

BURMA: ALL THE PRESIDENT'S MEN

Burma Partnership and Equality Myanmar¹

1. Introduction

On 28 March, 2014, the Myanmar National Human Rights Commission enabling law was passed, finally institutionalising its mandate that will begin in 2015. The human rights situation in Burma certainly needs any institution possible: with continuing abuses by the Burma Army, violations related to business investment rampant, particularly land confiscation, curtailment of freedom of expression and association, and perhaps most pressing, the continuing rise of anti-Muslim rhetoric, persecution, and violence.

Since the two major bouts of violence in Arakan State, western Burma in 2012, of which the Rohingya have been overwhelmingly the victims, the situation in Arakan State, western Burma is deteriorating. With around 135,000 mostly Rohingya, living in squalid conditions in Internally Displaced Persons (IDPs) camps, the government took the deplorable decision to effectively kick out the humanitarian agency Medicines Sans Frontières (MSF). This is related to their corroboration of facts regarding a massacre at Duu Char Yar Tan village which will be outlined later in this report, but also in the context of anti-NGO bias in the area, with many Arakanese Buddhists perceiving biased treatment from humanitarian agencies in favour of the Rohingya.

Other humanitarian agencies, including UN agencies, were forced to leave Arakan State due to well-planned mob violence, fuelled by the perception of pro-Rohingya bias in aid distribution. While these NGOs and UN agencies are gradually making their way back to Arakan State, although not MSF, the effect of the absence of aid has hit the Rohingya population the hardest, with people starving due to lack of food, and dying due to lack of adequate medical attention that was previously provided.

The violence aimed at NGOs was closely linked to the 2014 Census, the first of its kind in Burma for over thirty years, where a campaign led by extremist monks and Arakanese nationalists to deny the option of Rohingya to identify themselves as anything other than 'Bengali' was successful, with the government making a last minute decision to deny the option to acknowledge the existence of Rohingya, thus painting them as illegal immigrants. This hate campaign is carried out with impunity led by the extremist monk, Wirathu, to whom President Thein Sein is close. It is not only carried out with impunity, but is hand in hand with persecution policies of the government, as documented by human rights organisation Fortify Rights in their report about official state policies of persecution against Rohingya.²

President Thein Sein also supports a package of four proposed bills, one of which is the Law on Religious Conversions that places restrictions on marriage between religions. Thus, a Muslim man who wants to marry a Buddhist woman has to change religion, while the parents of a Buddhist woman also have to give

¹ Contact Person: Khin Ohmar (khinohmar@burmapartnership.org), Coordinator of Burma Partnership

² Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar, Fortify Rights, 2014, http://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf

permission for such a marriage. Such a law violates the rights of women to have free choice over their marital partner while further discriminating against Muslims.

Human rights abuses are ongoing related to conflict, especially in Kachin and northern Shan States. Arbitrary arrest and detention, rape and sexual assault, torture and extrajudicial killing are all systematic policies of the Burma Army, which remains a completely unreformed institution that is guaranteed impunity in the 2008 Constitution. Despite ceasefire negotiations, the Burma Army continues to launch offensives and commit abuses. In ceasefire areas, such as Karen State, land acquisition by unscrupulous businesses, often in conjunction with the Burma Army or its proxy forces, are taking advantage of the lull in fighting to grab land for quick profit while the Burma Army itself is reinforcing and strengthening its presence.

Despite the release of some political prisoners more are being arrested, especially under Article 18 of the Peaceful Assembly Law. Repressive legislation is also still on the books while the media are increasingly being muzzled.³ Instances for arrests of journalists and criminal charges based on political motivation include: five journalists sentenced to ten years in prison with hard labour from *Unity Journal* for reporting on a chemical weapons factory; of *Democratic Voice of Burma* journalist, Zaw Pe for trying to investigate corruption; Ma Khine from *Eleven Media* spent time in prison under trespass and defamation charges while a *Mizzima* journalist was charged for leading a demonstration against the increased repression of the media. This is a human rights issue that has taken a major step backwards under Thein Sein's government.

