

# BURMA: ‘ALL SHOOK UP’

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## 1. INTRODUCTION

The next twelve months will be a revealing year for the Myanmar National Human Rights Commission (MNHRC). With the enabling law being finally passed in March of 2014, it is now possible for the MNHRC to fulfill its mandate of human rights protection. Unfortunately, instances of significant backsliding remain for the human rights situation in Burma, though Civil Society Organizations (CSOs) are hopeful for change in the upcoming general elections in November 2015. Discriminatory legislation in the form of the controversial “Race and Religion” bills, the harsh clamping down on freedom of assembly and expression during peaceful protests, and the systematic denial of civil and political rights for Rohingya are significant issues that will test the effectiveness of the MNHRC during its pivotal year.

The signing of the draft Nationwide Ceasefire Agreement (NCA) has come to a standstill as a number of Ethnic Armed Organizations (EAOs) collectively refused to sign the NCA over the lack of inclusion for all EAOs in the peace process and continued significant human rights violations by the Burma Army<sup>2</sup>. Additionally, ongoing violence such as the Burma Army attack on a Kachin Independence Army (KIA) training school, which left 23 cadets dead on 19 November 2014, illustrates the substantial political tension in ethnic regions of Burma<sup>3</sup>. By attempting to move forward without the inclusion of all political actors or at the least, the ending of conflict, the Burma Government cannot hope to achieve a sustainable peace.

In addition to exacerbating existing conflicts, the upcoming general elections are poised to significantly test Burma’s fledgling transition to democracy<sup>4</sup>. Yet due to the decision to eliminate the White Card identification system earlier this year, a significant portion of Burma’s 1.3 Million Rohingya will be unable to participate in the electoral process<sup>5</sup>. Finally, the leader of the main opposition party the National League for Democracy (NLD), Aung San Suu Kyi, will not be able to partake in the upcoming elections for presidential post due to a constitutional clause that specifically prohibits anyone with foreign-born relatives from becoming President<sup>6</sup>.

The need for an effective MNHRC could not be more pressing. In her March 2015 report to the Human Rights Council, the United Nations Special Rapporteur on the situation of human rights in

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<sup>2</sup> Mark Inkey, “Burma Ceasefire Agreement: One Step Forward, Two Steps Back,” *Asian Correspondent*, 8 May 2015, <http://asiancorrespondent.com/132721/burma-ceasefire-agreement-one-step-forward-two-steps-back>.

<sup>3</sup> Saw Yan Naing, “Attack on KIA a Setback for Nationwide Ceasefire, Negotiators Say,” *The Irrawaddy*, 27 November 2014, <http://www.irrawaddy.org/burma/attack-kia-setback-nationwide-ceasefire-negotiators-say.html>.

<sup>4</sup> International Crisis Group, *Myanmar’s Electoral Landscape Asia Report N. 266*, (Brussels, Belgium: International Crisis Group Headquarters, 28 April 2015), <http://www.crisisgroup.org/en/regions/asia/south-east-asia/myanmar/266-myanmar-s-electoral-landscape.aspx>.

<sup>5</sup> BBC News, “Why are so many Rohingya Stranded at Sea?” *BBC News Asia*, 18 May 2015, <http://www.bbc.com/news/world-asia-32740637>.

<sup>6</sup> Lindsay Murdoch, “Aung San Suu Kyi Concedes She Won’t Become Myanmar’s Next President,” *The Sydney Morning Herald*, 9 January 2015, <http://www.smh.com.au/world/aung-san-suu-kyi-concedes-she-wont-become-myanmars-next-president-20150109-12knaw.html>.

Burma, Yanghee Lee, drew particular attention to the current restraints being placed on Freedom of Assembly and the Freedom of Expression<sup>7</sup>. She first made reference to the ‘March 10<sup>th</sup> incident’ in Letpadan, in which dozens of students were brutally attacked and made victim to mass arrests by the police during a peaceful protest on education reform<sup>8</sup> leading to condemnation from 130 civil society organizations (CSOs)<sup>9</sup>. A garment workers’ peaceful protest in March also resulted in nearly 20 individuals being arrested<sup>10</sup>.

These incidents are a byproduct of the Burma Government’s “Peaceful Assembly and Peaceful Procession Law”, which was passed in June 2014. Under this legislation, protestors wishing to exercise their basic civil and political rights are effectively forced to seek permission from the Burma Government to conduct planned peaceful protests, and subjected to overly onerous conditions such as a detailed description of the motivation behind the protest, the names of organizers, and the chants they will use during the course of the protest<sup>11</sup>.

The suppression of the basic Freedom of Expression extends into the media as well. Currently, 13 journalists remain imprisoned in Burma on a variety of charges including defamation and the violation of the largely outdated 1923 State Secrets Act<sup>12</sup>.

This figure includes the journalists from the *Unity* newspaper that were arrested last year and sentenced to seven years (initially ten) with hard labor as a result of having conducted an investigation into an alleged chemical weapons facility being used by the Burma Army<sup>13</sup>. These arrests run contrary to the statements issued by the MNHRC in recent times, calling on President Thein Sein to release “prisoners of conscience”<sup>14</sup>.

The case of Htin Lin Oo, a former National League for Democracy information officer, who was recently sentenced to two years hard labour for speaking out against the rising Buddhist Nationalist movement is also noteworthy<sup>15</sup>. Clearly, Freedom of Expression in Burma is non-existent.

This past year saw the extrajudicial abduction and subsequent murder of journalist Ko Par Gyi. In addition to highlighting a significant lack of freedom for the media, the conclusion of this case

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<sup>7</sup> UN Office of the High Commissioner for Human Rights, “UN Rights Expert Calls on Myanmar to Address Worrying Signs of Backtracking in Pivotal Year,” *UNOHCHR*, March 18, 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15714&LangID=E>.

<sup>8</sup> BBC News, “Myanmar Riot Police Beat Student Protestors with Batons,” *BBC News Asia*, March 10, 2015, <http://www.bbc.com/news/world-asia-31812028>.

<sup>9</sup> 130 Civil Society Organizations, “Burmese Government Urged to Cease the Assault and Arrest of Students Protesting in Letpadan and Rangoon,” *Burma Partnership*, March 13, 2015, <http://www.burmapartnership.org/2015/03/burmese-government-urged-to-cease-the-assault-and-arrest-of-students-protesting-in-letpadan-and-rangoon/>.

<sup>10</sup> Yen Snaing, “Police Arrest Protesting Garment Workers,” *The Irrawaddy*, March 4, 2015, <http://www.irrawaddy.org/burma/police-arrest-protesting-garment-workers.html>.

<sup>11</sup> Human Rights Watch, “Burma: ‘Peaceful Assembly Law’ Fails to End Repression,” *Human Rights Watch*, January 26, 2015, <http://www.hrw.org/news/2015/01/26/burma-peaceful-assembly-law-fails-end-repression>.

<sup>12</sup> Roy Greenslade, “Two Burmese Newspaper Journalists Jailed for Defaming Military MP,” *The Guardian*, March 20, 2015, <http://www.theguardian.com/media/greenslade/2015/mar/20/two-burmese-newspaper-journalists-jailed-for-defaming-military-mp>.

<sup>13</sup> San Yamin Aung, “Supreme Court Rejects Appeal of Unity Journalists,” *The Irrawaddy*, November 27, 2014, <http://www.irrawaddy.org/burma/supreme-court-rejects-appeal-unity-journalists.html>.

<sup>14</sup> Myanmar National Human Rights Commission, *Request Submitted in Open Letter by Members of the Myanmar National Human Rights Commission to the President of the Republic of the Union of Myanmar*, by Win Mra, Chairman, <http://www.mnhrc.org.mm/en/statements-2/request-submitted-in-open-letter-by-members-of-the-myanmar-national-human-rights-commission-to-the-president-of-the-republic-of-the-union-of-myanmar/>.

<sup>15</sup> Zarni Mann, “2 Years Hard Labor for Htin Lin Oo in Religious Offense Case,” *The Irrawaddy*, June 2, 2015, <http://www.irrawaddy.org/burma/2-years-hard-labor-for-htin-lin-oo-in-religious-offense-case.html>.

(which will be discussed below) demonstrated the impunity shared by members of the Burma Army and the inability of the MNHRC to hold all stakeholders accountable during human rights violations.

