

## Special Rapporteur on the Situation of Human Rights Defenders

Answers prepared by [Burma Partnership](#) and the [Human Rights Education Institute of Burma](#)

For more information please go to the [MNHRC Monitor Webpage](#) available at <http://bit.ly/NG01Eo>

1.

- a. **Please indicate if you are aware of any mechanisms that are in place within the National Human Rights Institute to ensure that human rights defenders at risk are protected (eg: through protection programs, early warnings systems, or submitting complaints to regional/international bodies on specific cases)**

The Myanmar National Human Rights Commission (MNHRC) was established a year ago, under [Union Government's Notification No. 34/2011](#) on the 5<sup>th</sup> of September 2011.

The MNHRC started drafting its Enabling Act after the Parliament refused to allocate its budget on the basis that it was not a body legally formed since it was established by the President without the approval of the legislature. Thus, the MNHRC is currently in the process of drafting its Enabling Act that will be submitted to the Parliament in the forthcoming months.

Currently the MNHRC operates on the basis of a two page letter that lists its roles and responsibilities. Among these responsibilities, that are very limited, no program refers to the protection of human rights defenders. It is also impossible to know whether the future Enabling Act will include such a program since no consultation has been organized with civil society and the draft of the Act remains undisclosed.

- b. **Please indicate whether a complaint has ever been submitted to the Institution on your behalf, or that of your organization. If applicable, please outline the Institution's response to the grievance and whether it met with the expectations in line with international human rights standards.**

Our organization never submitted a complaint to the MNHRC because according to its current mandate only individual can submit complaints, organizations cannot do it on behalf of victims.

Burma Partnership (BP) and the Human Rights Education Institute of Burma (HREIB) both suggested that the MNHRC include in its future Enabling Act the possibility for organizations to submit complaints on behalf of victims of human rights violations.

Some of our partners inside Burma filed complaints with the MNHRC, a majority of the complaints remain unanswered.

**c. Please indicate whether your organization has ever been consulted by the Institution about protection measures for human rights defenders in your country**

Both BP and HREIB have not been consulted on protection measures for human rights defenders, specifically when human rights activists and human rights lawyers [are still arrested](#), imprisoned, put under surveillance, threatened and restricted in their freedom of expression, assembly and travel.

**2.**

**a. Please indicate whether the Institution is perceived to be independent from the Government. If not, please provide details as to why is this the case.**

There is a widespread perception that the MNHRC was established as an attempt by the regime to appease the international community and to rehabilitate its image on the international scene, there are serious reasons to doubt the Commission's independence from the Government.

The MNHRC needs presidential approval to carry out its duties and reports to the President only. This raises serious concerns regarding the independence of the MNHRC from the President.

- The MNHRC reports directly to the President on its conducts when it is accepted that NHRIs should answer to an authority other than the executive, most usually the legislature.
- The MNHRC carries out tasks entrusted by the President, when the MNHRC visited two prisons in December 2011 presidential authorization was required while members and staff of NHRIs should not receive instructions or be required to seek authorization from Government ministers or other public officials.
- Chairman Win Mra explained that the MNHRC's terms of reference would need to be officially approved by the authorities. As noted by the UN Special Rapporteur on the situation of human rights in [Burma]Tomás Ojea Quintana in his latest report: "This would seem to indicate that it is not fully independent of the Government."

The composition of the MNHRC and the way Commissioners were appointed raises serious concerns that the Commission might only serve as a tool for whitewashing Burma's appalling record of human rights abuses.

- In contravention of the Paris Principles that emphasise that NHRIs should be established by procedures that ensure pluralist representation, the current members of the MNHRC were appointed solely by the President.
- The MNHRC 15 member body includes former military regime's ambassadors, as well as retired civil servants and two former high-ranking officials of the Burma Army. There are no representatives of NGOs, trade unions or professional associations.
- The Chairman and Vice-Chairman of the MNHRC used to be Burma's ambassadors to the United Nations. During their term they continuously denied the occurrence of human rights abuses in the country. Thus, the MNHRC leading members have been part of the regime's campaign to deny human rights abuses and to defend the perpetrators of these crimes.

The MNHRC's activities over the past year give the very strong impression that it is nothing more than an institution created to "window dress" the country's human rights record in the eyes of the international community and to legitimize the regime.

- Since its establishment the MNHRC has released eight statements, two open letters and given several interviews. Through this public interventions the MNHRC stated that there is no mistreatment of prisoners in Burma's infamous jails, on the situation in Kachin State it referred to human rights violations perpetuated by armed groups only leaving out crimes committed by the Burma Army, it refused to recognise the on-going and longstanding discrimination against the Rohingya in Arakan State and it has repeatedly publicly welcomed and endorsed the Government's actions.

