human Rights Commission Act, that it would submit the draft to the President and, if approved, present it to the Parliament for adoption. Only a year and half later, in July 2013, the draft bill was published in the state-run newspaper *The Mirror*. The Office of the High Commissioner for Human Rights (OHCHR) and the Asia Pacific Forum (APF) have both been able to provide feedback on the draft legislation.⁷

The MNHRC has been engaging at the regional and international level. In November 2012 it was accepted as associate member of the APF⁸ and in September 2012 as a member of the South East Asia NHRIs Forum (SEANF).⁹ However, while the MNHRC has been engaging with the international community, the draft legislation was not published in 2012 and consultation with civil society organizations has been limited and non-inclusive, despite numerous calls to do so.¹⁰

The publication of the MNHRC enabling law in July 2013 marks an important development for the future shape, mandate and powers of the Commission. However, the law has not been yet debated or adopted in Parliament, thus making it difficult to provide, at this stage, a detailed analysis of it.

Parallels can be drawn between the status of the country and the MNHRC. Fundamental challenges and serious concerns regarding the government's and the commission's commitment to promote and protect human rights remain. So far Burma and the MNHRC's transition have yet to produce tangible changes, leaving many to wonder whether the country and its national human rights institution are becoming "lost in transition."

6 Statement of the Myanmar National Human Rights Commission on Its Establishment and Its Current Status of Functioning, 27 March 2012, available at <http://bit.ly/Mb16iQ>

7 Roundtable Considers Founding Legislation for Myanmar NHRI, Asia Pacific Forum, 19 February 2013, available at <http://bit.ly/11B9yEC>

8 APF Membership Expands to 19, APF, 16 November 2013, available at <http://bit.ly/13xKdqp>

9 Statement of Myanmar National Human Rights Commission (MNHRC) concerning its membership in South East Asia NHRIs Forum (SEANF) No. 6/2012, 17 September 2012, available at <http://bit.ly/11tIRjT>

10 Open Letters Call for Civil Society Consultation on the Enabling Law of the Myanmar National Human Rights Commission, Asian NGO Network on National Human Rights Institutions, 8 May 2013, available at <http://bit.ly/11B7OeD> and Burma's Civil Society Calls for Transparency and Inclusiveness in Drafting of the National Human Rights Commission Enabling Law, 10 May 2012, available at <http://bit.ly/Q6aYgQ>

II. Independence: Lack of Trust and Legitimacy of Members

The Myanmar National Human Rights Commission (MNHRC) was established on 5 September 2011 by the Union Government of the Republic of the Union of Myanmar Notification No. 34/2011.¹¹ According to the Notification, the MNHRC is charged with promoting and safeguarding the fundamental rights of citizens in accordance with the 2008 Constitution. The government Notification lists the 15 members of the Commission.¹² Currently, the members of the MNHRC were selected and appointed by President U Thein Sein, at his sole discretion, with no consultations; and announced in the government Notification mentioned above.

In a letter dated 12 January 2012, the MNHRC added that Commissioners were on a five years tenure, which may be renewed for another term, and that they enjoy criminal and civil immunity for acts taken while executing the responsibilities and entitlements of the MNHRC.¹³ Current members of the MNHRC include three women out of 15 members and representatives of ethnic nationalities such as Chin, Karen, Kachin, Shan and Arakanese.¹⁴

Tomás Ojea Quintana, Special Rapporteur on the situation of human rights in Burma, in his report in March 2012 summarized:

“While the President appointed commissioners representing different ethnic minority groups, the vast majority are retired Government civil servants. Some informed the Special Rapporteur that they had been neither consulted nor informed in advance of their appointment.”¹⁵

The current composition of the MNHRC is of serious concern. Many consider the MNHRC to be an institution that could not promote and protect human rights because of its current membership. Deep-rooted trust issues amongst the current Commissioners are an important obstacle to civil society cooperation and engagement with the Commission, but also a strong limitation on the Commission’s legitimacy.