The humanitarian crisis in Arakan State is representative of some of the worst human rights violations currently in Burma. In May 2015, thousands of refugees from Burma became stranded in the Andaman Sea, facing starvation, dehydration and sickness, after completing a lengthy overseas journey to neighboring Thailand, Indonesia and Malaysia<sup>16</sup>. The initial response from the destination countries to deny these refugees the right to seek asylum exacerbated the crisis; however most of the blame must be placed on the oppressive policies of the Burma government. After all, the majority of the refugees identified as Rohingya: Burma's long discriminated against ethnic group.

Since the outburst of violence between the Rohingya minority and Arakan Buddhists in Arakan State in 2012, tens of thousands of Rohingya have been confined to Internally Displaced Persons (IDPs) camps in which conditions are appalling. Rohingya in these camps face malnutrition, inter-communal violence, a lack of basic healthcare, and a severe shortage of clean water<sup>17</sup>. The Burma Government recognizes the Rohingya only as illegal immigrants, and as a result, members of the minority are denied citizenship, voting rights, and the freedom to move throughout the country<sup>18</sup>.

The four Race and Religion bills currently being debated within parliament exemplify the extent of this discrimination. For instance, the Buddhist Women's Special Marriage Bill will be used in an attempt to control the marriage between Buddhist women and non-Buddhist men by placing additional restrictions on their union. In addition to its sexist and misogynistic language, the Bill insinuates that non-Buddhist men may attempt to forcibly convert their Buddhist spouses<sup>19</sup>.

Serious human rights violations have become commonplace amongst Burma's conflict regions. Displaced refugees in the Kokang region have given testimony to a variety of crimes committed by the Burma Army including the disappearance of villagers, torture, the extra-judicial killing of civilians, and beheadings<sup>20</sup>. In Kachin State, continued offensives by the Burma Army on KIA positions have resulted in numerous casualties from both sides along with violence, detention and torture directed at civilians<sup>21</sup>.

Most concerning is the widespread use of sexual violence in conflict. On 20 January 2015, Burma Army soldiers gang-raped, tortured and murdered two Kachin volunteer teachers, Maran Lu Ra

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<sup>16</sup> Simon Tisdall, "South-east Asia Faces its Own Migrant Crisis as States Play Human Ping-Pong," *The Guardian*, May 14, 2015, <http://www.theguardian.com/world/2015/may/14/migrant-crisis-south-east-asia-rohingya-malaysia-thailand>.

<sup>17</sup> Carlos SardinaGalache, "Myanmar's Rohingya Face a Humanitarian Crisis," *Al Jazeera*, April 19, 2014, <http://www.aljazeera.com/indepth/features/2014/04/myanmar-rohingya-face-humanitarian-crisis-2014419153817624529.html>.

<sup>18</sup> Human Rights Watch, "Burma: Rohingya Muslims Face Humanitarian Crisis," *Human Rights Watch*, March 26, 2013, <http://www.hrw.org/news/2013/03/26/burma-rohingya-muslims-face-humanitarian-crisis>.

<sup>19</sup> Amnesty International, "Myanmar: Scrap 'Race and Religion Laws' that could Fuel Discrimination and Violence," *Amnesty International Asia and the Pacific*, March 3, 2015, <https://www.amnesty.org/en/articles/news/2015/03/myanmar-race-and-religion-laws/>.

<sup>20</sup> Shan Human Rights Foundation, "Killing, Beheading, and Disappearance of Villagers Instill Fear of Return Among Kokang Refugees," *SHRF*, May 11, 2015, <http://www.burmapartnership.org/2015/05/killing-beheading-and-disappearance-of-villagers-instill-fear-of-return-among-kokang-refugees/>.

<sup>21</sup> Fortify Rights, "Myanmar: End Military Attacks on Kachin and Shan Civilians," *Press Release and Briefing*, November 6, 2014, <http://www.fortifyrights.org/publication-20141106.html>.

and Tangbau Hkawn Nan Tsin, in Northern Shan State<sup>22</sup>. During an address to the United Nations Security Council this year, Secretary-General Ban Ki-Moon indicated that despite widespread sexual violence being propagated by the Burma Army, state actors continued to act with a high degree of impunity<sup>23</sup>.

## 2. INDEPENDENCE

<b>Establishment of NHRI</b>	
Established by Law/Constitution/Presidential Decree	<i>Myanmar National Human Rights Commission Law, 2014 Notification No. (21/2014)</i>
Mandate	<p>Taken from (<a href="http://www.mnhrc.org.mm/en/about/mandate/">http://www.mnhrc.org.mm/en/about/mandate/</a>)</p> <ul style="list-style-type: none"> <li>(a) To promote and protect the fundamental rights of citizens enshrined in the Constitution of the Republic of the Union of Myanmar effectively;</li> <li>(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;</li> <li>(c) To effectively promote and protect the human rights contained in the international conventions, decisions, regional agreements and declarations accepted by Myanmar;</li> <li>(d) To engage, coordinate, and cooperate with the international organizations, regional organizations, national statutory institutions, civil society and registered non-governmental organizations working in the field of human rights.</li> </ul>
<b>Selection and Appointment</b>	
Is the selection formalized in a clear, transparent and participatory process in	Chapter III of the Myanmar National Human Rights Law outlines the legislative basis for the

<sup>22</sup> Kachin Women's Association Thailand, "Details of the Rape and Murder of Two Kachin Teachers in Pangshai Township, Muse District, Northern Shan State," *Women's League of Burma Statement*, January 22, 2015, [http://www.kachinwomen.com/kachinwomen/images/19Jan2015/WLB\\_statement\\_Kachin\\_murders\\_English.pdf](http://www.kachinwomen.com/kachinwomen/images/19Jan2015/WLB_statement_Kachin_murders_English.pdf).

<sup>23</sup> United Nations Security Council, *Conflict-Related Sexual Violence, Report of the Secretary General*, S/2015/203, March 23, 2015, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2015\\_203.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2015_203.pdf).

<p>relevant legislation, regulations or binding administrative guidelines, and for its subsequent application in practice?</p>	<p>selection of new MNHRC members. This includes how the Selection Board will be comprised, the criteria for the nomination of Commission members, the role of the Selection Board, along with the authority granted to the President to ultimately select and appoint nominations.</p> <p>In practice, the selection process has been substantially less transparent. On 24 September 2014, the previous 15-member commission was disbanded without sufficient prior public notice of the timing of the reshuffle and replaced with a new body of 11 commission members. In an article written by the Myanmar Times, it was pointed out that even key members of the Executive– along with one of the ousted Commission members, U HlaMyint – were unaware of who had been nominated for the commission<sup>24</sup>.</p>
<p>Is the selection process under an independent and credible body, which involves open and fair consultation with NGOs and civil society?</p>	<p>The President – as opposed to an independent body – maintains authority over the final appointment and dismissal of MNHRC representatives. This point is especially salient in regards to the September 2014 presidential order to disband the Commission. During the disbandment, there was no communication with civil society over the dismissal of former Commission members and the appointment of their replacements<sup>25</sup>.</p> <p>The MNHRC enabling law is problematic in terms of how civil society is to be involved. It states that the Selection Board shall be comprised of two representatives from registered Non-Governmental Organizations (NGOs) though it fails to provide information as to how these organizations are selected. There is also concern in the eligibility of only “registered NGOs” to be considered for nomination to the Commission as the majority of civil society and human rights organizations in Burma operate without the government-approved registration<sup>26</sup>. According to the</p>

<sup>24</sup> Bill O’Toole and Lun Min Maing, “Rights Body Shake-Up In Line with Law, Insists Government,” *Myanmar Times*, October 3, 2014, <http://www.mmtimes.com/index.php/national-news/11838-confusion-surrounds-reshuffle-of-new-human-rights-commission.html>.

<sup>25</sup> Kyaw Thu, “Myanmar Revamps Human Rights Panel Amid Criticism from Rights Groups,” *Radio Free Asia*, September 9, 2014, <http://www.rfa.org/english/news/myanmar/commission-09252014174739.html>.

<sup>26</sup> Nyein Kaw, Chester Toh, and JainilBhandari, “Setting Up an NGO in Myanmar,” *Lexology, Globe Media Business Group*, July 29, 2013, <http://www.lexology.com/library/detail.aspx?g=0272d66e-3a21-4097-9d81-b0e0f62ba266>.

