

9 August 2013

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Dear U Shwe Mann,

Subject: Civil Society's Concerns on Draft MNHRC Law Must Be Adequately Addressed

The Asian NGO Network on National Human Rights Institutions (ANNI), a network of 30-member organizations from 17 countries across Asia writes to you concerning the latest developments on the founding legislation of the Myanmar National Human Rights Commission (MNHRC). This follows an [open letter](#) previously sent by ANNI on 8 May 2013 to request broader and meaningful consultation with civil society and to make the draft legislation publicly available for scrutiny and feedback. In this regard, we commend the openness displayed by the government to publish and solicit comments from the public on the [draft bill](#) in *The Mirror* on 7 July 2013. At the same time, we also welcome the news that the MNHRC will be formalized in legislation by an act of Parliament.

We applaud the many positive features in the draft bill. However, ANNI is concerned that the bill, already scheduled for reading and debate in the current Parliamentary sitting, contains many problematic provisions that will undermine the independent and effective functioning of the MNHRC. In this regard, we call your attention to the letter of concern put forth by 43 civil society organizations from Burma on 2 August 2013 expressing their [reservations and recommendations](#) made to the draft bill (*See Annex*).

In particular, ANNI expresses concern over the selection process, which is crucial in ensuring the independence of the Commission. The Selection Board, tasked to submit the names of prospective Commission members for direct appointment by the President, is largely composed of individuals representing or affiliated to the Executive branch of the government with only token representation from the legislature and civil society, with the latter limited to only those from registered NGOs. Such composition of the Selection Board lacks both pluralism and inclusiveness, as set out in international standards concerning national human rights institutions (NHRIs). Furthermore, the decision on the selection of Commission members should not be determined by the exclusive purview of the President, and the Parliament should be part of the formal decision making process of selection of Commission members, to ensure legitimacy and transparency in the selection process.

We stress that the process of establishing the re-constituted MNHRC is vital in determining the extent of the Commission's compliance with international standards, and thus the credibility and international recognition of the Commission. The potential of the MNHRC to implement its

mandate to the fullest must also be underpinned by meaningful civil society engagement. Hence, the selection process of Commission members should also be characterized by a wide and inclusive consultation process, which should include a mechanism for public nomination of candidates, especially from civil society representatives such as human rights defenders and vulnerable or un/under-represented segments of society.

Finally, it is also paramount to ensure the formalization of the selection process in relevant legislation, regulations or binding administrative guidelines to ensure a clear, transparent and participatory selection process that promotes merit-based selection, ensures pluralism and promotes the independence of and public confidence in the MNHRC.

ANNI thus calls on Parliamentarians to play a more proactive role in deliberating and duly addressing the problematic provisions in the draft enabling law before it is put to a vote. We believe that the [recommendations](#) made should be thoroughly considered and remain committed to the enhancement of the MNHRC. If you require more information, please kindly contact Sayeed Ahmad at +66 84217 6150 or email: sayeed@forum.asia.org; or Joses Kuan at tel: +66 83544 5166 or email: joses@forum-asia.org.

Sincerely,

Asian NGO Network on National Human Rights Institutions (ANNI), comprising:

1. ADVAR – Iran;
2. Ain o Salish Kendra (ASK) – Bangladesh;
3. All India Network of NGOs and Individuals Working With National and State Human Rights Institutions (AiNNI) – India;
4. Asian Forum for Human Rights and Development (FORUM-ASIA);
5. Cambodian League for Promotion and Defence of Human Rights (LICADHO) – Cambodia;
6. Cambodian Working Group for the Establishment of an NHRI (CWG) – Cambodia
7. Centre for Human Rights and Development (CHRD) – Mongolia;
8. Commission for Disappearances and Victims of Violence (KontraS) – Indonesia;
9. Defenders of Human Rights Centre – Iran
10. Education and Research Association for Consumer Education (ERA Consumer) – Malaysia;
11. Hong Kong Human Rights Monitor (HKHRM) – Hong Kong;
12. Human Rights Organization of Kurdistan;
13. Indonesian Human Rights Monitor (IMPARSIAL) – Indonesia;
14. Indonesian NGO Coalition for International Human Rights Advocacy (HRWG) – Indonesia;
15. Informal Sector Service Centre (INSEC) – Nepal;
16. Institute for Policy Research and Advocacy (ELSAM) – Indonesia;
17. International Campaign for Human Rights in Iran – Iran;
18. Joint Movement for NHRI and Optional Protocols – Japan;
19. Judicial System Monitoring Program (JSMP) – Timor Leste;
20. Justice for Peace Foundation (JPF) – Thailand;
21. Korean House for International Solidarity (KHIS) – South Korea;