As detailed in the 2012 *ANNI Report*, the 15-member body includes former military regime’s ambassadors, as well as retired civil servants with little prior knowledge of human rights.¹⁶ There are no representatives of NGOs, trade unions or professional associations. For instance, U Win Mra, the Chairman of the MNHRC is a retired career diplomat. He served as the permanent representative of Burma to the UN from 1994 until 2001. In his capacity as the regime’s former Ambassador to the UN in New York, U Win Mra spent seven years routinely defending the regime against allegations of human

11 Formation of Myanmar National Human Rights Commission, Union Government of the Republic of the Union of Myanmar Notification No. 34/2011, available at <http://bit.ly/QmEtW4>

12 Ibid.

13 See “Burma: Curb Your Enthusiasm, Analysis of the Establishment of the New Myanmar National Human Rights Commission,” 2012 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, FORUM-ASIA2012, available at <http://bit.ly/176x1A5>

14 “We won’t be influenced by the govnt,” The Myanmar Times, 19 September 2011, available at <http://bit.ly/MaXJIP>

15 Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana,” paragraph 19, 7 March 2012, available at <http://bit.ly/NoOVkA>

16 ANNI, op. cit.

rights violations. Since he was appointed as the Chairman of the MNHRC, he ruled out the possibility for the Commission to look into human rights abuses in ethnic conflict areas,¹⁷ explained that the release of political prisoners is not a priority,¹⁸ and rejected the possibility of establishing a truth commission to investigate the violence in Arakan State saying:

“Truth commissions are established by new governments in countries that have transformed after violence, unrest and human rights abuses so they can be rediscovered and revealed. That is why it is a different condition here: the transition in Myanmar was peacefully attained by the election.”¹⁹

The MNHRC also failed to investigate or comment on serious human rights violations committed by the government or its security forces such as the violent crackdown against peaceful protesters at the Letpadaung copper mine in Sagaing Region. On 29 November 2012, riot police attacked a camp of demonstrators opposing the Letpadaung copper mine with water cannons, tear gas and incendiary devices, resulting in injuries to at least 70 activists and monks.²⁰ The MNHRC has released no statements related to human rights defenders at risk, threatened, arbitrarily arrested or judicially harassed. It also has not played any preventive role in relation to the protection of human rights defenders.

In June 2012, the Commission visited Arakan State after communal violence. In the statement about its findings, the MNHRC stated:

“It was noted that the basic needs of food, clothing, shelter and health of the victims at the above-mentioned relief stations are being met The Tatmadaw (the Armed Forces), the Police Force and the Border Immigration Headquarters are providing security for the respective areas and stations.”²¹

Reports from the Office for the Coordination of Humanitarian Office and Médecins Sans Frontières alert the international community about the squalid conditions in which Rohingya IDPs are living in Arakan State.²² In addition, Human Rights Watch released a report with evidence of the Burma Army and the local security forces’ discrimination against the local Rohingya population, and their active role in some cases in the violence

17 Myanmar human rights panel rules out conflict abuse probe, The Brunei Times, 15 February 2012, available at <http://bit.ly/116o2TW>

18 Win Mra, Chairman of the MNHRC says the Release of Political Prisoners is Not a Priority, The Irrawaddy, 11 May 2012, available at <http://bit.ly/116ofXg>

19 Human Rights Body Cool on Truth Commission Proposal, The Myanmar Times, 13 August 2012, available at <http://bit.ly/PG8uWf>

20 List of monks and activists who received medical attention in hospitals as a result of the violent crackdown of the Letpadaung protests, as documented by the Assistance Association for Political Prisoners (Burma), available at: <http://bit.ly/116oGkB>

21 Statement No. (4/2012) of Myanmar National Human Rights Commission Concerning Incidents in Rakhine State in June 2012, available at <http://bit.ly/NG45V6>

22 Medical Aid to Arakan State Rohingya Blocked, MSF Says, The Irrawaddy, available at <http://bit.ly/1161qGh>

against them.²³ Tomás Ojea Quintana, in his latest report, mentioned that he received allegations of human rights violations committed by NASAKA (the Border Immigration forces) against the Muslim population and recommended to suspend their activities in the area.²⁴ In this context, it seems that the Commission's visit to Arakan State was a way to appease the international community and legitimize the government's actions, while on the ground independent investigation reveals a dire humanitarian situation and violations committed by the Army and the government's forces.