	MNHRC, “[The] stipulation for registration was considered necessary in order to have orderliness in consideration of NGO membership <sup>27</sup> .”
Is the assessment of applicants based on pre-determined, objective and publicly available criteria?	<p>Chapter III of the MNHRC Enabling Law outlines the criteria for the selection of Commission Members. This section – which has been made public – contains prerequisites involving citizenship, age, character, along with relevant experience in human rights and international law<sup>28</sup>.</p> <p>Unfortunately, the lack of transparency in the most recent September 2014 Member selection process prohibits civil society from determining whether the Selection Committee has followed the criterion. The failure of the MNHRC Enabling Law to guarantee the independence of the Selection Committee also calls into question whether correct procedures were followed when pursuing the hiring of new Commission members<sup>29</sup>.</p>
Is there a provision for broad consultation and/or participation, in the application, screening and selection process?	The September 2014 Commission reshuffle demonstrated that civil society and other stakeholders were not consulted in the application and selection process of the new Commission members. Furthermore, the singular involvement of the Executive in the selection process, with only limited interaction with the Speakers of the Lower and Upper Houses of Parliament, does not provide any room for participation. This has prompted a number of civil society organizations, including the Alternative ASEAN Network on Burma and the International Federation for Human Rights to highlight this point as a major cause for concern <sup>30</sup> .
Is there a requirement to advertise vacancies? How is it usually done/describe the process?	Chapter IV of the MNHRC Enabling Law, which contains provisions related to the filing of vacancies within the Commission, does not specify how these positions will be advertised

<sup>27</sup> MNHRC personal communication to FORUM-ASIA, 27 July 2015.

<sup>28</sup> Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, PyidaungsuHluttaw Law No. 21/2014*, March 28, 2014.

<sup>29</sup> International Service for Human Rights, “The Situation of Human Rights Defenders: Myanmar, UPR Briefing Paper – March 2015,” *ISHR Global*, March 2015, <http://www.ishr.ch/sites/default/files/article/files/ishr-upr-briefing-paper-on-myanmar.pdf>.

<sup>30</sup> Alternative ASEAN Network on Burma and the International Federation for Human Rights, “Myanmar: 23<sup>rd</sup> Session of the Working Group on the Universal Periodic Review,” November 9, 2015, [https://www.fidh.org/IMG/pdf/20150322\\_burma\\_upr\\_joint\\_en.pdf](https://www.fidh.org/IMG/pdf/20150322_burma_upr_joint_en.pdf).

	to the general public. Moreover, it reinforces the idea of the Executive holding appointment and termination authority in the event of any vacancy, with only limited input from the two House Speakers representing parliament. <sup>31</sup>
Divergences between Paris Principles compliance in law and practice	<p>According to the Paris Principles, the composition and appointment of members of a national human rights institution must be “in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights...<sup>32</sup>” The representation of Burma’s “social forces” within the MNHRC falls short of the recommendations in the Paris Principles.</p> <p>In practice, the MNHRC has afforded a significant degree of authority to the President in forming and dismissing both the MNHRC along with the Selection Board<sup>33</sup>. Commission members must be free to criticize human rights concerns that are related to the government without fear of retribution in the form of dismissal or otherwise.</p> <p>Civil society is vastly underrepresented especially in comparison to the overwhelming representation of former government officials. Of the current 11 Commission members, nine have previously held positions as civil servants<sup>34</sup>. This includes officials with strong connections to the previous military regime such as Win Mra, the former Ambassador to the UN in New York, and Nyunt Swe, a former Deputy Ambassador to the UN in Geneva<sup>35</sup>.</p> <p>Win Mra had previously stated that ethnic representation among MNHRC members included delegates from Mon, Chin, Karen,</p>

<sup>31</sup> Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.

<sup>32</sup> Office of the High Commissioner for Human Rights, *Principles Relating to the Status of National Institutions (Paris Principles)*, Adopted by General Assembly Resolution 48/134 of 20 December 1993, OHCHR, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>.

<sup>33</sup> Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.

<sup>34</sup> Myanmar National Human Rights Commission, *Commissioners*, Last Modified 9 May 2015, <http://www.mnhrc.org.mm/en/about/commissioners/>.

<sup>35</sup> Alternative ASEAN Network on Burma and the International Federation for Human Rights, “Myanmar: 23<sup>rd</sup> Session of the Working Group on the Universal Periodic Review,” 9 November 2015, [https://www.fidh.org/IMG/pdf/20150322\\_burma\\_upr\\_joint\\_en.pdf](https://www.fidh.org/IMG/pdf/20150322_burma_upr_joint_en.pdf).

	<p>Kachin, Shan, and Arakan, however there is no publicly-available information as to how this representation was determined and whether this representation has been maintained after the September 2014 dismantling of the Commission<sup>36</sup>. According to a former high-level staff member of the MNHRC, ethnic representation has been limited to Mon and Shan<sup>37</sup>. The MNHRC has stated that representation also includes Arakan and Karen, however they did not indicate as to whether Chin, Karen, Kachin, or other ethnic groups are represented<sup>38</sup>.</p> <p>Furthermore, while there is one current Member acting as a representative for Muslim Burmese, there is concern that the highly abused Rohingya population will not be represented, due in large part to systemic discrimination in the Burma Government<sup>39</sup>.</p> <p>The representation of women amongst MNHRC Commissioners is also shockingly low. The September 2014 Commissioner shakeup resulted in one female Commissioner being removed from her position, leaving only two women in the 11-Member body<sup>40</sup>.</p> <p>It should be noted that the MNHRC, in response to the claims made regarding its limited representation, states that the current makeup of the Commission is in line with section 7 (c) of the Enabling Law<sup>41</sup>. Unfortunately, this suggests that they are ignoring the inherent problematic nature of the Enabling Law, which fails to ensure a greater level of representation for women and ethnic groups.</p>
<b>Functional Immunity</b>	
<p>Are members of the NHRI granted immunity/protection from prosecution or legal liability for actions taken in good faith in the course of their official duties?</p>	<p>The MNHRC Enabling Law indicates, in Chapter IV, that Members of the Commission are eligible for termination in the event that they are convicted for a criminal offence,</p>

<sup>36</sup> Yadana Htun, “We Won’t Be Influenced by the Gov’t,” *Myanmar Times*, 19 September 2011, <http://www.mmtimes.com/index.php/national-news/2090-we-won-t-be-influenced-by-the-govt.html>.

<sup>37</sup> Former Staff Member of the MNHRC in discussion with Burma Partnership, June 2015.

<sup>38</sup> MNHRC personal communication to FORUM-ASIA, 27 July 2015.

<sup>39</sup> Former Staff Member of the MNHRC in discussion with Burma Partnership, June 2015.

<sup>40</sup> Myanmar National Human Rights Commission, “Commissioners”, Last Modified May 9, 2015, <http://www.mnhrc.org.mm/en/about/commissioners/>.

<sup>41</sup> MNHRC personal communication to FORUM-ASIA, 27 July 2015.



	<p>determined by a court to be insolvent, or if they violate the regulations of the Commission<sup>42</sup>.</p> <p>While a “court of competent jurisdiction” is required to determine whether a Member is fit or unfit for participation in the MNHRC, the Executive holds ultimate authority. This is especially relevant to the 2014 reshuffle in which 9 Members of the Commission were dismissed. Among those dismissed were U Lahpai Zau Goone and U Hla Myint,, who in an interview with the Myanmar Times, expressed that they were both unaware of the grounds for their dismissal<sup>43</sup>. This prompts significant doubt as to whether these individuals were dismissed in accordance with MNHRC Enabling Law.</p>
<p>Does the NHRI founding law include provisions that promote:</p> <ul style="list-style-type: none"> <li>- Security of tenure</li> <li>- The NHRIs ability to engage in critical analysis and commentary on human rights issues free from interference;</li> <li>- The independence of the senior leadership; and</li> <li>- Public confidence in national human rights institution.</li> </ul>	<p>Chapter VI of the MNHRC Enabling Law includes a clause indicating the protection that Commission Members or staff should receive from anyone attempting to interfere in the undertaking of MNHRC functions. In addition, Chapter IX outlines the additional immunity from interference in the form of censorship, the search and confiscation of assets, and how the MNHRC can authorize the protection of identity for any civilian currently involved with an investigation<sup>44</sup>.</p>
<p>Are there provisions that protect situation of a coup d’etat or a state of emergency where NHRIs are further expected to conduct themselves with heightened levels of vigilance and independence?</p>	<p>There is no information within the MNHRC Enabling Law on the role of the NHRI during a state of emergency or following a coup d’etat.</p>
<p>Divergences between Paris Principles compliance in law and practice</p>	<p>Under the <i>Composition of Guarantees of Independence and Pluralism</i> subsection of the Paris Principles, the third point states, “In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is</p>

<sup>42</sup> Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.

