

13 August 2019

U Win Mra
Chair, Myanmar National Human Rights Commission
27 Pyay Road (6-mile)
Hlaing Township, Yangon

DRAFT STRATEGIC PLAN OF THE MYANMAR NATIONAL HUMAN RIGHTS COMMISSION

Thank you for inviting MCRB and others to comment on the draft Strategic Plan 2020-2024.

Together with its co-founder organisation the Danish Institute for Human Rights (who have made an input into this latter), MCRB has welcomed the opportunity to work with the Commission in 2019 to build its capacity as a National Human Rights Institution to address business and human rights issues.

Inter alia, we see the support we can provide the Commission as being to share relevant international initiatives and good practice on business and human rights. As a topical example of this, I attach in Annex the email that I sent on 27 June to U Yu Lwin Aung and U Nyunt Swe to assist the Commission in their enquiry into the suicide of Kyaw Zin Win at Myanmar Imperial University. In this we highlighted the international initiatives around workplace LGBT rights (which our other cofounding organisation the Institute for Human Rights and Business has played an important role in working with business and the UNOHCHR on this). We outlined how these are relevant to the MIU case.

The suggestions I made in this email are just one example of the issues we highlight below for how the Commission can strategically promote business and human rights through its input into Myanmar's legal framework, as well as through promoting human rights education for society, including business.

While recognizing that the structure of the Strategic Plan does not lend itself to adding a separate business and human rights objective, most of the Priority Issues already identified are related to business and human rights, specifically

- *Discrimination based on gender, ethnicity, religion*
- *Social disharmony due to conflicts and religious disharmony*
- *Violation of women's rights and freedoms*
- *Violation of children's rights*
- *Violation of environmental rights*
- *Poor working conditions and lack of labor rights /business and human rights issues*
- *Issues of migrant workers from Myanmar working in other countries and other country nationals working in Myanmar*
- *Rights of persons with disabilities*
- *Economic, social and cultural rights*
- *Trafficking in persons*

To this list, we suggest adding some other Priority Issues which we have observed as significant business/human rights risks in Myanmar, namely: land rights, protection of human rights defenders/freedom of expression and privacy, right to a fair trial, and right to access remedy.

We therefore believe that business and human rights and specifically promotion of the UN Guiding Principles on Business and Human Rights should be referenced in the document, even if there is not a separate objective. We note that 2020-2024 might be the period in which Myanmar decides to develop a National Action Plan on Business and Human Rights, with which the Commission should be fully involved.

A text could go under the Priority Issues list as follows:

“Many of these priority issues involve business. The Commission will use the protect-respect-remedy framework of the UN Guiding Principles on Business and Human Rights to inform its own work, through its contribution to improving policy and legislation (protect); raising awareness with business (respect) and receiving and acting on complaints (remedy), and will support Government should it plan to develop a National Action Plan on Business and Human Rights.

We suggest business and human rights strategic actions, although relevant through the Goals, fit best under Goal 3, currently formulated as ‘Reduce Human Rights Violations in Myanmar’. Firstly, we suggest this Goal is reformulated to **“Address human rights violations” or “Facilitate remedy for human rights violations”**. This is to recognise the limitations of the Commission’s powers and mandate.

Specifically, we propose the following changes to this section:

- **‘business’** should be named as a **strategic stakeholder** under Objective 3.1 (*Building a mechanism to continue a closer and systematic engagement with strategic stakeholders who could support efforts of reducing human rights violations*)
- Amend to read ‘Review existing complaints investigation processes and grievance mechanisms **including examining those of other government agencies, and ensure that these are complementary, transparent, efficient and effective**, and provide greater access and confidence for people to complain’.
 - We have in mind in particular the need to look at the business and human rights grievance and remedy processes offered by DICA, ECD, MNHRC, MOLIP, Anti-Corruption Commission inter alia.

We attach a great deal of importance to Objective 3.2 and the Commission’s mandate under Section 22c to *‘review existing laws and proposed bills for consistency with the international human rights instruments to which the State is a party and recommending the legislation and additional measures to be adopted for the promotion and protection of human rights’*, and we are keen to see this is operationalised in practice.

Since it is our observation that the Commission is not brought in consistently to make inputs into laws with a business and human rights angle, **we believe that a requirement to consult the Commission on draft laws at preparatory stages should be written into the revised MNHRC law, consistent with the UN Guiding Principles**. Examples of where this is relevant for business and human rights include the Investment Law, land laws, labour laws etc.

We also propose that under Goal 2 (awareness-raising) the Commission should build on its initial practice of issuing statements to respond publicly more often to major strategic issues of human rights importance and provide an opinion anchored in human rights principles. One example would be the

ongoing internet shutdown in Rakhine State which has significant negative impacts on a wide range of human rights (e.g. livelihood, information, health, education) which appear not to be taken into account by the Government.

