

Recommendations for proposed national human rights law

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Introduction

The National Unity Government's (NUG) initiative to establish a National Human Rights Institution (NHRI) through a public consultation process is an important step toward restoring the rule of law and dismantling the culture of impunity that has long plagued Myanmar. The proposed National Human Rights Commission Law is a significant improvement upon the Myanmar National Human Rights Commission Law (2014), which was adopted by the quasi-military Thein Sein government to set up an NHRI that lacked independence and expertise.

The recommendations in this analysis are grounded in international human rights law and the Principles relating to the Status of National Institutions (the "Paris Principles"). The following recommendations are intended to ensure the NHRI meets the "A" status requirements for international accreditation and serves as a robust shield for all people of Myanmar. They are organised into legal foundations, structural independence, operational efficacy, public accountability, and remedial powers.

1. Prioritise international law

The proposed law puts protecting the Federal Democratic Charter on the same level as protecting international treaty obligations (Art. 3.c).

However, the Vienna Convention on the Law of Treaties (Art. 27) requires that international obligations always take precedence over domestic legislation including constitutions. If not, governments may adopt domestic laws that undermine human rights. The Federal Democratic Charter and the Sagaing Constitution are recent examples of domestic laws that, while well intentioned, [fail to protect human rights](#) in accordance with international law. Regional frameworks such as the ASEAN Human Rights Declaration similarly undermine international law.

Recommendation: Amend Article 3(c) to establish a hierarchy that prioritises international law. A new clause should say that in cases of conflict between domestic legislation or regional agreements and international human rights treaties, the international standard shall take precedence.

2. Protect undocumented, stateless, and displaced people

The proposed law limits the NHRI's protective mandate to individuals residing within the country and those holding Myanmar citizenship abroad (Art. 3.e).

However, this wording creates a protection gap for marginalised and displaced populations who have been systematically denied formal documentation, including the Rohingya. By linking protection to citizenship or residency, the law inadvertently excludes many marginalised people inside Myanmar, as well as refugees in Bangladesh, Thailand, and elsewhere. International standards require NHRIs to protect the rights of all persons under the State's jurisdiction or affected by its actions, regardless of their legal status or possession of an identity card.

Recommendation: Amend Article 3(e) to ensure that the NHRI's mandate extends to all persons whose human rights have been affected by the State's actions, and explicitly include people of Myanmar origin, refugees, internally displaced persons (IDPs), and Stateless persons.

3. Adopt a conflict-sensitive mandate

The proposed law is designed for a peacetime environment and centralised governance system with uncontested territorial control. The Paris Principles are designed for a similar context.

However, many parties claim territorial control in Myanmar and conflict is widespread. Therefore, it is important to reflect that context. First, restricting the NHRI's scope to international human rights law ignores the fact that atrocities in Myanmar are currently inseparable from war crimes, which are covered by international humanitarian law.

Second, the NHRI will need to operate within areas under contested or other actors' control. It should be empowered to cooperate with ethnic minority authorities and their own justice systems, including via joint investigations. It should also be empowered to monitor human rights violations remotely in places that it cannot physically access.

Recommendation: Amend Article 3 to include the monitoring of international humanitarian law within the NHRI's mandate, ensuring it has the legal standing to investigate atrocities committed in the context of armed conflict. Amend Article 24(e)(2) to explicitly authorise the use of remote testimony and remote monitoring including modern electronic and digital tools. Amend Article 24(d) to explicitly authorise joint investigations with ethnic minority justice systems including via formal cooperation agreements.

4. Safeguard independence through judicial status

The proposed law currently assigns the chairperson the rank of union minister and other commissioners the rank of deputy ministers (Art. 16).

However, assigning a ministerial rank to NHRI commissioners undermines the appearance of independence. A minister is a political appointee within the executive branch of the State. If the NHRI is perceived as part of the executive branch, its ability to impartially investigate the government is

compromised. International best practice suggests that NHRI commissioners should hold a status equivalent to a judge in the judicial branch to emphasise their role as independent arbiters of the law.

Recommendation: Amend Article 16 to designate the status of the NHRI chairperson as equivalent to a justice of the supreme court, and commissioners as equivalent to high court judges. This reinforces their functional independence and legal authority while distancing them from the political executive.

5. Establish clear and staggered terms

The proposed law specifies that the term of office for NHRI commissioners shall be the same as the term of office of the government (Art. 17).