With the forthcoming legal establishment of the MNHRC, the draft legislation must require a diverse composition, a public, transparent and broad consultation process open to different groups of societies, ensure adequate representation of civil society, publish criteria for appointment, lay out clear qualification requirements to ensure members have knowledge of human rights, and require for the composition of the Commission to reflect pluralism, including gender balance and representation of ethnic nationalities, religious minorities and vulnerable groups.

In 2012, members of the MNHRC attended numerous consultations and trainings on human rights and independence, especially regarding its founding legislation. The OHCHR, the EU,²⁵ the UN Secretary General,²⁶ the Raoul Wallenberg Institute²⁷ and the APF²⁸ all offered support to the Commission. However, this is not enough for the people of Burma to place trust in the current Commissioners. As the enabling law of the MNHRC will be adopted, the Commission needs to be re-shuffled and new members must be appointed according to the process described above.

In 2012, the MNHRC did not have its own staff members but was assisted by staff from other government departments. In early 2013, staffs were recruited mainly from graduates of the Rangoon Law School. No information about the recruitment policy is available. New staff attended in-house training on human rights given by the Commission members themselves. This is a cause for concern, knowing the poor level of understanding of human rights of the Commissioners' themselves.

III. Effectiveness: "A paper-shuffling mechanism"

Despite being in the process of drafting its enabling law, the MNHRC continued to operate and receive complaints during 2012. A statement dated 6 October 2011 currently regulates the complaint handling mechanism of the MNHRC.²⁹

23 Human Rights Watch, op. cit., "All You Can Do Is Pray"

24 Report of Tomás Ojea Quintana Special Rapporteur on the situation of human rights in Burma, 6 March 2013, available at <http://bit.ly/1162SZh>

25 Catherine Ashton Launches a Program to Help the MNHRC, 17 April 2012, available at <http://bit.ly/115VLQr>

26 UN Secretary General Offers Support to strengthen MNHRC's Independence, 9 May 2012, available at <http://bit.ly/115VTPT>

27 Human Rights Documents to be Translated to Myanmar: NHRC, 9 February 2013, available at <http://bit.ly/115W1iu>

28 APF Offers Assistance to Myanmar's New NHRI, 27 April 2012, available at <http://bit.ly/115VQ6M>

29 Myanmar National Human Rights Commission Accepting of Complaint, 6 October 2011, available at <http://bit.ly/QDEFoo>

The statement explains that the person whose rights have been violated must send the complaint; it also requires the complainant to provide a copy of his or her national registration card. In ethnic nationalities areas, it is not unusual for people to not have national registration cards and many might be afraid of interacting directly with the MNHRC due to its members' former links to the regime. Civil society organizations or third parties should be allowed to lodge complaints on behalf of victims of human rights violations. In addition, there is no provision to guarantee the complainants or witnesses security and, when necessary, confidentiality. The statement also makes no mention of the right to remedy and the concrete powers and actions the MNHRC could take when facing human rights violations. Instead it states:

"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."

The rules and procedures haven't been released so far. The statement also explains that

"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."

Another source of information regarding the MNHRC complaint mechanism can be found in the presentation given by the MNHRC at a seminar organized by OHCHR in Rangoon. The document, called *Presentation on Recent Developments on Myanmar National Human Rights Commission Complaints Handling, Investigations and Cooperation with the Special Procedures of the United Nations*, explains in detail the MNHRC complaints handling mechanism.³⁰

TABLE 1: NO. OF COMPLAINTS RECEIVED BY THE MNHRC IN 2012

Total Number of Complaints	2866
Number of Complaints Accepted and Referred to the Government	830
Number of Answers Received from the Government	51
Number of Complaints sent back to Complainant to seek other means of redress	147

In the presentation, the Commission further explains that complaints can be referred "to the Office of the Union Government for onward transmission to the Ministry or body identified by the Commission as responsible. [...] As a result, when the complaints are