Other trends include continuing human rights abuses related to business, particularly land confiscation. Mega projects such as Special Economic Zones (SEZs) of which foreign investors are involved such as Thilawa SEZ (Japanese involvement), Kyaukphyu SEZ (Chinese involvement) and Dawei SEZ (Thai involvement) are displacing thousands with inadequate compensation, livelihood support and little attempts for genuine consultation. Displaced villagers are often coerced into signing agreements and accepting compensation while the concept of free, prior and informed consent is systematically ignored, by domestic and international companies, or the Burmese government itself.

With huge potential investment in Burma's manufacturing sector, especially the garment industry in industrial zones, it is vital that the rights of workers are protected yet there is a continuing pattern of harassment and intimidation of labour activists and unionists. Legislation enacted in 2012 does not adequately protect workers who make attempts to improve their dismally low wages, health and safety conditions in factories and long working hours.

Other major economic development projects that are infringing on people's economic and social rights, particularly in ethnic areas, are large mining and hydropower projects such as the Leptadaung Copper Mine in Sagaing Region and the Tasang Dam in Shan State are displacing local communities without adequate reparation and causing significant negative environmental effects.

³ Burma: Repression Marks Press Freedom Day, Human Rights Watch, 2014, <http://www.hrw.org/news/2014/05/03/burma-repression-marks-press-freedom-day>

In this environment, the Myanmar National Human Rights Commission has been ineffective. In the two areas of most concern, in Arakan State and Kachin State, the MNHRC has done almost nothing. The Chairman explicitly stated that they cannot investigate abuses in active conflict zones, thus ruling out Kachin State and the ongoing atrocities there, while in Arakan State, despite credible evidence in the hands of the UN and corroborated by Medicins Sans Frontieres, claims to have found no evidence of the massacre at Du Char Yar Tan village, in which over 40 Rohingya were killed with police involvement. Furthermore, the MNHRC continues to use the term ‘Bengali’ to describe Rohingya, thus explicitly revealing their discriminatory attitude to them while exacerbating the victimisation process.

2. Independence

Establishment of NHRI	
Established by Law/Constitution/Presidential Decree	<i>Myanmar National Human Rights Commission Law, 2014</i>
Mandate	<ul style="list-style-type: none"> a) To promote and protect the fundamental rights of citizens enshrined in the constitution of the Republic of the Union of Myanmar effectively b) To create a society where human rights are respected and protected in recognition of the Universal Declaration of Human Rights adopted by the United Nations c) To effectively promote and protect the human rights contained in the international conventions, decisions, regional agreements and declarations accepted by Myanmar d) To engage, coordinate, and cooperate with the international organisations, regional organisations, national statutory institutions, civil society and registered non-governmental organisations working in the field of human rights
Selection and appointment	
Is the selection process formalised in a clear, transparent and participatory process in relevant legislation, regulations or binding	It is up to the selection board to come up with procedures for short-listing candidates, yet the enabling law itself should set out the process/procedure for selection, with consultations with civil society. Thus currently, the assessments for candidates are not based on pre-determined, objective and publicly available criteria that promotes the appointment of merit-based candidates.

administrative guidelines?	
<p>Is the selection process under an independent and credible body which involves open and fair consultation with NGOs and</p>	<p>Candidates for membership of the MNHRC are selected by a selection board, from which the President will choose final appointments. This selection board currently comprises of ten members, five of which are from the government or government affiliated. Only two are from civil society and those people must be from a registered NGO. This is problematic. Firstly, there are too many government representatives on the selection board, it must be reduced to increase independence. Furthermore, many civil society organisations are not registered, and this stipulation thus excludes large swathes of civil society, particularly smaller, community groups, and overtly political and human rights activists.</p>

civil society?	
Is the assessment of applicants based on pre-determined, objective and publicly available criteria?	The enabling law outlines the criteria for the assessment of applicants, including experience in a plethora of issues including, domestic and international human rights, good governance, public education, cultural issues, economics and employment, and civil society. They must be over 35 years of age, a citizen of Burma, and recognized as a person of good character.
How diverse and representative is the decision making body? Is pluralism considered in the context of gender, ethnicity or minority status?	Article 7(c) does give consideration to pluralism in the context of gender, ethnicity, or minority status but it isn't specific, and should therefore indicate a proportional number of women and ethnic and religious minorities.
Terms of office	
Term of appointment for members of the NHRI	Five years
Next turn-over of members	After the 2015 election

The current enabling law has only recently been passed, and as such it is too early to assess how this has been practically applied. The current Commission members were not selected based on this law and new members will be selected after the 2015 general election. Within the enabling law itself, however, there are issues related to independence and therefore effectiveness.