<sup>43</sup> Bill O’Toole, “Rights Body Shake-Up Under Fire,” *Myanmar Times*, 29 September 2014, <http://www.mmimes.com/index.php/national-news/11803-rights-body-shake-up-under-fire.html>.

<sup>44</sup> Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.

	<p>ensured.” Under the current MNHRC Enabling Law, the process in which Members of the Commission are dismissed is in violation of this component of the Paris Principles. The MNHRC does not outline, by an official act, the establishment of a specific duration of the mandate but rather allows Presidential authority to ultimately dismiss Members arbitrarily. This prevents Members of the Commission from fulfilling their duties and obligations for fear of reprisal from the Executive, thus severely impacting their supposed independence<sup>45</sup>.</p> <p>For this stipulation to be upheld in practice, the dismissal of Commission Members must be made transparent and substantiated with evidence. While the MNHRC Enabling Law attempts to provide a framework for dismissal – as discussed earlier – authority vested in the Executive overrides these principles in practice. The September 2014 dismissal of nine Commission Members, in which there was no public available information relating to the grounds for dismissal, provides evidence for the lack of independence available to Commission Members.</p> <p>The Paris Principles detail the importance of establishing “as broad a mandate as possible” for the protection and promotion of human rights<sup>46</sup>. Unfortunately, the MNHRC often falls victim to significant interference and deference to the military in Burma, which compromises the ability of the NHRI to conduct independent investigations within a broad mandate of human rights protection<sup>47</sup>. This is evident in the killing of journalist Ko Par Gyi, in which a military tribunal acquitted two soldiers involved in the death of the journalist despite suggestions from the MNHRC that a civilian</p>
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<sup>45</sup> International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *General Observations of the Sub-Committee on Accreditation*, Office of the High Commissioner for Human Rights, May 2013, <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20GENERAL%20OBSERVATIONS%20ENGLISH.pdf>.

<sup>46</sup> Office of the High Commissioner for Human Rights, *Principles Relating to the Status of National Institutions (Paris Principles)*, Adopted by General Assembly Resolution 48/134 of 20 December 1993, OHCHR, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>.

<sup>47</sup> Burma Lawyer’s Council, “Revealing Burma’s System of Impunity: A Briefer for the Commission of Inquiry Campaign,” *Burma Campaign UK*, [http://burmacampaign.org.uk/images/uploads/Revealing\\_Burmas\\_System\\_of\\_Impunity\\_-\\_BLC\\_Briefer.pdf](http://burmacampaign.org.uk/images/uploads/Revealing_Burmas_System_of_Impunity_-_BLC_Briefer.pdf).

	court should handle the inquiry. The case (discussed below) demonstrates how the authority of the military compromises the mandate of the MNHRC to promote and protect human rights.
<b>Capacity and Operations</b>	
Adequate Funding	Within Chapter VII of the MNHRC enabling law, it is specifically stated that the Government is responsible for the provision of adequate funding to the Commission. It also allows for the receipt of contributions from external sources, so long as the independence of the Commission is not compromised as a result <sup>48</sup> . Currently, the MNHRC receives funding from the Government, the Raoul Wallenberg Institute of Human Rights, and the Swedish International Development Cooperation Agency <sup>49</sup> .
Government representatives on National Human Rights Institutions:	Member nominees are required to have retired from public service if they are to be considered for a position within the Commission, according to MNHRC Enabling Law <sup>50</sup> . Considering how there are nine former civil servants currently operating as Members of the Commission, there is reasonable concern that there is indirect influence of government within the Commission.

### 3. EFFECTIVENESS

#### *Case Study 1: Brang Shawng*

In October 2012 Brang Shawng, an ethnic Kachin from Sut Ngai Yang village, Kachin State, wrote a letter to the Myanmar National Human Rights Commission that called for an independent investigation into the death of his 14 year old daughter, Ja Seng Ing, at the hands of the Burma Army. The complaint resulted in criminal proceedings against Brang Shawng that were initiated by the Burma Army on the basis of the complainant having issued “false charges”<sup>51</sup>. Not only did the MNHRC fail to investigate this human rights complaint, they failed to protect the complainant, which resulted in criminal prosecution.

<sup>48</sup> Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.

<sup>49</sup> Former Staff Member of the MNHRC in discussion with Burma Partnership, June 2015.

<sup>50</sup> Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.

<sup>51</sup> Fortify Rights, “Myanmar: Overturn Wrongful Conviction of Brang Shawng,” *Press Release*, 18 February 2015, <http://www.fortifyrights.org/publication-20150218.html>.

Brang Shawng provided a detailed description of the death of his daughter Ja Seng Ing in the letter he wrote to the President of Burma and later the MNHRC. Amidst intense fighting between the Burma Army and the Kachin Independence Army (KIA) in Sut Ngai Yang village, a group of soldiers belonging to the Burma Army encountered a landmine previously laid by the KIA. According to Brang Shawng, Ja Seng Ing was fatally wounded after soldiers from the Burma Army began firing indiscriminately throughout the village after the landmine exploded<sup>52</sup>. The military investigation, however, has claimed that Brang Shawng's daughter was killed due to injuries sustained from the KIA landmine itself<sup>53</sup>.

Independent investigations conducted after the military investigation support Brang Shawng's account of the events leading to the death of his daughter. The Ja Seng Ing Truth Finding Commission, comprised of 10 Kachin community-based organizations, interviewed a number of eyewitnesses that confirmed it was the Burma Army who was responsible for the death of Ja Seng Ing<sup>54</sup>. Fortify Rights, a human rights organization, supported this investigation and claimed that Brang Shawng's prosecution was in fact retaliation for implicating the military in his daughter's murder<sup>55</sup>.

In February 2015, Brang Shawng was convicted of the charges laid against him after spending more than 45 sessions in court over a period of 12 months<sup>56</sup>. The defendant was provided with the option of serving six months in prison or paying a fine of 50,000 kyats, ultimately choosing the latter.

The MNHRC proved to be an ineffective NHRI by allowing the confidentiality of a complainant to be breached and for failing to overcome interference from an external actor, the Burma Army. In a letter written to President Thein Sein, Fortify Rights stated, "The United Nations Paris Principles outline international standards for the operations of national human rights institutions and emphasize the importance of ensuring they are independent, autonomous, and able to operate free from government interference. Moreover, according to the MNHRC Law in Myanmar, third parties "should not victimize, intimidate, harass or otherwise interfere with" an individual because he or she provides information to the MNHRC<sup>57</sup>. In the case of Brang Shawng, the MNHRC has both failed to act independently and to safeguard a human rights defender from retaliation demonstrating a severe lack of commitment to the Paris Principles.

In addition, this case study highlights a disturbing trend throughout Burma's transition towards democracy: the impunity of the military. The Enabling Law of the MNHRC specifically mentions, "A person shall not victimize, intimidate, threaten, harass or otherwise interfere with any person on the ground that that person, or any associate of that person... has given information

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<sup>52</sup> Matthew Thiman, Courtney Svoboda, and Tyler Giannini, "How One Father's Letters to the Government Got Him Convicted," *The Irrawaddy*, 7 April 2015, <http://www.irrawaddy.org/contributor/how-one-fathers-letters-to-the-government-got-him-convicted.html>.

<sup>53</sup> Matthew Thiman, Courtney Svoboda, and Tyler Giannini, "How One Father's Letters to the Government Got Him Convicted," *The Irrawaddy*, 7 April 2015, <http://www.irrawaddy.org/contributor/how-one-fathers-letters-to-the-government-got-him-convicted.html>.

<sup>54</sup> Ja Seng Ing Truth Finding Committee, "Who Killed Ja Seng Ing?" *Taken from the website of Burma Partnership*, [http://www.burmapartnership.org/wp-content/uploads/2014/12/REPORT\\_Who-Killed-JSI\\_6.Dec\\_14.pdf](http://www.burmapartnership.org/wp-content/uploads/2014/12/REPORT_Who-Killed-JSI_6.Dec_14.pdf).

<sup>55</sup> Fortify Rights, "Re: Prosecution of Shayam Brang Shawng," 8 December 2014, [http://www.fortifyrights.org/downloads/Brang\\_Shawng\\_Letter\\_20141208.pdf](http://www.fortifyrights.org/downloads/Brang_Shawng_Letter_20141208.pdf).

