

**CAL6011**

National Human Rights Laws and Mechanisms

**Seminar 2: Human rights in Context: Case of  
Myanmar**

Hanoi, 9 July 2012

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## Background:

September 2011: Establishment of Myanmar National Human Rights Commission

One of five commissions in ASEAN: Indonesia, Philippines, Thailand, Malaysia, Myanmar

\* Not yet in line with Paris Principles (independence and autonomy)

# Myanmar National Human Rights Commission

- Government notification 34/2011 released to the press – signed by one staff member of the President's Office – lack of legal basis
- Commissioners appointed by President: Former officials (ambassadors, government employees)
- Can receive complaints
- Initially: Lack of information about the procedure, mandate, and responsibilities of the commission.  
HR coverage: Fundamental rights of citizens as stated in Chapter 8 of the constitution, rights under international conventions to which Myanmar is a state party.
- Power to investigate and do field trips. BUT: · Cannot examine cases that are already in the court – can exercise mostly a conciliatory function. Tries to keep a broad interpretation and take on all cases that have a human rights link.. Also: Avoid armed conflict.
- Lack of staff and resources

## **Relations with stakeholders:**

- Accountable to the president through its annual report.
- Recognition that credibility of the commission rests in its relations with public and media.
- Conflict with Parliament since March 2012 over budget item/constitutionality of commission
- Upcoming draft law to be debated in Parliament

## Mandate:

Under Notification No. 34/2011 dated 5 September 2011 of the Government of the Union of Myanmar, the Myanmar National Human Rights Commission is vested with the following responsibilities and competence:

- (1) To receive communications on the violations of the fundamental rights of citizens enshrined in the Constitution of the Republic of the Union of Myanmar, to investigate them and to convey the findings to the relevant government departments and bodies for necessary action.
  - (2) On receipt of information on violations of the fundamental rights of citizens, to verify the information and to convey the findings to the relevant government departments and bodies for necessary action.
  - (3) To examine whether the rights under the international human rights instruments to which Myanmar is a State party are fully enjoyed and to advise on the reports of Myanmar submitted to international human rights treaty bodies.
  - (4) To study international instruments on human rights to which Myanmar has not yet been a party to, and to submit recommendations on signing of and accession to appropriate instruments.
  - (5) To communicate with the UN organizations and foreign and domestic bodies engaged in the promotion and protection of human rights.
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## Mandate cont.

(8) To carry out the tasks occasionally assigned by the President in connection with the promotion and protection of human rights.

(9) To submit annual reports to the President on the activities of the Myanmar National Human Rights Commission and developments in the field of human rights.

In addition, in performing its responsibilities, the Commission is empowered to summon and question the individuals concerned; to claim and examine the relevant documents except those specially classified as require by the State, and to visit and examine scenes of violations.

The Commission, a commission member or an individual assigned by the commission shall not be prosecuted criminally or judicially for performing in good faith the responsibilities vested under Notification No. 34/2011.

The Commission Chairman and its members have the same term of office as the President and can serve for a second term.

## Some initial activities

Greeted with skepticism

- Calls for release of prisoners of conscience
- Undertake prison visits
- Assess situation of children in conflict zones in Kachin State
- But: Not investigate HRV in conflict
- Avoid past abuses/transitional justice issues

## Analysis:

➤ Short period of existence – not assess performance

➤ Some developments during first months:

-Recognition of need to include international treaties

-Recognition of need for parliamentary act

-Need to develop relations with more stakeholders within country

-- Etc.

## Questions for discussion:

Why do states establish NHRIs?

What can an NHRI be expected to achieve in relation to HR?



# Opportunity to tell the world that Myanmar has a commission

Long history of conflict with international community over HRV in Myanmar

Starting point: 1988 uprising/1990 elections

Forced labour , denial of freedom of association, child soldiers – ILO

Ex: Agenda of UN Human Rights Council (1992), UN Special Rapporteur on the situation of human rights in Myanmar (Tomas Ojeas Quintana), Agenda of UN General Assembly (1993), Agenda of UN Security Council (2006/2007)

Pragmatic political decision – like Indonesia in 1993?

## Focal point for complaints within Myanmar

October 2011-February 2012: 1037 letters of complaint

September 2011 – May 2012: 2189 complaints

Main issues:

- Land disputes
- Disputes between landlords and tenants.
- Complaints against government officials for corrupt practices and malpractices.
- Complaints against private hospitals, clinics and doctors for unsatisfactory treatment.
- Among fishermen in relation to the auction of lake fishing rights
- Dismissals from work without prior warning
- Also complaints against police brutality, but not about AF

-=> ESCR issues

## Opportunity for interaction with other human rights mechanisms

- Visits to Philippines, Thailand, Indonesia

- Interaction with UN agencies, and offers of technical support from many countries

=> Additional forums and opportunities for engagement .

## Background and Context of transition

- November 2010 election -> April 2012 By-election

- Release of political prisoners

BUT: several hundred remain.

- 2011 intensification of fighting in ethnic areas -> 12 ceasefire agreements signed over past 10 months or so.

BUT: Fighting in Kachin State remains; also clashes in other areas.

- International pariah -> lifting of sanctions

- 15 years of house arrest -> Aung San Suu kyi's first trips abroad (Thailand, Europe/seat in parliament.)

- Grounded in relations between DASSK and President Thein Sein

## Transition and human rights

➔ Improvements in some human rights situations (CPR)

New law on the right to protest signed into force

New law on the right to establish trade unions

Upcoming new media law and announcement of easing of censorship

➔ Continuation of other HR situations/violations despite transition

Maintain repressive laws

Absence of rule of law

Recent violence in Rakhine State

Detention of student leaders around 7 July 2012

HRV during/connected to transition (ex: conduct of 2010 election)

➔ Focus on national reconciliation and dialogue/engagement

➔ Little or no discussion on how to deal with past abuses/transitional justice

\* MNHRC will have to prove itself.