22. Law and Society Trust (LST) – Sri Lanka;
23. Lawyers’ League for Liberty (LIBERTAS) – Philippines;
24. Maldivian Democracy Network (MDN) – Maldives;
25. Odhikar – Bangladesh;
26. People’s Watch (PW) – India;
27. Philippine Alliance of Human Rights Advocates (PAHRA) – Philippines;
28. Suara Rakyat Malaysia (SUARAM) – Malaysia;
29. Taiwan Association for Human Rights (TAHR) – Taiwan;
30. Human Rights Forum (HRF) – Bangladesh

Since its establishment in 2006, ANNI has advocated for the strengthening of the independence and effectiveness of national human rights institutions (NHRIs) in Asia. Our work has included, among others, the publication of annual reports on NHRIs in Asia, active engagement with regional and international groupings such as the Asia Pacific Forum of NHRIs (APF), and the submission of NGO parallel reports to the International Coordinating Committee of NHRIs (ICC) accreditation reviews of Asian NHRIs.

Recommendations on the Myanmar National Human Rights Commission Law

On 7 July 2013, the draft enabling law of the Myanmar National Human Rights Commission (MNHRC) was published in the state-run newspaper *The Mirror*. Along with the publication of the draft law was a notice calling for comments and recommendations.

We, the undersigned organizations welcome the publication of the draft law and would like to take this opportunity to make the following recommendations and proposed amendments in order to ensure the MNHRC's independence, effectiveness, and its full compliance with the UN Principles relating to the status of national institutions. These principles, known as the Paris Principles, set out the minimum international standards required for National Human Rights Institutions (NHRIs) to effectively fulfill their role.

While there are some positive aspects in the draft legislation, some provisions pose serious threats to the commission's independence. Thus, we highly recommend that the problematic provisions detailed below be amended.

Selection and Appointment Procedures of MNHRC's Members

Article 4 states that the President shall establish a selection board in charge of developing a shortlist of candidates from which the President will make the final selection and appointment.

The selection and appointment mechanism is one of the most important ways to guarantee the independence and pluralism of NHRIs. It must afford necessary guarantees to ensure representation of the diversity of society.

The current selection board, as established by Article 4 of the draft legislation, does not offer such guarantees for multiple reasons. First, the selection board is predominantly composed of government representatives or affiliates. Out of nine members, five are government-affiliated representatives (two ministers, the Attorney General, the Chief Justice and the Chairperson of the Union Civil Services Board) while two are parliament representatives and one has to be a representative from a registered non-governmental organization (NGO). Article 4 must be amended so that the composition of the selection board includes less government representatives. Second, Article 4 does not specify who the two parliament representatives should be and how they will be selected. Thus, Article 4 must be amended to ensure that the two parliament representatives are selected by the Parliament itself rather than the President and that they represent the different political forces in the legislature. Third, Article 4(h) requires that a representative of a registered NGO be part of the selection board. This is too restrictive.

Civil society is not limited to registered NGOs but includes also journalists, individuals, union members and academics. The language of Article 4(h) must be changed to an “independent member of the civil society.”

Article 6(c) states that the selection board must seek to ensure the equitable representation of men and women and of national races. To secure pluralism, the draft legislation should specify a significant number. Thus, Article 6(c) should be amended so that it clearly requires that at least one third of the total number of the commissioners are representatives of women, ethnic nationalities, and religious minorities.

In addition, **Article 7** states that the selection board shall adopt “procedures for nominating prospective Members of the Commission.” International standards recognize that it is of critical importance that the terms and conditions for selection and appointment are transparent and set out in the founding law of NHRIs. Thus, the procedures for nominating potential members of the MNHRC should not be left to be developed by the selection board but should be set out in the current draft. They should include broad consultations with civil society throughout the process and broad advertisement of vacancies.