We can offer some suggestions for concrete steps related to business and human rights which the Commission should take in the 2020-2021 Workplan which we understand you intend to finalise by the end of August (although we assume this, and the draft Strategy will be presented to any incoming Commission for final decision).

As for strategic actions to be dropped, given the Commission's lack of resources, and the limitations within which it works, MCRB doubts that the Commission should expend resources on building a database of human rights abuses. Such a role is best played by civil society organisations/NGOs. However, we do believe that the MNHRC should invest in providing more data on complaints received, as well as publishing more case studies on how complaints are handled,

Finally, we would like to encourage the Commission to study carefully the recommendations in the report by the CSO Working Group on MNHRC Reform which was launched on 3 August, many of which we believe would be helpful to strengthen the Commission operations, independence and mandate.

I apologise for this late response which misses your initial deadline, and hope that these comments can nonetheless be taken into account when finalising the strategy.

We look forward to continuing to work with the Commission on business and human rights issues in support of the Government's priorities to promote responsible investment.

Yours sincerely

Vicky Bowman

Director, Myanmar Centre for Responsible Business

ANNEX

From: Vicky Bowman [mailto:vicky.bowman@myanmar-responsiblebusiness.org]
Sent: Thursday, June 27, 2019 11:32 PM
To: 'yulwinaung@mnhrc.org.mm' <yulwinaung@mnhrc.org.mm>
Cc: 'Hnin Wut Yee' <hninwut.yee@myanmar-responsiblebusiness.org>; 'Myint Naing Kyaw' <myint.naing.kyaw@myanmar-responsiblebusiness.org>; 'thurakyaw@gmail.com' <thurakyaw@gmail.com>; 'Min Banyar Oo' <min.banyar.oo@myanmar-responsiblebusiness.org>; 'Salil Tripathi' <salil.tripathi@ihrb.org>; 'nyuntswe@mnhrc.org.mm' <nyuntswe@mnhrc.org.mm>
Subject: Myanmar Imperial University

Dear U Yu Lwin Aung

I have seen from today's Irrawaddy that the MNHRC intends to investigate the suicide of Kyaw Zin Win, the librarian at Myanmar Imperial and I welcome this
<https://www.irrawaddy.com/news/burma/national-human-rights-commission-investigate-lgbt-suicide.html>

Today I met Ma Poht Poht Kyi the MD of MIU and two of her colleagues to discuss the case and MIU's response; I know that she is willing to collaborate with all investigations to ensure justice. I have given her the names of some workplace harassment experts that she could ask to conduct an external independent investigation.

To aid the MNHRC in your enquiry, I am attaching in English and Myanmar the summary of the UN Standards of Conduct for Business on Combatting Discrimination against LGBT developed by UNOHCHR with the support of my colleague Salil Tripathi from the Institute for Human Rights and Business. The full report/background paper is available [here](#) (English only).

These international Standards provide a very good framework for considering the responsibility of business towards LGBTI rights, and I believe that they will help you to frame your recommendations.

I hope that the MNHRC's investigation and findings will be based— as befits a National Human Rights Commission - in the wider context of discrimination against LGBT in Myanmar, and not just this individual case and that you will seek inputs from the LGBTI community on this.

From MCRB's perspective, we hope to see the Commission make recommendations about the need for wider legal reform, including of the Penal Code, the importance of bullying and harassment being explicitly recognised as a safety issue under the new Occupational Safety and Health Law (and therefore a duty of the employer to address) and the need for a change in societal culture and attitudes, and the role that business can play in promoting positive change (as for example, we sought to achieve with Colors Rainbow on 17 May by [encouraging business to fly a rainbow flag](#)). This week's Colors Rainbow statement on the death of Kyaw Zin Win outlined the legal reforms and support which are needed to combat discrimination and reduce the likelihood of further LGBTI people taking their lives.

Finally, I hope that the MNHRC will also comment on how businesses can encourage responsible use of social media inside and outside of the workplace, This is both because social media may have

contributed to Kyaw Zin Win taking his life, but also because cyberbullying and Facebook 'trolling' appears to have been a part of the public response.

As you may be aware, MCRB have recently run a workshop in which Heineken shared the work they had done to train their staff on how to use social media responsibly; we would be happy to share that information with you, as well as anything else which could help you with your enquiry.

With Colors Rainbow, we plan to hold a workshop on 27/28 August in Yangon to discuss the role that business can play, including in advocacy for LGBT equality through legal reform, drawing on experience from India and elsewhere. We would be delighted to have MNHRC participation.

Best wishes

Vicky

Director,
Myanmar Centre for Responsible Business (MCRB)

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Post-script (13/8/2019) – the seminar will now take place 28/29 August.