Financial independence is a problem. Currently the MNHRC receives funding from the government as oppose to Parliament. The allowances, entitlements and honorariums of MNHRC members are also at the discretion of the President rather than under the general MNHRC budget. Thus the funding of the institution as well as the benefits for individual members are under too much control of the executive, potentially limiting their independence.

As for dismissal, the enabling law does not offer guarantees that prevent arbitrary dismissal which is crucial to effectiveness and independence. It does not specify who has the authority to dismiss a member of the MNHRC. Furthermore, the grounds under which a member can be dismissed are too broad. A member can be dismissed if that person "is deliberately engaged in actions to defeat the objectives of the

Commission.” Thus, the potential of arbitrary dismissal is high and the criterion for dismissal on this ground are vague.

As regards selection of staff members of the MNHRC, while considerations of pluralism are included for members, these are not included for staffers; while there are no provisions to ensure an open and transparent recruitment procedure that would safeguard against nepotism.

The current Commissioners include members who have less than illustrious pasts when it comes to human rights issues in Burma. The current Chairperson, Win Mra is the former ambassador to the United Nations in New York between 1994 and 2001. His tenure was marked by consistent denial of human rights violations in Burma, despite a wealth of evidence to the contrary during a particularly repressive time in Burma’s history.

Furthermore, and this is especially salient to the current human rights situation in Arakan State, he denied that the term Rohingya can be used to describe an ethnic group of Burma. The Vice-Chair, Kyaw Tint Swe also served as the ambassador to the UN in New York, between 2001 and 2010 and would also consistently deny the obvious human rights violations that were taking place in Burma, claiming that the country was a victim of a “systematic disinformation campaign.”⁴

3. Effectiveness

The MNHRC, in times when an independent, principled investigation into human rights abuses is required, has been proven to be ineffective and has actually contributed to the culture of impunity and hate in certain parts of Burma.

Case Study 1: Duu Chee Yar Tan Massacre

One of the most pressing human rights issues in Burma today is the anti-Rohingya violence and persecution by authorities. As Tomas Quintana, Special Rapporteur on the situation of human rights on Myanmar stated in his final statement to the UN Human Rights Council in March 2014, “tackling the impunity and systematic discrimination in Rakhine (Arakan) State represents a particular challenge which, if left unaddressed, could jeopardise the entire reform process.” One case study of significance is that of an alleged massacre at Duu Chee Yar Tan village in Arakan State in January 2014, committed by an Arakanese mob, and local police. The following is a summary based on an account put together by the Burmese Rohingya Organisation UK:

Duu Chee Yar Tan is a collection of seven small villages in northern Arakan State, a remote area. Three of these villages are home to mostly Arakanese and four to Rohingya. On the 9th of January, eight Rohingya men passing through the area were summoned to see the town administrator. Four days later, the dead bodies of eight Rohingya men were found and this information began to spread throughout the villages causing confusion and anger. In the middle of that night, a group of police officers went to one of the Rohingya villagers, allegedly to prevent the future spread of the news of eight dead Rohingya men,

⁴Alternative Asean Network on Burma(ALTSEAN-Burma), available at: <http://www.altsean.org/Research/Regime%20Watch/Judicial/Human%20Rights%20Commission.php>

*raping and killing a woman. After local villagers heard about these events, protests and altercations occurred, including gunshots. A police officer who went missing is thought to have been shot at this time. The police returned with more officers as well as a mob of around 30-40 Arakanese and the raping, beating and killing began, carried out by both police and Arakanese villagers. Most of the villagers then fled the scene.*⁵

The UN High Commissioner for Human Rights, Navi Pillay, stated that the UN had received “credible information” that “at least 40 Rohingya Muslim men, women and children were killed in Duu Chee Yar Tan village by police and local Rakhine (Arakan)”.⁶ This information was corroborated by MSF who claimed they had treated 22 Rohingya at that time, in that area, due to violence-inflicted injuries. Calls for an international investigation were not heeded, but the MNHRC did conduct an investigation.