<sup>56</sup> Saw Yan Naing and Andrew D. Kaspar, "Kachin Man Accusing Army of Killing Daughter Found Guilty of Defamation," *The Irrawaddy*, 17 February 2015, <http://www.irrawaddy.org/burma/kachin-man-accusing-army-killing-daughter-found-guilty-defamation.html>.

<sup>57</sup> Fortify Rights, "Re: Prosecution of Shayam Brang Shawng," 8 December 2014, [http://www.fortifyrights.org/downloads/Brang\\_Shawng\\_Letter\\_20141208.pdf](http://www.fortifyrights.org/downloads/Brang_Shawng_Letter_20141208.pdf).

or evidence in relation to any complaint, investigation or proceedings under this law<sup>58</sup>.” Unfortunately, the Chair of the MNHRC has previously stated that the Commission will not investigate human rights abuses in conflict areas, demonstrating significant deference to the military in these matters<sup>59</sup>. In the Brang Shawng case, the MNHRC clearly disregarded – or was otherwise incapable of – protecting the human rights defender from the interference of the military.

In order to be an effective NHRI, the MNHRC must be restructured to allow for complete independence from external influence or interference. This involves empowering MNHRC Members and staff to fulfill their mandate for the protection and promotion of human rights throughout the complaint handling process in accordance with the Paris Principles. It also includes offering protection for human rights defenders and complainants who may be subject to reprisal.

### *Case Study 2: Protection of Human Rights Defenders*

Brang Shawng is one of many human rights defenders that have been prosecuted, oppressed, or silenced in the last year. Unfortunately, the MNHRC has failed to take its role seriously, as many of these human rights defenders lack the protection that should be guaranteed by a functioning national human rights institution.

The second objective of the MNHRC, as stated in the Enabling Law, states that it will “...create a society where human rights are respected and protected in recognition of the Universal Declaration of Human Rights adopted by the United Nations<sup>60</sup>.” The MNHRC has attempted to fulfill this obligation by conducting regular workshops and training sessions, designed to promote a culture of human rights amongst senior officials and other stakeholders within the government. This responsibility was also undertaken with the creation of the Political Prisoners Scrutiny Committee (PPSC), which would support Thein Sein’s declaration of releasing all political prisoners by the end of 2013.

In reality, the MNHRC has consistently failed to publicly support, investigate, or identify human rights defenders that have been targeted by the Burma Government. Both Thein Sein’s office and the MNHRC have issued statements regarding their commitment to releasing “prisoners of conscience,” despite evidence suggesting a lack of progress<sup>61</sup>. According to the Assistance Association for Political Prisoners, there are currently 170 activists still imprisoned and an additional 437 awaiting trial<sup>62</sup>. Most disconcerting is the fact that this figure has actually increased substantially from the previous year’s total of 40.

Over the past year, the Burma Government has detained, charged, and imprisoned a high number of political prisoners. On 27 May, nine farmers were arrested for conducting a peaceful protest on land confiscation, bringing the total number of land rights activists awaiting trial to 944 (not

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<sup>58</sup> Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.

<sup>59</sup> Kyaw Thu, “Myanmar Revamps Human Rights Panel Amid Criticism from Rights Groups,” *Radio Free Asia*, 9 September 2014, <http://www.rfa.org/english/news/myanmar/commission-09252014174739.html>.

<sup>60</sup> Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.

<sup>61</sup> Myanmar National Human Rights Commission, “Statement of the Myanmar National Human Rights Commission on the Presidential Order of Pardon No. 12/2014,” December, 2014, <http://www.mnhrc.org.mm/en/statements-2/statement-of-the-myanmar-national-human-rights-commission-on-the-presidential-order-of-pardon-no-12014/>.

<sup>62</sup> Assistance Association for Political Prisoners (Burma), “Political Prisoner Data,” 15 June 2015, *retrieved from:* <http://aappb.org/political-prisoner-data/>.

included in the 437 political prisoners awaiting trial)<sup>63</sup>. In addition, the land reform activist Sein Than was notably arrested and sentenced to two years in prison for leading peaceful protests in his Rangoon community<sup>64</sup>. San Tun, another land rights leader, was killed last June and the case remains unsolved as result of the Burma Police having shot and killed a key suspect<sup>65</sup>. While Win Mra has previously acknowledged that the majority of complaints received by the MNHRC are related to farmers claiming a lack of compensation for land seized by the Burma Army, the Commission has failed to protect the human rights defenders that step forward<sup>66</sup>.

Political activists all over Burma have been targeted on baseless and transparent charges during the past year. In June 2015, Htin Lin Oo, a columnist and former member of the National League for Democracy, was convicted for promoting religious tolerance in an October speech. The activist received two years in prison, with hard labor, on the legal basis that he had wounded “religious feelings<sup>67</sup>.” In July, eight Chin activists were arrested for staging a demonstration in protest of a Burma Army soldier who had beaten and attempted to rape a 55-year-old woman in Matupi Township, Chin State<sup>68</sup>.

Human rights defenders Naw Ohn Hla, Nay Myo Zin, and Sein Htwe were also arrested in response to their peaceful protest against the death of Khin Win in the Letpadaung Copper Mine incident. In both the latter cases, the human rights defenders were charged under the Peaceful Assembly and Peaceful Protest Law. While these arrests comprise only a sample of those that have been subjected to arbitrary arrest this past year, they illustrate the lack of political will in the MNHRC to protect human rights defenders and adequately protect human rights.

Within the Paris Principles, the protection of human rights includes the protection of activists from arbitrary arrest<sup>69</sup>. Without the protection of an NHRI, these human rights defenders are vulnerable to persecution from the government, army, nationalist movements, and elsewhere.

With the announcement from the All Burma Federation of Student Unions stating their wish to involve the MNHRC in the investigation of the 10 March Letpadan protests, the Commission must reconsider how it is currently promoting and protecting human rights<sup>70</sup>. The MNHRC has the responsibility, as outlined in the Paris Principles and its own Enabling Law, to urge the government to release current political prisoners and cease the intimidation and arbitrary arrest of human rights defenders.

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<sup>63</sup> Naw Noreen, “Nine Sentenced for Plough Protest in Meikhtila,” *Democratic Voice of Burma*, May 27, 2015, <http://www.dvb.no/news/nine-sentenced-for-plough-protest-in-meikhtila-myanmar-burma/51417>.

<sup>64</sup> Alternative ASEAN Network on Burma and the International Federation for Human Rights, “Myanmar: 23<sup>rd</sup> Session of the Working Group on the Universal Periodic Review,” November 9, 2015, [https://www.fidh.org/IMG/pdf/20150322\\_burma\\_upr\\_joint\\_en.pdf](https://www.fidh.org/IMG/pdf/20150322_burma_upr_joint_en.pdf).

<sup>65</sup> Alternative ASEAN Network on Burma and the International Federation for Human Rights, “Myanmar: 23<sup>rd</sup> Session of the Working Group on the Universal Periodic Review,” November 9, 2015, [https://www.fidh.org/IMG/pdf/20150322\\_burma\\_upr\\_joint\\_en.pdf](https://www.fidh.org/IMG/pdf/20150322_burma_upr_joint_en.pdf).

<sup>66</sup> APF Secretariat, “Myanmar: Land Grabbing Tops List of Rights Violations,” *Asia Pacific Forum*, September 6, 2014, <http://www.asiapacificforum.net/news/myanmar-land-grabbing-tops-list-of-rights-violations>.

<sup>67</sup> Zarni Mann, “2 Years Hard Labor for Htin Lin Oo in Religious Offense Case,” *The Irrawaddy*, June 2, 2015, <http://www.irrawaddy.org/burma/2-years-hard-labor-for-htin-lin-oo-in-religious-offense-case.html>.

<sup>68</sup> Network for Human Rights Documentation – Burma, “Report on the Human Rights Situation in Burma (July – December 2014),” *Periodic Report*, March 10, 2015, <http://reliefweb.int/report/myanmar/report-human-rights-situation-burma-july-december-2014>.

<sup>69</sup> Office of the United Nations High Commissioner for Human Rights, *National Human Rights Institutions, History, Principles, Roles and Responsibilities, Professional Training Series No. 4*, UN New York and Geneva, 2010, [http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI\\_en.pdf](http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf).

<sup>70</sup> Mratt Kyaw Thu, “Students Threaten to Sue Police OverLetpadan Crackdown,” *The Myanmar Times*, June 9, 2015, <http://www.mmmtimes.com/index.php/national-news/14934-students-threaten-to-sue-police-over-letpadan-crackdown.html>.

