

TRANSLATION OF LETTER FROM MCRB TO PATHEIN GAD CHAIRMAN, DATED 29/6/2017

Thank you very much for arranging to meet us on 20 June 2017 with representatives from Pathein Township government offices including from Ngwesaung and Chaungtha to discuss the letters which we submitted to the State Counsellor's Office and Anti-Corruption Commission on apparently unofficial payments for beach sand mining.

We welcomed the opportunity to be able to present the longer-term erosion effects of beach sand mining to your team, as well as the safety issues of using it in construction.

We also welcomed the opportunity to share our experiences of how this issue is being addressed elsewhere in Myanmar, including Ngapali, and the weaknesses in the legal and governance framework.

We were interested to hear from Ngwesaung township officials, including on what local people felt about taking sand from the beaches. We recognise, in the issues they raised, some very similar issues to the ones we have observed in Ngapali. This includes perceptions of local Ngwesaung people that they are not benefitting economically from tourism, and that companies from outside the area have, in the past, been able to obtain land, and use sand from the beach for construction of resorts. Very similar views were expressed in Ngapali.

MCRB through its Sector Wide Impact Assessment on tourism, and subsequent advocacy, has always emphasized the need for local community involvement in, and benefit from tourism, through ownership of small businesses, including small guesthouses, and participation in the tourism value chain. We recently co-hosted the 2nd Conference on Communities and Tourism in Naypyidaw which brought together a number of community tourism initiatives to connect with the market, share experiences and learn from one another. We would be happy to help any communities in Ngwesaung and Chaungtha who want advice on how to participate in tourism.

We have also advocated, in line with the Myanmar Government's 2013 Tourism Master Plan, for local 'destination management organisations' which involve local people and local businesses as well as government officials, to ensure that the management of tourism is sustainable and benefits local people.

The other point raised by the Ngwesaung officials was the practice of collecting 'donations' for municipal development to supplement very small budgets. This includes 'donations' for taking sand from the beach.

We recognise that inadequate local government budgets are a major challenge for local officials. However we are concerned that these off-budget, unofficial, 'donation' practices can lead to corruption. Based on what we hear from companies and individuals, most demands by government officials for payments in addition to official fees are described as a 'donations'. In some cases these are payments for an opportunity e.g. extraction of sand. In some cases they are a form of extortion e.g. where a citizen or investor has the right to a service, or is compliant with the law, but is told to pay a 'donation' in addition to payment of officially notified fees. If they do not pay the additional donation, they will face problems.

MCRB is keen to see local governments have the budget they need to carry out public services, including waste and sewage management, and other infrastructure. These problems are particularly acute in beach resorts. MCRB participated in 2016 in a discussion on this subject organised by the Chaungtha Hoteliers Association, at which the Chief Minister U Mahn Johnny was also present.

The funds for providing municipal services need to be raised from a combination of central government allocations, and local fees, particularly fees paid for by 'users' such as visitors, both foreign and Myanmar. In many countries, a local room tax is applied for hotels and guesthouses which goes to pay for the local services which visitors use, and conservation purposes. We have discussed this in the context of tourism in Ngapali and in Myeik Archipelago.

Similarly, where mining is legally permitted, including mining of 'black' sand (rather than beach sand) from areas where it will not cause environmental damage, it is important that at least some of the revenue concerned is used for local purposes, including environmental conservation.

MCRB's advocacy work therefore includes encouraging central government to adopt Constitutional changes and laws which delegate permitting and fundraising competence to local states/regions and even townships. We were therefore pleased to see that in 2015, the Union Hluttaw in the 'Law Amending the Union of Myanmar Constitution Law - Pyidaungsu Hluttaw Law No. 45/2015' adopted changes to Schedules 2 and 5 of the Myanmar Constitution.

Under Article 188 of the Constitution, 'The Region or State Hluttaw shall have the right to enact laws for the entire or any part of the Region or State related to matters prescribed in Schedule Two of the Region or State Hluttaw Legislative List'. The following areas were added to Schedule Two:

- Hotel and guest house business, in accord with the law enacted by the Union, to be managed by State or Region.
- Tourism business, in accord with the law enacted by the Union, to be managed by State or Region.
- Small scale mining and individual extraction in accord with the law enacted by the Union.

Furthermore, according to Article 254 of the Constitution, '(a) The Region or State shall collect the taxes and revenues listed in Schedule Five in accord with law and deposit them in the Region or State fund. And (b) The Region or State has the right to expend the Region or State fund in accord with the law'.

Schedule 5 of the Constitution was amended in Law 4/2015 to allow 'Taxes Collected by Region or States' to include:

(25) Hotel and guest house tax matters undertaken by State or Region in accord with the law enacted by the Union.

(26) Tax matters relating to tourism managed by State or Region in accord with the law enacted by the Union.

(30) Revenue from mining and mining business managed by State or Region in accord with the law enacted by the Union.

We hope that the Ayeyarwady Regional Government will be able to make use of these Constitutional changes to develop legal and official means of raising funds for the Region/State Fund, both from river sand mining, and tourism, which can then be used to support municipality costs in Ngwesaung, Chaungtha and other tourism destinations.

Thank you again for the good discussion. We hope to work with you in the future on sustainable development in Patheingyi township, and the wider Ayeyarwady Region.

Vicky Bowman, Director, Myanmar Centre for Responsible Business