



18 November 2015

End of Mission Statement on the Impact and Effectiveness of the Myanmar National Human Rights Commission (MNHRC)

A joint fact-finding mission conducted from 16-18 November 2015 by the Asian Forum for Human Rights and Development (FORUM-ASIA), as secretariat of the Asian NGO Network on NHRIs (ANNI), and Burma Partnership to inquire into the impact and effectiveness of the Myanmar National Human Rights Commission (MNHRC) was completed today. The mission team comprised of Professor Kyong-Whan Ahn, former Chairperson of the National Human Rights Commission of the Republic of Korea and Professor Emeritus, Seoul National University Law School; Mr. Nur Kholis, Chairperson of National Human Rights Commission of Indonesia (Komnas HAM); Ms. Betty Yolanda, Country Programme Manager of FORUM-ASIA; and Mr. Joses Kuan, Advocacy and Research Officer of Burma Partnership.

The delegation met with a wide spectrum of civil society representatives, including rights activists, human rights defenders (HRDs), lawyers, as well as victims and individuals who have engaged the MNHRC to secure justice for individual complaints or to uncover systemic patterns of human rights violations and abuses in the country. The delegation also met with the Myanmar National Human Rights Commission, where a frank exchange was had. The mission team would like to place on record its appreciation to the MNHRC for receiving and engaging with the delegation, where issues surrounding the MNHRC's compliance with the Paris Principles both in law and practice as well as the environment in which it operates were discussed.

While there have been positive developments in some areas relating to democratization and human rights in Burma/Myanmar, progress has stalled and the situation has even worsened in many other areas. These include issues such as illegal land grabbing and abuses related to extractive industries, restrictions on the rights to freedoms of expression, association and assembly through repressive and archaic legislation, the tenuous peace process and human rights violations in the ethnic areas, among others.

In assessing the effectiveness and impact of the MNHRC, the mission team not only inquired into the MNHRC's compliance with the Paris Principles in law, but also in practice and through their responses to critical and widespread as well as pressing and emergent human rights issues and situations in the country. Vested with a complaint-handling function and investigative powers, it is thus critical that the MNHRC robustly utilizes these tools to effectively contribute to human rights protection and governance in the country.

The mission was also further timely and significant, as the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Right (ICC) will also assess the MNHRC's institutional compliance with the Paris Principles- considered the minimum standards for

national human rights institutions (NHRIs) to be credible and operate effectively- from 16-20 November, 2015. Today, the mission team wishes to present and highlight some preliminary observations from the visit.

Baseline Perceptions: Widening Credibility Deficit

Over the two days, a common theme that consistently emerged in interviews and focus group discussions with civil society representatives, HRDs as well as victims/complainants is that the MNHRC is a “*for show*” institution or a “*post-office box*”.¹ This is a worrying development as it signals the lack of public confidence in the institution just barely four years after its inception.

There is a growing sentiment expressed during the interviews that that investigations or inquiries undertaken in response to certain emblematic or prominent cases serve to deflect further scrutiny and accountability, and in the process showcase that action is being taken.

There also appears to be a sharp disconnect in perceptions of the MNHRC’s impact and effectiveness. For example, the MNHRC expressed that it is making substantial credibility gains, evidenced by the relatively high turnout of people (including released students) who provided testimonies and witness accounts in its Letpadan crackdown inquiry. However, interview responses from students, civil society representatives and the victims suggest instead that the statement by the MNHRC calling for the release of the arrested students (and other political prisoners) was a strategy to gain international recognition and credit ahead of the General Elections² as well as the ICC-SCA accreditation review.

Paris Principles Compliance in Practice

The MNHRC investigated the Ko Par Gyi death under instructions from the President’s Office after significant attention had been generated and had implicated active servicemen from the Tatmadaw (Burma Army). While the MNHRC conducted an investigation into the incident, the mission team was given to understand there was a considerable amount of distress and harassment that his spouse, Ma Thandar, had to confront when filing the case with the MNHRC.

These include being denied access to the MNHRC with her lawyer, as well as surveillance by members of the Myanmar Police Secret Branch when she went to the MNHRC. Her dealings and communications with the MNHRC were also limited to one phone call and two letters (an initial letter of invitation and a follow up letter seeking information relating to biodata details).

In its investigation, the MNHRC report claims that there had been an incident which involved apprehending Ko Par Gyi and the use of firearms in the process.

¹ Quotations in verbatim

² This includes the major flaws surrounding the Elections, such as discrepancies in the electoral lists, disenfranchisement of constituencies, military re-offensives in certain ethnic regions.

However, according to forensic experts that Ma Thandar has spoken to, he had been shot five times, one of which was point blank through the chin, implying that he had been shot four times before being killed. Furthermore, a substantial portion of the report is centered on the conflict between the DKBA and the Tatmadaw (Burma Army) as well as establishing if Ko Par Gyi was a civilian or combatant. Glaring omissions remained on the human rights violations that were uncovered, including the allegation of torture and extra-judicial killing of the victim as well as principles relating to due process and fair trial standards, among others.

The MNHRC also recently undertook an investigation into the Letpadan students crackdown, and in a welcome move, called for the release of all political prisoners (including the detained students) for them to be able to exercise their right to vote in the general elections. The investigation also found law enforcement officials had applied excessive force and failed to comply with standing orders and guidelines for managing protests.

However, the lack of a human rights perspective continues to also dampen the impact and effectiveness of the report. These include other aspects of human rights violations, what needs to be done to provide remedies to victims and how to prevent recurrences (including legislative amendments where necessary).

Just days after the MNHRC statement, however, arrests of other student activists (from the Letpadan incident) resumed. There was no further intervention or response from the MNHRC. When probed, the MNHRC disappointingly indicated that they will not be pursuing the matter further, despite hunger strikes and allegations of torture and ill-treatment (Myingyan Prison) as they are still in an “inaugural state” and are concurrently preoccupied with administrative issues such as finalizing procedures for hiring, financial rules, among others.