Yet after their three day investigation, in a statement released on February 14, the MNHRC claimed that such an incident did not take place and recommended more security measures. According to the Burmese Rohingya Organisation UK, however, before Arakan State Government officials visited the area on the 22nd of January, villagers in the area were warned by police and security services of arrest if they told of seeing killings or dead bodies. If this is true, the same fear applies to the investigation conducted by the MNHRC a week later.

A worrying aspect of the MNHRC statement is the reference to Rohingya as ‘Bengali’ (Arakan state borders Bangladesh, formerly East Bengal). For many Arakanese Buddhists, and indeed, many people throughout Burma, they perceive the term Rohingya as an artificially created identity by illegal immigrants from Bangladesh to gain more status within Burma. This is a highly discriminatory term that furthers the idea that they are not from Burma and violates the human rights principle of self-identification. It is obvious from this investigation that the MNHRC is not impartial. The language used reflects a discriminatory attitude and one that does not respect international human rights standards, including the Universal Declaration of Human Rights. The MNHRC’s investigation was used as a counter effort to placate the calls from the international community for an independent and international investigation.

Furthermore, as a result of MSF’s statements that they had treated 22 Rohingya, the government did not renew their terms of reference in Arakan State, effectively banning them from delivering lifesaving treatment to vulnerable communities, most of whom are Rohingya. Members of the press were also blamed for stirring tensions by the government and reporters trying to access the area were denied, and briefly detained.⁷ The MNHRC’s investigation, whose findings contradict those from the UN and statements from MSF serve to de-legitimise the Commission in the eyes of the international community. An independent NHRI should not be used as a tool to cover human rights atrocities committed by a state institution, in this case, the police force.

Case Study 2: Sexual Violence in Armed Conflict Zones

⁵Du Chee Yar Tan Massacre Timeline, Burma Rohingya Organisation UK, available at: <http://brouk.org.uk/?p=85>

⁶Pillay Calls for Killings in Northern Rakhine State to be Investigated, UN Office of the High Commissioner for Human Rights, January, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14194&LangID=E>

⁷Rise in Bigotry Fuels Massacre in Myanmar, Jane Perlez, The New York Times, 1, March, 2014, <http://www.nytimes.com/2014/03/02/world/asia/rise-in-bigotry-fuels-massacre-inside-myanmar.html>

One of the other major human rights issues facing Burma today is the abhorrent behaviour of the Burma Army that continues to act with impunity. While ceasefires have been signed with most major armed groups, and peace talks continue, the Burma Army itself continues its offensive against the Kachin Independence Organisation in northern Burma. Over 130,000 people have been displaced in the past three years and the rights groups have documented a plethora of human rights violations committed mainly by the Burma Army.

One particular issue is that of sexual violence. The Women's League of Burma, an umbrella alliance comprising of 13 women's organizations from Burma released a report in January 2014 titled, "Same Impunity, Same Patterns."⁸ The report presents how over 100 women have been raped by the Burma Army since reforms began in 2010. Many of these cases occurred in Kachin State, which has experienced the majority of the fighting and the most activity by the Burma Army. In Shan State too, where there is a ceasefire but the Burma Army continues to manoeuvre and launch offensives, thirty cases of sexual violence were recorded. The report states that forty-eight of the documented cases involved gang rape by Burma Army soldiers, and twenty eight of the victims died. Some girls were as young as eight years old. Given the difficulties of recording these cases, both due to fear of repercussions as well as social stigma, WLB believe that these numbers are just the tip of the iceberg.