The MNHRC's statements clearly reveal that it does not have the free space to report about human rights violations committed by the regime and the Burma Army.

**b. If applicable, please outline what steps could be taken by the State to ensure that the Institution is allowed to operate effectively to protect and promote human rights.**

At this point in time, there are significant reasons to doubt the independence and autonomy of the MNHRC. For the MNHRC to be in compliance with the Paris Principles, it would require a complete reconstitution of the Commission, including ensuring an inclusive and transparent selection process, clearly define its relationship with the Government to ensure independence, and a strengthening of its mandates and functions. Furthermore, based on concerns over the track record of the current Commissioners, the MNHRC's members need to be restructured to ensure the credibility and legitimacy of the Commission.

The forthcoming Enabling Act of the MNHRC may address some of the main concerns regarding effectiveness and independence. To guarantee this Burma's Government and Parliament must ensure that:

- the Enabling Act of the MNHRC clearly sets out the Commission's role and powers in order to guarantee its permanence and independence;
- the Enabling Act fully reflects all the Paris Principles' requirements including a broad mandate based on universal human rights principles, pluralism of members, adequate financial resources, power of investigation and encompass representation of civil society;
- the drafting process of the MNHRC's Enabling Act is transparent and participatory.

**3.**

**a. Please describe the general working relationship, if any, between your organization and the Institution.**

The engagement of the MNHRC with local stakeholders including civil society remains limited.

- Some of BP and HREIB partners inside Burma have invited the Commission to participate in various events that they organized and BP sent two letters to the MNHRC and released a [statement](#) calling for a transparent and participatory drafting process of the Commission's

Enabling Act. We also tried to contact some commissioners via email. The Commission only answered our first letter, the rest of our communications remain unanswered.

- As far as Burma Partnership is aware, no consultation with civil society actors has been organized on the drafting of the MNHRC's Enabling Act.

The Commission has been very reticent about meeting with civil society groups and very selective in its engagement with NGOs.

- The Executive Director of HREIB met with the Chairman and Vice-Chairman of the MNHRC in Rangoon last July. In the meeting, the MNHRC explained that to engage with the Commission groups had to be officially registered.
- This poses a serious problem in that the current 1988 Registration Law is overly restrictive and prohibits NGOs to be involved in politics and advocate for good governance. Any association that is not registered under this law is considered as unlawful and the law requires that NGOs pay an unrealistic amount up to 500, 000 kyat (around 550 USD) for registration fees.

Thus it is feared that the Commission will most likely only engage with Government affiliated or registered groups rather than independent community and grassroots organizations.

**b. Please indicate what measures could be taken to ensure better cooperation between the Institution and civil society, including human rights defenders. If applicable, please provide examples of good practices.**

The commissioners need to understand that engaging on a regular basis with a broad range of civil society actors can only strengthen its independence and legitimacy. Currently the MNHRC seems to be more accountable to the President than to the public or Parliament.

The MNHRC must engage on a regular basis with civil society groups 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 media.

The MNHRC also needs to be more accessible to human rights defenders and victims of human rights violations. They need to have a functioning phone and fax machine and also be able to communicate via email. In order to ensure transparency and effective cooperation the MNHRC must also publicly report on its activities annually.

Moreover, we recommend implementing the following steps to ensure that the drafting process of the MNHRC's Enabling Act is credible, inclusive, transparent and consistent with the Paris Principles:

- To widely publicize and disseminate the draft of the Enabling Act in Burmese and other ethnic nationalities languages, especially through the media, and allow adequate time for meaningful public participation in the drafting process, including recommendations by the public on its content.

- To publicly identify a focal person within the Government and within the MNHRC to oversee the drafting process as well as a parliamentary committee to facilitate broad based consultation and communication with the public.
- To enable input at all stages of the drafting process, including the initial draft of the law and its subsequent discussion in the Parliament.
- To ensure pluralism through 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.
- To ensure enough resources are allocated to the consultation process to enable it to be effective, inclusive and comprehensive.
- To ensure a conducive and secure atmosphere for people to take part in the consultation process especially in ethnic areas.

**4.**

- a. Please indicate whether Institution staffs are considered to be human rights defenders in your country.**

The MNHRC, its commissioners and staffs are not considered as human rights defenders rather as regime promoters.

- b. If so, please indicate whether any challenges or obstacles exist that may prevent the Institution from protecting and promoting human rights in the country.**