The Paris Principles require NHRIs have a stable mandate. However, this provision is too ambiguous. The duration of an NHRI tenure should not be linked to government terms because governments may fall for political reasons. Durations of commissioners' terms should also be staggered to ensure the development of institutional memory and effectiveness. The period of time should be unlinked to a government tenure to prevent governments controlling the NHRI through the appointment of commissioners.

Recommendation: Amend Article 17 to specify a fixed term of office (e.g. five years) for commissioners. It should also stagger the appointments process so that only a portion of the Commission is replaced at any one time.

6. Remove geographical restrictions

The proposed law includes representatives of civil society organisations (CSOs) in the board responsible for selecting Commissioners (Art. 6) but restricts CSOs to only those based “in Myanmar or in border areas” (Art. 2.i).

However, under current security conditions, a significant portion of Myanmar's human rights infrastructure, including many capable individuals and organisations have been forced into exile far beyond the immediate borderlands. Restricting CSOs to a specific geography is a relic of traditional domestic law that ignores the reality of modern remote operations and transnational advocacy. Such a narrow scope risks excluding the very experts and human rights defenders whose participation is vital for the Commission's credibility and functional reach. Instead, the definition of CSO should be changed from a geographic requirement to a functional and strategic requirement.

Recommendation: Amend Article 2(i) to include any non-profit organisation that maintains a strategic focus on the promotion and protection of human rights in Myanmar, regardless of where their headquarters or employees are physically situated.

7. Include thematic expertise and socioeconomic diversity

The proposed law focuses its diversity quotas on protected characteristics such as gender, ethnicity, and sexual orientation (Art. 10.a-b).

The quotas are admirable in protecting identity-based minority rights. However, there is a risk that without further diversity requirements the NHRI could end up consisting of identity-based minority rights experts only. This may lead to an NHRI that primarily focuses on only one type of marginalisation, identity-based, and not other types, such as political or socioeconomic disadvantage. An NHRI should include the interests of political groups as well as the poor, landless, internally displaced, and rural communities.

Furthermore, while the quotas are likely to ensure expertise in minority rights, they may not achieve a diversity of expertise on other rights, which is vital to ensuring that the NHRI is effective as well as representative. The Federal Democratic Charter and the Sagaing Constitution are examples of how good minority representation but less thematic expertise in the design stage contributes to identity-based protections [but inadequate guarantees for other human rights](#). In particular, it is important to include labour unions, which have historically been the most powerful and effective defenders of many rights.

Recommendation: Amend Article 10 to add a new sub-clause requiring that Commissioners reflect a diversity of human rights expertise, including, but not limited to, civil and political rights, labour rights, economic rights, consumer rights, land rights, and environmental rights.

8. Give discretionary power to bypass ineffective domestic remedies

The proposed law directs the NHRI to decline investigations if it determines that a “more appropriate remedy” is available to the complainant (Art. 24.e.1.e).

This is a standard legal norm called “exhaustion of remedies”. However, it risks blocking investigations where they are most needed. Appropriate remedies such as the police and courts are often the institutions that are failing or are themselves complicit in abuses. Requiring a victim to use a broken system before approaching the NHRI creates a barrier to justice. The NHRI should be a safety net, not a last resort.

Recommendation: Amend Article 24.e.1.e to grant the NHRI discretion to investigate even when other remedies exist, particularly where there is a reasonable belief that such remedies are ineffective, biased, or unreasonably delayed. The focus should be on the efficacy of the remedy, not merely its existence on paper.

9. Prioritise public accountability

The proposed law includes legal protections for NHRI commissioners by penalising any person who obstructs them during the performance of their duties (Art. 24.f).

NHRI commissioners should be adequately protected from acts of retribution by those that they are investigating. However, similar obstruction provisions in the Penal Code have often been used to censor journalists and punish legitimate criticism of public officials. Under international standards, public officials, including NHRI commissioners, must tolerate a higher degree of scrutiny and criticism than private individuals. This includes tolerating criticism that commissioners may regard as insulting.

Recommendation: Amend Article 24.f to only cover threats of violence or criminal intimidation. Given the weak freedom of expression protections in Myanmar’s domestic laws, a sub-clause should be added that explicitly excludes public criticism, journalistic investigation, and peaceful protest.

10. Add a mandatory duty to respond

The proposed law empowers the NHRI to issue findings and recommendations to the relevant authorities (Art. 24).