### Case Study 3: Ko Par Gyi

In October 2014, Ko Par Gyi, a journalist covering conflict between the Democratic Karen Benevolent Army (DKBA) and the Burma Army and who was detained the month earlier had been killed while in the custody of the Army<sup>71</sup>. Public outcry over the mysterious circumstances around the death of the journalist prompted Thein Sein to order the MNHRC to examine this case. The subsequent investigation contained numerous inaccuracies, contradicted the military account of events, and failed to include key issues such as whether Ko Par Gyi was tortured which led to the Commission recommending that the trial be handled in a civilian court<sup>72</sup>. Despite this recommendation, two soldiers involved in the death of Ko Par Gyi were acquitted of any charges in a privately held military tribunal in November, prior to the beginning of the civilian trial<sup>73</sup>.

The details of the case shed light on a number of concerning shortcomings within both the MNHRC and the Burma Government. Firstly, the Burma Army's Light Infantry Battalion, publicly claiming that Ko Par Gyi was a member of the rival DKBA, detained the journalist on 30 September 2014<sup>74</sup>. It wasn't until 24 October, twenty days after Ko Par Gyi had been murdered, that the family of the journalist learned of his fate through a statement released by the Burma Army. In fact, the lack of transparency in the Ko Par Gyi case became a disturbing trend. Both the military acquittal of the two soldiers involved, and the beginning of the civilian court trial in April 2015, were kept secret from the media and the family of the slain journalist until much later<sup>75</sup>.

The widow of Ko Par Gyi and well-known human rights activist, Ma Thandar, denied that her husband ever had any involvement with the DKBA<sup>76</sup>. While the resulting MNHRC investigation could not find conclusive evidence of Ko Par Gyi's involvement with any EAOs, it also did not adequately clarify that Ko Par Gyi was in fact a journalist. Testimony from a number of journalists, including members of the Myanmar Journalist Association should have been sufficient for clearing Ko Par Gyi's role in Burma<sup>77</sup>. It is clear that the Burma Army failed to properly identify and was responsible for the death of the journalist, however the MNHRC investigation nonetheless failed to hold the military accountable for this mistake.

Ma Thandar, along with the family's lawyer and two forensic experts, question the validity of the MNHRC report into whether Ko Par Gyi was tortured while in custody, citing numerous

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<sup>71</sup> The Irrawaddy, "Missing Reporter Killed in Custody of Burma Army: Report," *The Irrawaddy*, 24 October 2014, <http://www.irrawaddy.org/burma/missing-reporter-killed-custody-burma-army-report.html>.

<sup>72</sup> Lun Min Mang, "Commission Suggests Civil Court for Journalist's Death Case," *Myanmar Times*, 8 December 2014, <http://www.mmtimes.com/index.php/national-news/12464-commission-suggests-civil-court-for-journalist-s-death-case.html>.

<sup>73</sup> Yola Verbruggen, Naw Say Phaw Waa and Lun Min Mang, "Military Acquittal Raises Fresh Doubts About Civilian Inquest," *Myanmar Times*, 12 May 2015, <http://www.mmtimes.com/index.php/national-news/14402-military-acquittal-raises-fresh-doubts-about-civilian-inquest.html>.

<sup>74</sup> Aung Zaw, "Death of an Activist Reporter," *The Irrawaddy*, 4 May 2015, <http://www.irrawaddy.org/from-the-irrawaddy-archive-burma/death-of-an-activist-reporter.html>.

<sup>75</sup> Artan Mustafa, "Cases Proceed Silently in Myanmar Journalist's 2014 Killing," *International Press Institute*, 28 May 2015, <http://www.freemedia.at/newssview/article/cases-proceed-silently-in-myanmar-journalists-2014-killing.html>.

<sup>76</sup> Paul Mooney and Aye Win Myint, "Myanmar Activists Demand Independent Probe into Journalist's Killing," *Reuters*, 29 October 2014, <http://uk.reuters.com/article/2014/10/29/uk-myanmar-journalist-idUKKBN0H1O120141029>.

<sup>77</sup> Lun Min Mang, "Rights Team Contradicts Government on Journalist's Death," *Myanmar Times*, 21 November 2014, <http://www.mmtimes.com/index.php/national-news/12326-investigation-confirms-ko-par-gyi-was-a-freelance-journalist.html>.

consistencies between statements given by military officials and the MNHRC<sup>78</sup>. This only gives more credence to the MNHRC's suggestion that the case be examined in an impartial, civilian court. The acquittal of the two soldiers involved in the death of Ko Par Gyi through the military's internal oversight mechanism, however, has prevented any comprehensive examination into this case. By failing to adequately investigate the torture claims, the MNHRC passed up a valuable opportunity to demonstrate a commitment to the Prohibition Against Torture as enshrined within international customary law. Reoccurring incidents of harsh beatings during Burma Army interrogations in the Kokang area of Northern Shan State make this point especially relevant<sup>79</sup>.

The impunity of the military from prosecution also presents a serious obstacle to the efficacy of the MNHRC. This impunity is entrenched in the 2008 Constitution, which allows members of the military to override civilian court judgments during the prosecution of their own members<sup>80</sup>. Ma Thandar believes that this impunity explains why the military conducted their own trial in secrecy to ensure that an early acquittal would prevent further inquiry during any subsequent civilian court case<sup>81</sup>.

The Paris Principles require that NHRIs maintain "as broad a mandate as possible" and a competence to protect and promote human rights<sup>82</sup>. In this sense, competence includes outlining a broad jurisdiction in the investigation of human rights and the ability to conduct these investigations autonomously. The inability to hold accountable those directly involved with a human rights violation, such as the Burma Army in the Ko Par Gi case, exemplifies a disregard for these principles. This is also supported by Principle Six of the Paris Principles, which outlines the necessity for NHRIs to maintain adequate powers of investigation and states that they shall, "Hear any person and obtain any information and any document necessary for assessing situations falling within its competence<sup>83</sup>." The military acquittal of the two soldiers and the current lack of involvement of the military in the current civilian trial are evidence that the MNHRC lacks these necessary powers of investigation<sup>84</sup>.

The MNHRC has also failed to continually pressure the Burma Army and the Government into adhering to their initial recommendation to have the Ko Par Gyi case tried in a civilian court. During the most recent hearing of the case in Kyaikmayaw Township, two key witnesses from the Burma Army failed to appear before the court<sup>85</sup>. Despite these shortcomings, the MNHRC has not yet made a public statement urging the Burma Government and Army to cooperate. This solidifies their inability to provide a long-term and systematic plan for human rights investigations. The outcome of the Ko Par Gyi case is disturbingly similar to that of last year's

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<sup>78</sup> Kyaw Hsu Mon, "The Report was Fabricated," *The Irrawaddy*, 3 December 2014, <http://www.irrawaddy.org/interview/report-fabricated.html>.

<sup>79</sup> Shan Human Rights Foundation, "Shooting, Killing and Torture of Civilians by Burma Army During Kokang Conflict," 4 March 2015, <http://www.shanhumanrights.org/index.php/news-updates/205-shooting-killing-and-torture-of-civilians-by-burma-army-during-kokang-conflict>.

<sup>80</sup> International Centre for Transitional Justice, "Impunity Prolonged: Myanmar and its 2008 Constitution," *ICTJ New York*, September 2009, <https://www.ictj.org/sites/default/files/ICTJ-Myanmar-Impunity-Constitution-2009-English.pdf>.

<sup>81</sup> Ma Thandar in discussion with Burma Partnership, June 2015.

<sup>82</sup> Office of the United Nations High Commissioner for Human Rights, *National Human Rights Institutions, History, Principles, Roles and Responsibilities, Professional Training Series No. 4*, UN New York and Geneva, 2010, [http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI\\_en.pdf](http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf).

<sup>83</sup> Office of the United Nations High Commissioner for Human Rights, *National Human Rights Institutions, History, Principles, Roles and Responsibilities, Professional Training Series No. 4*, UN New York and Geneva, 2010, [http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI\\_en.pdf](http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf).

<sup>84</sup> Artan Mustafa, "Cases Proceed Silently in Myanmar Journalist's 2014 Killing," *International Press Institute*, 28 May 2015, <http://www.freemedia.at/newssview/article/cases-proceed-silently-in-myanmar-journalists-2014-killing.html>.