Dismissal Procedure of MNHRC’s Members

Freedom from arbitrary dismissal is crucial to an NHRI’s independence. Since the MNHRC will have the authority to comment on the government’s actions in respect to human rights, its members must be protected from retaliation. For this reason, the founding legislation should specify in detail the circumstances under which a member may be dismissed. Dismissal should be limited to serious wrongdoing, clearly inappropriate conduct or serious incapacity. In addition, mechanisms for dismissal should be independent from the executive.

Article 18 does not offer these guarantees. It does not state who has the authority to dismiss a member of the MNHRC or what the procedure to follow is. It is imperative that Article 18 be amended so that it establishes an independent mechanism for dismissal. International guidelines suggest a two-third majority vote of the Parliament or an independent board of judges. However, in the specific context of Burma/Myanmar, it is important to note that the Parliament’s composition and the judiciary do not offer these guarantees of independence either.

In addition, grounds for dismissal listed in Article 18 are too broadly worded, i.e. “is deliberately engaged in actions to defeat the objectives of the Commission.” This ground for action, also mentioned in **Article 25**, is not specific enough and could lead to a broad and arbitrary interpretation and be used against commission’s members too critical of the authorities. Thus, Article 18(d) and Article 25 must be removed.

Operational Independence and Powers of the MNHRC

The Paris Principles require that NHRIs have access to all documents and all persons necessary for it to conduct an investigation. This includes the power to compel the production of documents and witnesses. We welcome the fact that Article 35 grants the MNHRC such powers. Article 35(a) and (b) further list limitations to such powers. While we acknowledge the necessity to protect classified documents for

national security reasons (Article 35(a)), **Article 35(b)** mentions “classified documents in the departments and organizations of the government.” The language used is extremely broad and does not explain what are departments and organizations of the government. Such limitation could be used to seriously limit the commission’s investigative powers. Thus, we recommend that Article 35(b) be removed.

Article 36 states that the commission shall not inquire into any complaint that involves current proceedings before the court. To acknowledge the complementarity of the commission and the court system and to broaden the powers of the MNHRC, Article 36 should be amended so that the commission, with authorization of the court, can inquire into matters pending before it.

Article 37 and 39(d) explain that government department or organization should reply to the commission’s recommendation “within a reasonable period.” The timeframe within which the government department and organization must inform the commission about the action they have taken to address violations of human rights should be fixed. If not specified and time-limited, the department or organization could constantly delay reporting to the commission. Thus, Article 37 and 39(d) must be amended to change “within a reasonable period” to “within a maximum limit of six months.”

In addition, we would like to suggest adding an article that would give the commission the power to take actions if the answer given by authorities is not satisfactory. Without such mechanisms the commission’s power to compel authorities to address human rights violations would be seriously limited. Thus, an article that gives the power to the MNHRC to submit memorandums to the President and the Parliament if a department or organization does not take satisfactory actions to address human rights violations must be added.

Funding of the MNHRC

Financial autonomy guarantees the overall freedom of NHRIs to determine their priorities and activities. International standards recommend that public funds should be provided through a mechanism that is not under direct government control. **Article 50** of the draft legislation states that the “government shall provide the commission with a budget.” This undermines seriously the commission’s independence and autonomy. Thus, we recommend that Article 50 be amended so that funds are allocated through a vote in Parliament rather than directly by the government in order to foster the MNHRC’s financial autonomy.

In addition, the budget of the commission should be made public to guarantee transparency. The law should require that a specific line in the national budget be added for the MNHRC’s budget.

Article 11 makes the honorarium, allowance, other entitlements and status of the members of the commission determined by the President. This makes the members of the commission directly financially dependent on the President. It shows a clear conflict of interest and impediment to the commissioners’ independence. If commissioners’ salaries are dependent on the President, commissioners will be more than hesitant to comment on the executive’s actions. Thus, Article 11 should be reviewed so that the allowance, honorarium and entitlements of the commissioners are part of the overall budget of the

MNHRC, to be approved by the Parliament and so that the status of the commissioners is already specified in the law.

Accountability and Publication of Findings and Reports

To increase the independence, transparency and credibility of the MNHRC it should be accountable to the President, the Parliament and the public in general. NHRIs' reports should be made widely available. The public and other stakeholders should be able to know about the work of the commission including complaints received and investigated, monitoring and advice to the government.