However, recommendations from oversight bodies are often ignored, filed away, or met with administrative silence. For an NHRI to have a functional impact, its moral authority must be backed by a procedural burden on the State. Without a duty to respond, the NHRI risks becoming a “paper tiger” that identifies abuses without triggering any corrective action from the State.

Recommendation: Amend Article 24 to add a sub-clause requiring any government department or official body named in an NHRI report to provide a formal, written response within 30 days. This response must say which recommendations are accepted, including an implementation timeline, and provide detailed legal or policy justifications for any that are rejected.

11. Provide for interim measures to prevent irreparable harm

The proposed law outlines a comprehensive investigative process that may take considerable time to conclude (Art. 24.e).

However, many human rights violations require immediate intervention to prevent irreparable harm. For instance, the forced eviction of a village or the destruction of critical evidence. If the NHRI must wait until a full investigation is complete to issue a recommendation, the harm will have already occurred. The ability to issue urgent, temporary orders is vital to the protective function of an NHRI during times of crisis and conflict.

Recommendation: Amend Article 24.e to grant the NHRI the power to issue urgent interim recommendations to the State. These measures should require the temporary suspension of any action likely to cause irreversible damage to the life, liberty, or property of individuals while a full investigation is pending.

Conclusion

The proposed National Human Rights Bill represents a historic opportunity for the National Unity Government to codify a new era of accountability. For the NHRI to be effective in the current context, it must be a legally resilient institution capable of operating across contested territories and protecting those most marginalised. Implementing these recommendations will ensure that the NHRI not only meets international “A” status requirements but also serves as a credible foundation for justice in a future federal union.

Human Rights Myanmar remains available for further consultation and is committed to supporting the development of an NHRI that leaves no one behind.

Paris Principle	Compliance	Notes
I. Competence & Responsibilities		
1. Mandate to promote/protect human rights	Yes	Clearly defined in Art. 2 and 3.
2. Broad mandate set in legislation	Yes	Established as a Union Law.
3(a). Advisory role to government/parliament	Yes	Included in Art. 24 powers.
3(b). Harmonise national law with international instruments	Partial	Weakened by Art. 3(c) hierarchy issues.
3(c). Encourage ratification of treaties	Yes	Explicitly stated as an objective.
3(d). Contribute to UN reporting	Yes	Included in general responsibilities.
3(e). Cooperate with UN and other NHRIs	Yes	Strong international cooperation language.
3(f). Human rights education and research	Yes	Included in Art. 25 duties.
3(g). Public awareness/combat discrimination	Yes	Central to the Commission's mandate.
II. Composition & Independence		
1. Pluralist representation of social forces	Partial	Strong on identity; missing labour and class diversity.
1(a). Inclusion of NGOs, trade unions, social orgs	Partial	Not explicitly required in the current draft.
1(b). Trends in philosophical or religious thought	Yes	Reflected in religious minority quota (Art. 10).
1(c). Universities and qualified experts	Yes	Included in Selection Board criteria.
1(d). Parliament representation	Yes	MPs included in the Selection Board (Art. 6).

1(e). Government departments in advisory capacity only	Yes	Compliant with current draft structure.
2. Adequate funding / financial autonomy	Partial	Funding exists, but lacks ring-fencing protections.
3. Stable mandate (fixed duration)	Partial	Art. 17 currently ties the mandate to the government.
III. Methods of Operation		
(a). Freely consider any question	Yes	Commission has <i>suo motu</i> powers.
(b). Hear any person/obtain documents	Yes	Powers are robust and legally enforceable.
(c). Address public opinion directly	Partial	Risks being chilled by Art. 24(f) "insult" clause.
(d). Meet on a regular basis	Yes	Procedural rules are present.
(e). Establish working groups/local sections	Yes	Permitted under the Commission's internal rules.
(f). Consult with other jurisdictional bodies	Yes	General mandate for institutional cooperation.
(g). Consult with NGOs and vulnerable groups	Yes	Explicitly mandated in Art. 24.
IV. Quasi-Jurisdictional Competence		
(a). Seek amicable settlements/conciliation	Yes	Included in complaint handling procedures.
(b). Inform petitioners of rights/remedies	Yes	Part of the standard intake process.
(c). Hear/transmit complaints to authorities	Yes	Found in Article 24 investigative procedures.
(d). Propose legislative/administrative reform	Yes	The Commission has the power to recommend changes.