<sup>85</sup> Lawi Weng, "Army Witnesses Spurn Court Summons Over Journalists' Killing," *The Irrawaddy*, 12 June 2015, <http://www.irrawaddy.org/burma/army-witnesses-spurn-court-summons-over-journalists-killing.html>.



Du Chee Yar Tan incident, in which the MNHRC failed to conduct a credible investigation into the massacre of at least 48 Rohingya<sup>86</sup>. The ineffective and reactionary actions of the MNHRC call into question whether the institution is merely a smokescreen for human rights violations.

#### 4. OVERSIGHT AND ACCOUNTABILITY

##### 4.1 Civil Society

The MNHRC Enabling Law contains provisions for including civil society in its operational capacity and in a consultative role for the selection of a Selection Board and Commission members, reflecting a degree of adherence to the Paris Principles. The Enabling Law states that the MNHRC will engage civil society – and specifically registered non-governmental organizations – that are working in the field of human rights<sup>87</sup>. In the formation of a Selection Board, the President will select two representatives from registered CSOs and a single representative from the Myanmar Women’s Affairs Federation. The Enabling Law subsequently describes the criteria used by Selection Board to select nominations for prospective Commission members. The same section includes a clause that states that the Selection Board will consider prospective members that have knowledge or expertise in civil society, among other backgrounds.

The relationship of the MNHRC to civil society has seen some improvement since last year. According to their website, the past year has seen the MNHRC attend the Third Jakarta Human Rights Dialogue, the Regional Workshop on Human Rights and Agribusiness in Southeast Asia, and the Workshop on UN Security Council Resolution 1325 on Women, Peace and Security and Related Resolutions, among others<sup>88</sup>. In addition, the MNHRC is planning on attending training sessions, as part of the Grassroots Human Rights Forum, that are facilitated by Equality Myanmar, the Myanmar Women’s Affairs Federation, and the Myanmar NGO Network<sup>89</sup>.

Despite the improvements in civil society consultation, the MNHRC must encourage greater transparency to ensure commitment to the Paris Principles. During the consultation process on the upcoming Universal Periodic Review (UPR) report, a few civil society organizations acknowledged their involvement with the report but noted that the MNHRC refused to circulate the actual text of the finished draft<sup>90</sup>. In fact, a human rights defender involved in the consultation process also mentioned that the public statements issued by the MNHRC do not seem to reflect what is discussed during the consultation meetings.

For instance, during a meeting regarding the Four Race & Religion Protection Bills, a number of CSOs expressed concern over the fact that the passing of this legislation would violate international law. A subsequent statement by the Vice-Chair of the MNHRC revealed the contrary, stating that these Bills were in fact in accordance with international treaties such as the Convention on the Elimination of all Forms of Discrimination Against Women and the

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<sup>86</sup> Khin Khin Ei, “UN Envoy Calls for “Trust Building” Between Myanmar Government, Ethnic Rebels,” *Radio Free Asia*, 19 February 2014, <http://www.rfa.org/english/news/myanmar/special-rapporteur-02192014165927.html>.

<sup>87</sup> Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.

<sup>88</sup> Myanmar National Human Rights Commission, “Workshop on UN Security Council 1325 on Women, Peace and Security and Related Resolutions Organized by Myanmar national Human Rights Commission and UN Women,” 29 April 2015, <http://www.mnhrc.org.mm/en/2015/04/workshop-on-un-security-council-resolution-1325-on-women-peace-and-security-and-related-resolutions-organized-by-myanmar-national-human-rights-commission-and-un-women/>.

<sup>89</sup> Human Rights Defender in discussion with Burma Partnership, June 2015.

<sup>90</sup> Human Rights Defender in discussion with Burma Partnership, June 2015.

Convention on the Rights of the Child<sup>91</sup>. This information calls into question whether or not these consultations are actually meaningful or inclusive.

As mentioned above, the MNHRC failed to involve consultation with civil society organizations during the September 2014 Commission reshuffle. To this day, Burma CSOs have reported not being made aware of how the Selection Board is currently comprised and whether its composition contains a diverse grouping of representatives, as outlined in both the Paris Principles and the MNHRC Enabling Law<sup>92</sup>.

In response to the accusation that the formation of the Selection Board lacked transparency, the MNHRC pointed out that the establishment of the 10-member selection board was in fact made public in the Union Gazette on 25 July 2014, however they did not indicate how the representatives from parliament and civil society were selected, nor did they clarify whether civil society was involved in the formation process<sup>93</sup>. Furthermore, the Union Gazette is hardly an adequate outlet for the public disclosure of information considering its limited readership, reach, and lack of public confidence. Public disclosures through civil society and widely accessible media outlets will ensure that information is properly disseminated.

The limited involvement of civil society during the past year is reminiscent of the MNHRC's consultation with CSOs during the drafting of the enabling law in 2013. As highlighted in last year's report, the MNHRC had published the draft enabling law within *The Mirror* newspaper, inviting civil society to make recommendations. Unfortunately, the final enabling law contained only limited reference to the multitude of references and suggestions made by these organizations, indicating the lack of effort of the MNHRC to genuinely involve civil society during the consultation process<sup>94</sup>.

More broadly, the lack of adequate Freedom of Expression in Burma constitutes a serious threat to how CSOs will become involved in consultation with the MNHRC. Recently, Thein Sein made a statement through the state-run newspaper, the Global New Light of Myanmar which urged all political forces and citizens to "avoid extreme views and passing on the bitter legacy of political and armed conflict to future generations"<sup>95</sup>. These statements illustrate the Burma Government's commitment to suppressing free speech, which will only further restrict civil society engagement.

#### 4.2 Parliament

The MNHRC Enabling Law has attempted to reproduce the stipulations outlined in the Belgrade Principles, which describe the functional relationship between Parliament and NHRIs. The Law itself was enacted by members of the Pyidaungsu Hluttaw and includes provisions to include two representatives from Parliament to sit on the Selection Board<sup>96</sup>. During the selection and termination process, the President is to coordinate with Speakers from each of the upper house, the Amothya Hluttaw, and the lower house, the Pyithu Hluttaw. The Enabling Law also outlines the responsibility of the MNHRC to respond to requests for actions from parliament, demonstrate

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<sup>91</sup> Human Rights Defender in discussion with Burma Partnership, June 2015.

<sup>92</sup> Human Rights Defender in discussion with Burma Partnership, June 2015

<sup>93</sup> MNHRC personal communication to FORUM-ASIA, 27 July 2015.

<sup>94</sup> Burma Partnership and Equality Myanmar, "Burma: All the Presidents' Men," September 2014, <http://www.burmapartnership.org/wp-content/uploads/2014/09/All-the-Presidents-Men1.pdf>.

<sup>95</sup> Nay Pyi Taw, "All Political Forces and Every Single Citizen to Make Their Goal to Ensure Stability During Transitional Period Before General Elections," *Global New Light of Myanmar*, 3 June 2015, pp. 1 & 3.

<sup>96</sup> Pyidaungsu Hluttaw, *The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014*, 28 March 2014.

accountability to Parliament through annual reporting, and to contribute to existing legislation surrounding human rights. It should be noted, however, that wording in the existing Enabling Law provides the MNHRC with their own discretion as to whether or not they may provide information relating to complaints or inquiries into human rights cases to the Pyidaungsu Hluttaw.

Once again, the interaction between the MNHRC and Parliament differs in practice than it does in the Enabling Law. According to a former high-ranking staff member of the MNHRC, the September 2014 reshuffle was shrouded in secrecy and a lack of transparency. Prior to the reshuffle, the formation of the new Selection Board was not made public, nor was information regarding the selected two representatives from Parliament<sup>97</sup>. This contradicts the Belgrade Principles involving the Appointment and Dismissal process, which recommend that the Parliament should draft the Enabling Law to urge transparency throughout the entire process<sup>98</sup>.

Unfortunately, Parliament's role in shaping the practice of the MNHRC has been diminished to do a significant lack of interaction. The same former MNHRC staff stated that while the new Enabling Law allows the MNHRC to remain accountable to the Pyidaungsu Hluttaw, the consultation process was non-existent between March and August of last year<sup>99</sup>. Looking forward, there is considerable concern that the MNHRC's deeply rooted ties to the Executive will override its ability to remain accountable to Parliament. The independence of the MNHRC is therefore contingent upon parliamentarians improving their relationship with the Commission through regular and transparent interaction.