The incidence of sexual violence and rape by the Burma Army is systematic and deliberate. Thus, according to WLB, "sexual violence is used as a tool by the Burmese military to demoralise and destroy ethnic communities. Army officers are not only passively complicit in these sexual crimes but often perpetrators themselves." Yet these horrific abuses are committed with impunity. Under the 2008 Constitution, a courts-martial system was established which, under its mandate, according to the Burma Lawyers Council, "members of the military never have to appear before civilian courts, regardless of their crime."⁹ While courts-martial systems are common in other countries, the military justice system in Burma is practically non-existent. While in Indonesia, for example, decisions made in the military courts can be appealed at the civilian Supreme Court, but the highest power in the military justice system in Burma is the Commander-in-Chief of the Armed Forces, Senior General Min Aung Hlaing, who can overturn any decision made.¹⁰

Thus it becomes all the more important for the Myanmar National Human Rights Commission to conduct an independent and effective investigation into abusive policies that are not accountable under the current legal framework. Yet the MNHRC has done very little to address sexual violence and rape, committed by the Burma Army, nor the judicial and legal framework that places the Burma Army above the law. When WLB released their report in January, an invitation was sent to the MNRHC to attend the event but there was no response. Similarly, when the Kachin Women's Association – Thailand (KWAT), a member organisation of WLB, have tried to engage the MNHRC on this issue, and sent reports, there has been no response.

⁸ *Same Impunity, Same Patterns*, Women's League of Burma, January, 2014, http://womenofburma.org/wp-content/uploads/2014/01/SameImpunitySamePattern_English-final.pdf

⁹ *Revealing Burma's System of Impunity*, Burma Lawyer's Council, 9 September 2011, <http://www.burmapartnership.org/wp-content/uploads/2011/09/Revealing-Burmas-System-of-Impunity-BLC-Briefer.pdf>

¹⁰ *Myanmar: Civil-military Relations and Constitutional Reform*, Melissa Crouch, East Asia Forum, 21 June 2013, <http://www.eastasiaforum.org/2013/06/21/myanmar-civil-military-relations-and-constitutional-reform/>

This is illustrated by the case of Sumlut Roi Ja, which is emblematic of the lack of consideration given by the MNHRC towards sexual violence in conflict areas. Sumlut Roi Ja is a Kachin woman who was abducted by the Burma Army in late 2011. Witnesses saw her being sexually assaulted at a Burma Army base yet her family found no redress in the court system. KWAT thus filed this case with the MNHRC but the only response was a letter of reply that stated that they had forwarded the case on to the Office of the Union Government. In 2012, KWAT met with the MNHRC and offered to work together. MNHRC member Saw Khin agreed but after the follow-up letter sent by KWAT, there was no response from MNHRC.

It is clear that the MNHRC will not investigate or become involved in the affairs of the Burma Army despite evidence that its actions constitute war crimes, such as using rape as a weapon of war. The Burma Army is the most powerful institution in Burma, and despite the various levels of reform that have taken place in other spheres, the military is completely unreformed. It is debatable if the executive has any power over the military's actions, as evidenced by the two times that President Thein Sein ordered the halt to offensives in Kachin State and the subsequent indifference to such orders. Whether the MNHRC is committed to investigating cases of sexual assault and rape may be beside the point. The real issue is that the military is still in control in Burma, and the fear of the army is still very real. The MNHRC is not independent of the government, but even so the government does not necessarily have control over the army, and as such, this leaves the MNHRC in a position of impotence, regardless of whether the government has too much control over the MNHRC or not.

4. Engagement with National Stakeholders

There has been a more inclusive approach this past year by the MNHRC to include civil society input and to act more transparently, although this is starting from a very low baseline. One positive development has been the establishment of the website, both in Burmese and English languages. Notices in the state-run, 'New Light of Myanmar' and 'The Mirror' newspapers have also appeared, giving information on how to lodge a complaint. Yet for many people, this is not an effective method of communication. There is deficit of trust regarding state-run newspapers, and many people in rural areas simply do not read these publications.