Personal accounts from interviews conducted also revealed that the detained students had to endure disparaging comments, such as “you are more comfortable than previous political prisoners”, from MNHRC officials who made site-visits, again revealing the lack of a human rights and victims-sensitive approach.

Repressive Legislation and Legislative Reforms

Relatedly, Section 18 of the Peaceful Assembly and Peaceful Procession Law (“Peaceful Assembly Law”) has notoriously been used to arrest, charge and imprison peaceful protestors. Organizers are subjected to onerous requirements such as being required to provide disproportionate information, and are at further risk of criminalization due to several unduly broad and vague limitations.³ Taken together, the law amounts to an excessively strict “authorization regime” that unduly restrict the exercise of these fundamental rights.

³ “talk or behave in a way to cause any disturbance or obstruction, annoyance, danger or a concern that these might take place.”

When queried, the MNHRC surprisingly conveyed that “it is too much” to simply “just inform and go protest”. The MNHRC further added that insofar as they are aware, “permission” is required to assemble and demonstrate in **all other countries**. Such positions display a lack of understanding of international norms and standards governing the right to freedom of peaceful assembly. For example, the notion of “just inform and go protest” is an over-simplification of the notification requirements and process, which entails responsibilities by organizers, and safeguards “the right to be protected from undue interference and that the enjoyment of the right to hold and participate in peaceful assemblies entails the fulfilment by the State of its positive obligation to facilitate the exercise of this right”.⁴

The mission team commends the several consultations held between the MNHRC and civil society representatives on legislative reform initiatives, including the Prison Act, the Race and Religion laws, among others. While the respondents expressed frustration at the proceedings and the lack of information/updates following the dialogue sessions, the mission team was given to understand that the MNHRC had made written submission of expert opinions to the national Parliament.⁵ This represents a departure from the past practices of non/selective-engagement and also the willingness to engage with key stakeholders in government on critical human rights issues in the country. The MNHRC also stated that it will be vigorously mainstreaming (particularly with law enforcement and security sector personnel) and implementing the United Nations Security Council Resolution 1325 on Women, Peace and Security.

However, these are not without problems. Interview respondents indicated that such consultations are usually requested or initiated by civil society representatives/networks and only successful after numerous attempts. In these consultation sessions, interview respondents also indicated various degrees of difficulty, from, for example the scant allocation of time to discuss issues robustly, to soft “advice” that certain positions should not be taken in the forum..

Widespread and Systemic Issues

The MNHRC states that illegal land grabbing and confiscation (as well as disputes and violations relating to the extractive industry) rank as the highest number and type of complaints it receives. This indicates an issue of critical importance that appears to also take on a widespread and systemic character.

Rather than interviewing respondents from cases disposed by the MNHRC (i.e. Letpaduang Copper Mine), the mission team instead interviewed several villagers from farming communities and land rights activists from Taikkyi

⁴ A/HRC/20/27

⁵ The mission team was also privy to details of the submission.

Township in Yangon Region who are currently confronting land dispute problems.⁶

The rationale for this was twofold. Firstly, it was in response to the claims by the highest levels of government that “all land plots located in Yangon Region and Kayin State have been returned”⁷, and to assess if the MNHRC has taken any comprehensive and timely measures, or exercised its powers and functions robustly to address land/resource rights-related violations. However, despite the strong emphasis that the MNHRC places on the promotional aspect of its mandate, the interview respondents were not aware that it exists.

Interviews with the villagers further revealed that evidence and information to the contrary. Land confiscation, almost always involving military personnel and corporate business enterprises with ties to the government and/or military, actively continues. Article 18 of Peaceful Assembly Law, which continues to be exploited, is also simultaneously used with other sections of the Penal Code. These include sections 505(b), 427, 447 and 114. Clearly, land grabbing continues to grow in seriousness and scale while avenues for redress and accountability remain elusive.

Conclusion

The MNHRC has made certain strides since its inception in 2011. Particularly since the reconstitution in 2014, it has increasingly attempted to take on and address critical human rights issues in the country.

It is bound to generate considerable public expectation because its creation suggests an institutional approach to addressing and tackling violations domestically. Its creation also opens up an official space for human rights discourse. After all, it is the only state-formed organ tasked exclusively to protect and promote human rights. However, the institutional legitimacy of the MNHRC is ultimately tested through its performance, and in particular, its impact or ability to render justice for victims of violations and abuses.

As outlined above, it is unfortunate that the respondents interviewed suggest that the MNHRC is at risk of becoming an “alibi” institution to legitimize the government. Underlying this assertion is the lack of both real and perceived independence of the MNHRC. This creates an atmosphere of distrust and disengagement, and puts the MNHRC at risk of being discredited entirely by civil society organizations and HRDs in the country.

Furthermore, the investigations conducted by the MNHRC appear to sometimes be riddled with inconsistencies and discrepancies. In some instances, the human

⁶ It must however be noted and commended that the MNHRC’s inquiry into the Letpaduang incident was later used as reference material in Parliamentary debated.

⁷ <http://www.nationmultimedia.com/aec/Land-grabbing-top-the-list-of-rights-violations-30242458.html>

rights perspective has been grossly overlooked. This not only undermines the MNHRC's own credibility, but also allows injustice to continue.

The MNHRC must rigorously monitor and advocate for the implementation of its recommendations, which the Chairperson admitted "leaves much to be desired". In considering if an NHRI is effective and impactful, the MNHRC must exercise its powers and functions not only effectively and efficiently, but also fearlessly, to address and systematically follow up on known rights violations with a long-term plan and vision.