## 5. CONCLUSION AND RECOMMENDATIONS

When Burma's Minister of Foreign Affairs declared before the UN General Assembly in September 2014 that, "All major concerns related to human rights have been addressed to a larger extent in the new Myanmar," he could not have been more wrong<sup>100</sup>. The ongoing conflict between the Burma Army and Ethnic Armed Organizations (EAOs), the suppression of the Freedom of Assembly, Freedom of Expression and Freedom of the Media, the outright assault on ethnic minorities, and the number of human rights violations committed by the Burma Army are all serious threats to the state of human rights in Burma. While this provides a tumultuous and tense environment in which the MNHRC has to operate, it also provides an opportunity to demonstrate its effectiveness in promoting and protecting human rights. So far, the MNHRC has achieved little towards improving the human rights situation in Burma.

A review of the Enabling Law has revealed substantial points of concern and deviations from the Paris Principles. While 2015 could have been a pivotal year considering the release of the MNHRC mandate, there has been issues involving transparency, independence, and the involvement of the Executive in the Commission's core functions. Though the Enabling Law

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<sup>97</sup> Former Staff Member of the MNHRC in discussion with Burma Partnership, June 2015.

<sup>98</sup> Office of the United Nations High Commissioner for Human Rights, *Belgrade Principles on the Relationship Between Human Rights Institutions and Parliaments*, 22-23 February, 2012, <http://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/Belgrade%20Principles%20Final.pdf>.

<sup>99</sup> Former Staff Member of the MNHRC in discussion with Burma Partnership, June 2015.

<sup>100</sup> Union Minister for Foreign Affairs, U Wunna Maung Lwin, "Statement by His Excellency U Wunna Maung Lwin, Union Minister for Foreign Affairs and Head of the Delegation of Myanmar in the General Debate at the 69<sup>th</sup> United Nations General Assembly," *New York*, 29 September 2014, <http://www.mofa.gov.mm/wp-content/uploads/2014/09/Statement-by-His-Excellency-U-Wunna-Maung-Lwin-Union-Minister-for-Foreign-Affairs-.pdf>.

outlines how civil society, parliament and other stakeholders are to be represented in the MNHRC Selection Board, as Members, and in regular consultation, the practice in reality has been disappointing. The reshuffle of Commission Members in September 2014 did not include civil society involvement while failing to deliver any real public transparency. In addition, this event illustrated the power held at the Executive level over the MNHRC in the Selection process. The Paris Principles, which prioritize values in transparency, accountability, diversity of staff, and independence, are not being met within the current practice of the MNHRC.

The case studies of Brang Shawng and Ko Par Gyi were successful in illuminating the shortcomings of the MNHRC. The complaint handling process, which is not sufficiently explored in the MNHRC Enabling Law, must be amended to protect the confidentiality of complainants such as Brang Shawng. Additionally, both cases show that the MNHRC lacks the independence required to hold all actors accountable for human rights violations. The impunity of the Burma Army will continue to be a problem unless the MNHRC can investigate human rights violations without external influence. There is little doubt that this event worsened public perception of the MNHRC. Failure to adequately investigate cases such as Ko Par Gyi's murder, or the inability to protect complainants will only motivate human rights defenders to seek justice elsewhere.

While engagement with civil society and parliament has made meaningful strides since the adoption of the Enabling Law, the Commission must do more to ensure greater transparency in order to demonstrate that the consultation process is resulting in tangible change. Furthermore, accountability to Parliament will only be provided if there is greater political will to separate the MNHRC from oversight of the Executive.

The MNHRC and the Burma Government have largely ignored the recommendations issued in last year's Asian NGO Network on National Human Rights Institutions (ANNI) Report. The first recommendation to the Burma Government to allow the MNHRC unrestricted access to conflict zones has been met with only a degree of success. Conflict zones, such as in Laukkai area, have been investigated by the MNHRC, however considering the multitude of conflict ongoing in Burma; the MNHRC must demonstrate a stronger commitment to conducting independent and in-depth investigations<sup>101</sup>. As conflict continues to rage on in areas of Kachin and northern Shan state, the MNHRC must become more vocal regarding the investigation of these conflict related human rights violations.

Previous recommendations to the Burma Government regarding requested amendments to the MNHRC Enabling Law have also been ignored. The Enabling Law still fails to ensure a more representative Selection Board that includes non-registered CSOs and does not provide for an independent mechanism for dismissal procedures.

While the Chair of the Commission, Win Mra, has stated that he did not read the 2014 ANNI Report, Equality Myanmar and Burma Partnership have in fact both previously received responses to the Report from Win Mra<sup>102</sup>. Unfortunately, recommendations made to the MNHRC specifically in last year's report have also been ignored. As observed in the Accountability and Enabling Law section of this report, the MNHRC fails to actively promote civil society engagement. The September 2014 Commission reshuffle is a notable example of this. The failure to prevent the Burma Army's intimidation in the Brang Shawng case has violated the second

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<sup>101</sup> Myanmar National Human Rights Commission, "Press Release by the Myanmar National Human Rights Commission on the Armed Conflict in Laukkai Area Statement (2/2015)," 27 February 2015, <http://www.mnhrc.org.mm/en/2014/12/>.

<sup>102</sup> Bill O'Toole, "Rights Body Shake-Up Under Fire," *Myanmar Times*, 29 September 2014, <http://www.mmtimes.com/index.php/national-news/11803-rights-body-shake-up-under-fire.html>.

recommendation for the MNHRC to speak out in defense of human rights defenders. Finally, while the MNHRC might have been refraining from using anti-Rohingya rhetoric this past year, it is worth noting that the human rights body has failed to take a stance on the persecution ongoing in Arakan State.

Burma cannot make meaningful strides towards a democratic state if it continually fails to act as an effective and impartial institution that protects and promotes human rights. In light of the ongoing refugee crisis in the Andaman Sea, the ASEAN Parliamentarians for Human Rights recently published a report that stated the Muslim minorities, especially the Rohingya, were at a high risk of being subjected to atrocity crimes<sup>103</sup>. The urgency of this crisis, coupled with the numerous human rights violations mentioned in this report, demonstrate the importance of having an independent and effective NHRI. The following recommendations must be acknowledged if the MNHRC is to improve Burma's human rights discourse.

### **Recommendations to the Burma Government and Parliament:**

- 1. Ensure greater transparency surrounding the selection process of new Commission members at the MNHRC.*
- 2. Remove Executive influence within the selection process and allow civil society and parliament to have more involvement in nominating prospective Members.*
- 3. Refrain from interfering in MNHRC investigations and demonstrate the political will to respect and undertake recommendations from the Commission.*
- 4. Hold all actors accountable for human rights violations. Members of the Burma Army are no exception. Allow the MNHRC to fulfill their mandate to conduct investigations regardless of which actors are involved.*
- 5. Remove the impunity of the military from civilian prosecution in the 2008 Constitution.*

### **Recommendations to the MNHRC:**

- 1. Prioritize consultation with civil society during the selection process and ensure that the Selection Board is truly representative of Burma's diverse society. This should include non-registered rights-based CSOs as well.*
- 2. Ensure that the composition of MNHRC members is representative, especially of vulnerable social groups such as the Rohingya, women, and other minorities.*
- 3. Cooperate with Parliament in order to obtain additional funding from external sources. Direct government funding should be limited so as to improve independence.*
- 4. Improve the complaint-handling process and ensure that complainants are protected from reprisal. This should include acting in a confidential manner with regards to information sharing between the Executive, Parliament, the Burma Army, and other branches of the law enforcement agencies/departments.*
- 5. Recommendations stemming from human rights investigations must be accompanied with ongoing political pressure and analysis to ensure relevant stakeholders respect them.*
- 6. Defend human rights activists when they have been suppressed or subjected to arbitrary detention and urge the Burma Government to release all current political prisoners.*
- 7. The relationship between civil society and the MNHRC during regular consultation must be interactive and transparent. Consultations must be held on a regular basis.*

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<sup>103</sup> ASEAN Parliamentarians for Human Rights, "The Rohingya Crisis and the Risk of Atrocities in Myanmar: An ASEAN Challenge and Call to Action," April 2015, <http://burmacampaign.org.uk/media/APHR-Report-Rohingya-Crisis-and-Risk-of-Atrocities-in-Myanmar-final.pdf>.

8. *Regular reporting to Parliament, as outlined in the Enabling Law, must be both frequent and should encourage meaningful debate on human rights-related legislation. These reports should also be publicly disclosed.*