More needs to be done to ensure that people know how to make a complaint anonymously. An example is the case of Brang Shawng, whose 14 year old daughter was shot by the Burma Army when they attacked a village in Hpakant Township, Kachin State in September 2012. He did file a complaint to the MNHRC in order to seek truth and justice for his dead daughter, but he also sent a copy of the complaint to the Burma Army itself. Subsequently he was charged by the Burma Army for making false accusations. If the complaints process of the MNHRC had been clear to him, as well as its operating procedures, he may have been spared the injustice of appearing in court as the accused against the Burma Army.

Perhaps the most significant effort to engage with civil society was the publication of the draft enabling law in 'The Mirror' newspaper in July, 2013. Along with this publication was an invitation for comments and recommendations, which civil society duly submitted. This was a real chance for lawmakers to

incorporate input from the 43 civil society organisations that signed a six page document that outlined the kind of changes the enabling law needed to make it more independent and effective.

Yet, the final law adopted in March 2014 was in fact very similar to the original draft. Very few changes had been incorporated. One change was that there is now to be two members of civil society on the selection board; whereas there was only provision for one in the draft law. These civil society members, however, still have to come from civil society organisations that are registered under the Ministry of Home Affairs, a notoriously difficult task. Another positive change based on the recommendations was that if a complaint concerns a government department or organisation, the findings found by the MNHRC and sent to that department or organisation necessitate a response within thirty days. Yet the key problems with the draft enabling law remain, and thus renders the invitation for civil society input largely redundant. Furthermore, despite the invitation to send comments, there was no actual consultation meeting between the MNRHC and members of civil society regarding the draft enabling law.

The enabling law does give the MNHRC the mandate to consult with civil society but this needs improvement, and recommendations given to the MNHRC state that such consultation should be “regular and inclusive.”

Regarding the actual practice of engagement with civil society, disregarding the invitation for input on the enabling law, the results are mixed. There has been more of an attempt to travel and reach out to civil society organisations in the country. Members have made trips to Mandalay Region, Sagaing Region, Tenasserim Region, Mon State, and Karen State in the past year to talk with civil society about the Commission and conduct human rights trainings as well as taking part in discussions at various events such as International Human Rights Day on 10 December, 2013. Yet there has not been a systematic and regular relationship with civil society. In Burma, which has many remote and underdeveloped areas, these visits need to increase. Currently the MNHRC office is in Yangon, and for many people it is simply too far and too expensive to reach.

The draft enabling law states that the MNHRC cannot investigate cases with which there is already a court case pending or if a case has been ruled upon already by a court. Yet these should be complementary proceedings, and the enabling law should allow concurrent investigations.

The enabling law does outline the MNRHC role vis-à-vis Parliament in that their annual report is to be presented to the legislative body that summarises the current human rights situation and to outline the main activities carried and make recommendations.

The MNHRC is to review both existing and proposed legislation to monitor its adherence to international human rights law that Burma is a state party; as well as to make recommendations for additional legislation and proposals to parliament to further promote and protect human rights.

However, two major flaws exist. There is no oversight on the bodies that actually make the regulations that enforce laws enacted by parliament. In Burma the current trend is that these regulations are designed and carried out by various government ministries, with whom the MNHRC does not have any institutional relationship.

The second flaw is that both for the selection and dismissal of Commission members from their positions, the President can do so merely after consulting with both the speakers of the lower and upper houses of parliament. So this means the law is based on individuals rather than on the institution, the parliament, itself.

The MNHRC has been engaging with other NHRIs as well as entering into a capacity building program with the Raoul Wallenberg Institute that is based in Sweden. In 2013 three members of the Bangladesh National Human Rights Commission visited the MNHRC; while an eight member delegation took a tour to Europe, visiting Denmark, Germany, and France to learn from NHRI experiences in those countries. In partnership with the Raoul Wallenberg institute, assistance was given on human rights training programmes in the fields of business and human rights, on the roles and functions of NHRIs, on the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, as well as assistance in developing the MNHRC website which was launched in 2013. A MNHRC delegation also attended the first technical working group meeting of the South-East-Asia NHRI Forum in Bali in 2014. The willingness to learn from, and cooperate with, other NHRIs as well as engaging in capacity building exercises with a renowned international human rights institute is a positive development that hopefully will continue.