³⁰ Presentation on Recent Developments on Myanmar National Human Rights Commission (MNHRC) Complaints Handling, Investigations and Cooperation with the Special Procedures of the United Nation, MNHRC, available at <http://bit.ly/Zx2CGi>

investigated by the Ministry or the body identified as responsible, they are occasionally found to be invalid.”³¹

The mechanism described above is of serious concern. The MNHRC does not investigate the complaint itself, but rather transfers it to the concerned authorities and asks them to carry out the investigation. As stated above by the Commission, the complaints are then found to be invalid. It is not surprising that complaints are dismissed when the authority that allegedly committed the human rights violations are the very same authorities that investigate the complaint. The MNHRC’s answer to complaints is limited to transferring information to the concerned authorities. As of today, the MNHRC seems to be nothing more than a “paper shuffling” body.

For instance, the Kachin Women Association of Thailand (KWAT) referred the case of Sumlut Roi Ja, an ethnic Kachin woman abducted by the Burma Army.³² Her husband took the case to the Supreme Court, which dismissed it without even hearing his testimony. As a consequence, KWAT forwarded the case to the MNHRC. The Commission’s answer to the case (see Annex 1) is a simple letter informing KWAT that the commission forwarded the case to the Office of the Union Government. This is not an isolated case. The organization, Human Rights Defenders and Promoters (HRDP), submitted more than 800 complaints to the MNHRC. HRDP only received an answer from the MNHRC for 13 cases, including two labor rights cases, two cases of torture and nine cases of land grabbing. The 13 responses out of 800 complaints only state that the Commission will work on the case.

IV. Accountability

The presentation by the MNHRC mentioned above is the only activity report available. It was not widely distributed or disseminated to the public, in the media, or on the internet. The report was sent to the President but there have been no interaction with the Parliament or debate regarding the activities undertaken by the MNHRC in its first year of activities. As stated in its report, “Our formal relations with the Ministries are only through the Office of the Union Government. Ours with the Parliament is non-existent at present.”³³

In addition, engagement with civil society is very limited. As mentioned above, despite numerous calls for consultations on the draft enabling law of the MNHRC, our calls were not answered. One meeting co-organized by OHCHR in January 2012 involved both civil society and Commission members. According to HRDP, in the “consultation” the Commission refused to hand out the draft legislation to participants. It also refused to answer questions on the presentation. This meeting was more an information sharing mechanism rather than a genuine consultation to consider civil society members concerns, suggestions and recommendations on the draft legislation.

³¹ Ibid.

³² Sumlut Roi Ja Still Missing One Year On, Burma Campaign UK, available at <http://bit.ly/Zx6tDa>

³³ MNHRC, op. cit.

The MNHRC does not genuinely engage with civil society members and recognizes that it has no relations with the Parliament. The MNHRC seems to be only accountable to the President, thus reinforcing the feeling that it is nothing more than the President's Commission rather than an independent Commission established to protect and promote the human rights of the people of Burma.

The draft legislation lately published will be a unique opportunity to enhance the independence, pluralism and effectiveness of the MNHRC. The current draft might be subject to changes, thus limiting the value of an analysis at this stage. Next year's *ANNI Report* will analyze the legislation and evaluate its application over the year of 2013.

V. Conclusion and Recommendations

Proceeding with enacting an enabling law without ensuring a transparent and inclusive consultation process would only result in a Commission that does not meet the criteria for international recognition as a credible NHRI, and that has no legitimacy and trust from the peoples' whose rights the Commission is supposed to promote and protect. To ensure the MNHRC's transition is towards an independent, effective, transparent and accessible human rights institution, the Union government of Burma, Parliament and the MNHRC must take into consideration and implement the following recommendations.