Thus to ensure regular, wide and systematic publication of the MNHRC's reports and findings and thus, foster its transparency and credibility we recommend that the word "as appropriate" be deleted in **Article 22(j)** and **Article 44**. We further recommend that in **Article 22(l), (m)** and **Article 38** the requirement for submission should not be limited to the President and that the Parliament and the public should be added. Finally, we recommend that in **Article 38** the conditions of publication "if necessary" be deleted as well.

Engagement with Civil Society

The Paris Principles recognize that relationships with civil society can help NHRIs to protect their independence and pluralism, and enhance their effectiveness by deepening their public legitimacy. We welcome the power given to the MNHRC to consult and engage with civil society organizations. However, we recommend that **Article 22(f)** specifically emphasize that the consultation and engagement should be "regular" and "inclusive".

Inspection of Prisons, Jails, Detention Centers and Places of Confinement

We welcome the powers granted to the MNHRC under Article 42, 43 and 44 relating to the inspection of prisons, jails, detention centers and places of confinement. We take note that in **Article 43(a)** the MNHRC has the power to visit such places. However, NHRIs should have the power to enter any place of detention without prior warnings. Thus, we recommend that the requirement for the MNHRC to notify the relevant authorities of the time of its visits in Article 43(a) be removed.

Effectiveness of the MNHRC

Article 48 of the draft legislation requires that the commission makes decision by consensus, and if not possible, by a two-thirds majority. These requirements make it too difficult to reach any decision and could hamper the commission's effectiveness. Article 48 must be amended so that if commissioners cannot reach consensus, a simple majority vote is required.

MNHRC's Staff

Pluralism and diversity of the commission can also be enhanced if the staff composition also reflects the

diversity of society. Thus, we recommend that the requirements set out in Article 5 for the commission's members such as gender balance, ethnic and minority representation, human rights experience be also added as requirement for staff under **Chapter VIII**. In addition the law should require for the staff recruitment procedure to be open and transparent and the positions published in order to avoid nepotism.

Submitted by:

- 1) All Arakan and Students and Youths' Congress
- 2) All Kachin Students and Youth Union (AKSYU)
- 3) Assistance Association for Political Prisoners – Burma (AAPP-B)
- 4) Association of Human Rights Defenders and Promoters (HRDP)
- 5) Back Pack Health Workers Team (BPHWT)
- 6) Burma Issues (BI)
- 7) Burma Medical Association (BMA)
- 8) Burma Partnership (BP)
- 9) Chin Human Rights Organization (CHRO)
- 10) Committee for Internally Displaced Karen People (CIDKP)
- 11) Committee for Protection and Promotion of Child Rights (CPPCR)
- 12) Community Response Group
- 13) Equality Myanmar
- 14) Ethnic Community Development Forum (ECDF)
- 15) Forum for Democracy Burma (FDB)
- 16) Foundation for Education and Development (FED)
- 17) Generation Wave (GW)
- 18) Human Rights Foundation of Monland – Burma (HURFOM)
- 19) Kachin Women Organization – Thailand (KWAT)
- 20) Karen Women Empowerment Group (KWEG)
- 21) Karen Women Organization (KWO)
- 22) Karenni Social Welfare & Development Center (KSWDC)
- 23) Karunashin Women Empowerment Group
- 24) Kaung Rwai Social Action Network
- 25) Kayan New Generation Youth (KNGY)
- 26) Kayan Women's Organization (KyWO)
- 27) Mae Tao Clinic
- 28) Maukka Education Magazine
- 29) Mon Youth Progressive Organization (MYPO)
- 30) Nationalities Youth Forum (NYF)
- 31) Network for Democracy and Development (NDD)
- 32) Palaung Women Organization (PWO)
- 33) Paungku
- 34) Pa-Oh Youth Organization (PYO)
- 35) Rakhaing Women's Union (RWU)

- 36) Shwe Gas Movement (SGM)
- 37) Social and Health Development Association (SHDA)
- 38) Student and Youth Congress of Burma (SYCB)
- 39) Ta'ang Students and Youth Organization (TSYO)
- 40) Tavoy Women's Union (TWO)
- 41) Tavoyan Youth Organization (TYO)
- 42) Women Initiative Network for PEACE (WIN Peace)
- 43) Women's League of Burma (WLB)