5. ACJ References and Protection of Human Rights Defenders

There is little evidence that the MNHRC uses the Asia Pacific Forum (APF) Advisory Council of Jurists (ACJ) references in its work, although the MNHRC did acknowledge the suggestion to use such references in the future. These authoritative interpretations of universal human rights standards and their application by NHRIs in the exercise of their mandates would be of great assistance to the MNHRC, given the human rights issues facing Burma.

For instance, the ACJ reference on corporate accountability outlines the international framework that the actions of companies are accountable, highlighting legal and non-legal avenues as well as barriers and problems in this field. It also proposes ways that national human right institutions can work on this issue including: monitoring human rights violations related to investment, reviewing legislation to ensure it complies with international best practices, building capacity of human rights defenders to monitor abuses, to advocate that governments introduce legislation that complies with international standards, to educate both governments and companies on their obligations and responsibilities and to handle business-related complaints.

In the context of the rampant land confiscation throughout Burma, there is ample opportunity to use this particular ACJ reference. Reviewing the legal framework on land tenure is an urgent and hugely significant task that could have positive impacts on livelihoods, the environment, the peace process and equitable development. The ACJ reference provides both the expertise that the MNHRC can use in its work and practical guidelines to implement meaningful actions that can address land tenure.

As for the MNHRC's work on protection of human rights defenders this has been almost non-existent. Human rights defenders (HRDs) in Burma continue to be arrested, especially those involved in land

confiscation cases, but the MNHRC remains silent on such cases. Furthermore, there has been no capacity building workshops for HRDs on their rights as defined in the UN Declaration on Human Rights Defenders conducted by the MNHRC.

6. Conclusion and Recommendations

To date, the MNHRC has still not successfully investigated and taken effective action on any case submitted to it. Sitt Myaing, secretary of the MNHRC, stated in January that they haven't received many complaints from war-torn areas. However, when the MNHRC chairman publicly announces that the institution won't investigate complaints in active conflict areas, is this really a surprise? Despite the widespread and deeply serious violations taking place in conflict-affected areas, the reality that the MNHRC won't investigate them is a significant flaw in its claim to take human rights seriously. Furthermore, the situation in Arakan State is deteriorating and rather than even a statement that denounces human rights abuses, as various other human rights organisations have done, the MNHRC has made itself complicit in the persecution of the Rohingya by acting as a tool to cover up atrocities committed by the police force and reinforcing perceptions that Rohingya are illegal immigrants.

The above analysis of the enabling law is based on a law that has still to come into effect, and so only time will tell the practical application of the provisions in the law. One of the biggest flaws is the lack of independence that the selection committee has. Too many of its members are either government or government-affiliated while the provision of civil society involvement excludes large parts of Burma's civil society due to the stipulation that they must be registered. Furthermore, the MNHRC is financially dependent on the president's office.

For the MNHRC to be seen to be making substantive progress it needs to effectively tackle one of the myriad deteriorating trends in the human rights situation in Burma. This would send a message that does have a significant degree of independence and has the political will to investigate human rights abuses.

Recommendations

To the Burma Government, Parliament, and Military:

- To allow MNHRC unrestricted access to active conflict and ceasefire areas with guarantees of protection.
- To amend the enabling law to ensure that:
 - The selection committee consists of more civil society representatives, including those from unregistered civil society organisations;
 - To specify that at least a third of its members are women and from religious and ethnic minorities;
 - An independent mechanism is established for dismissal procedures to ensure that retaliation for investigation into sensitive issues is avoided;
 - To allow the MNHRC to investigate cases that are under court proceedings;
 - Funding for the MNHRC comes from Parliament as opposed to the government as it is now;
 - Salaries and expenses of members and staff are allocated through parliament as oppose to the president's office, as it is now.

To the MNHRC:

- To regularly and systematically engage with civil society organisations, both registered and non-registered, including human rights groups, ethnic groups and women's groups;
- To speak out publicly on cases of arrest and intimidation of human rights defenders;
- To study and use Advisory Council of Jurists references in its work;
- To refrain from perpetuating the racism and violence in Arakan State by using discriminatory language.