Recommendations to the MNHRC, the President, and the Parliament:

- Ensure that the MNHRC's enabling law fully complies with the Paris Principles, including by ensuring that the MNHRC has a broad mandate based on universal human rights principles, that its membership reflects pluralism, that the selection process of its members ensures inclusive representation, including that of civil society, and that the MNHRC is accorded adequate financial independence and resources as well as power of investigation;
- Delay or suspend the enabling law's deliberation in Parliament in order to organize a consultation process that includes all relevant stakeholders, including both registered and non-registered civil society and community-based organizations, grassroots peoples and communities throughout the country, especially those from ethnic areas and women's groups, as well as the media;
- Ensure that the publication of the draft legislation is also made available in ethnic nationality languages, and that these are disseminated widely, especially through the media and that sufficient time, and resources are provided for the public to provide feedback on its content and meaningfully participate in the drafting process.

To the Myanmar National Human Rights Commission:

- Foster transparency and engage on a regular basis with civil society groups including both registered and non-registered civil society and community-based organizations inside the country and on the border, as well as grassroots people and communities throughout the country, especially those from ethnic areas, women's groups and media.

To the Office of the High Commissioner for Human Rights (OHCHR), the Asia Pacific Forum (APF) and international organizations:

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, community-based organizations inside the country and on the border, as well as grassroots people and communities throughout the country especially those from ethnic areas, women's groups, and the media;
- Increasing transparency of the MNHRC's activities and its 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 the Commission's existence, functions and mandate;
- Starting capacity building activities for civil society and community-based organizations, including on the Paris Principles.

Annex 1:

(Unofficial Translation by Burma Partnership)

Republic of the Union of Myanmar
 Myanmar National Human Rights Commission
 Yangon
 Letter No. 3/101(1674)/Complaint/
 Date 2012 December 31
 To
 Office of Union Government
 Office No. (18)
 Naypyidaw

Subject: Matter concerning the letter calling for immediate release of Sumlut Roi Ja who was abducted by soldiers of Lwan Lone Bwan (South) Frontline Unit under 321st Light Infantry Battalion

As mentioned above, the commission received a letter for notice. The letter stated that: on 28 October 2011, while the 70 year old complainant Maru Ze Dau himself, his 28 year old daughter-in-law Daw Sumlut Roi Ja, and his 31 year old son Maru Dau Lum (husband of Sumlut Roi Ja), were harvesting corn, 3 Burma Army soldiers came and threatened them to

supply harvested corn to their Lwan Lone Bwan base; [the soldiers] accused complainant Maru Ze Dau and his son Maru Dau Lum that they were the KIA people's militias and threaten to kill them although they denied; [they] tied up their hands and took them to Lwan Lone Bwan base; although U Maru Ze Dau and son escaped while they were on the way [to the base], the daughter-in-law (Sumlut Roi Ja) was taken to the base; [Maru Ze Dau] didn't know if his daughter-in-law was still alive or not; she was mother of a newborn baby; the baby was crying; the son (Maru Dau Lum) became mentally unstable; the 70 year old complainant himself struggled to take care of the baby; complainant himself was a former soldier (ID No – 340328) who served in light infantry battalion no (27) from 1969-1975; [he] calls for unconditional release of his daughter-in-law; Maru Dau Lum, husband of Sumlut Roi Ja, had filed complaint to Naypyidaw Supreme Court on 27 January 2012; he [Maru Dau Lum] was informed that the case would be heard on 23 February 2012; Maru Dau Lum was not allowed to attend the hearing although he wanted to; only the military officer from Light Infantry Battalion 321 was allowed to attend; he [the officer] stated that they did not have any women with a name called Sumlut Roi Ja at their base; Maru Dau Lum, husband of Sumlut Roi Ja and son of Maru Ze Dau, received official letter of dismissal of the case after two weeks; family of complainant Maru Ze Dau were not satisfied with the legal system and will continue to wage fight for justice, his [Maru Ze Dau] son Maru Dau Lum, was living in IDP camps near the border; and his daughter was living with her grandparents on China side of the border.

Following the discussion of Commission's complaint assessment team on 28 December 2012, [We] have attached profile of person abducted and court decision in Burmese and English, and papers of case submissions to Kachin government in Burmese and English.

[Attachment]

Chairperson (On behalf of)

(Sitt Myaing, Secretary)

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