

Casem, Kimberly D

From: Amol Mehra [amol@accountabilityroundtable.org]
Sent: Thursday, October 04, 2012 12:50 PM
To: BurmaPRA
Subject: ICAR Letter to US State Department on Burma Reporting Requirements
Attachments: ICAR Letter to US State Department on Burma Reporting Requirements.pdf

Greetings,

The International Corporate Accountability Roundtable is a coalition of leading human rights, development, environmental and labor groups. We work to build frameworks for corporate accountability, strengthen current measures and defend existing laws, policies and legal precedents.

Please find attached our submission to the US State Department on Burma Reporting Requirements.

Should you have additional questions, please don't hesitate to contact Amol Mehra, ICAR Coordinator, at amol@accountabilityroundtable.org.

Best,

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The International Corporate Accountability Roundtable (ICAR) is a coalition of leading human rights, environmental and development groups working to promote robust frameworks for corporate accountability, strengthen current measures and to defend existing laws, policies and legal precedents. Our Steering Committee includes Amnesty International, EarthRights International, Global Witness, Human Rights First and Human Rights Watch.

We welcome the issuance of the “Reporting Requirements on Responsible Investment in Burma” (Reporting Requirements), which articulate a framework for corporate engagement in Burma/Myanmar that seeks to promote human rights. However, we are concerned that these Reporting Requirements do not go far enough in light of the serious human rights concerns they are trying to address and the responsibilities of businesses to respect human rights wherever they operate. In this way, we share key concerns and recommendations outlined in the submission of our NGO colleagues, entitled “Joint NGO Comment on Responsible Investment in Burma Reporting Requirements” and submitted on October 4, as detailed below.

ICAR would like to make a number of additional recommendations. These recommendations are consistent with our submission to the U.S. State Department of July 31, 2012 on Implementation of the U.N. Guiding Principles on Business and Human Rights and our broad recommendations of how the U.S. government should use its regulatory authority to implement these principles by mandating human rights due diligence.

To uphold the duty of states to protect human rights, states must take effective regulatory measures to ensure business entities respect human rights, including by imposing binding requirements on business entities to carry out human rights due diligence. **The U.S. government should mandate human rights due diligence for companies operating in Burma/Myanmar, as anywhere else, including requiring public disclosure of policies, practices, and measures taken to prevent human rights abuses.**

Although the Reporting Requirements indirectly encourage companies to conduct due diligence, by calling on them to publicly report if they do so, they do not explicitly mandate human rights due diligence. Moreover, the Reporting Requirements do not detail what information companies must publicly disclose regarding their due diligence procedures, and instead explicitly provide that companies can choose to address risk mitigation efforts in a confidential report to the U.S. government. These gaps undermine the aims of the Reporting Requirements, which, as described in the Federal Register notice, are to support the promotion of human rights in Burma/Myanmar.

We strongly urge the U.S. government to amend the Reporting Requirements to require companies seeking to enter Burma/Myanmar to disclose **publicly** both their human rights due diligence policies and their actual practices. Indeed, the Reporting Requirements should specify that policies and procedures as they appear on paper are different from the concrete steps a company actually takes to implement them (e.g., to perform due diligence), and that reporting on due diligence “procedures” must include

the concrete steps taken to identify risks to human rights, the results of the company's inquiry, including risks and impacts identified, and steps taken to mitigate the risks and prevent human rights abuses.

The Reporting Requirements should furthermore make clear that they extend to the activities of a company's subsidiaries, contractors and business partners. In this context, there is a need to supplement references to "investment" with other trade relationships such as those of a company with its suppliers. It should be made clear that public reporting on both policies and procedures should extend to a company's supply chain and other business relationships, including any contractual requirements the company may set. An addition is also needed to require companies to specify in their reports if their due diligence practices in Burma/Myanmar are subject to independent monitoring and, if so, by whom and against what standard.

There are a number of provisions in the Reporting Requirements that give rise to serious concerns, such as the unwarranted and counterproductive designation of some information as confidential and the establishment of inappropriate threshold amounts for reporting. **Rather than automatically permitting companies to exclude certain information from the public report, such as risk mitigation, companies should be required to prepare a single report covering the full range of issues under the Reporting Requirements, and this report should be made public.** Only on an exceptional basis and where this is fully justified under applicable U.S. law should information be allowed to be withheld from the public. The application of a \$500,000 investment threshold to trigger the reporting requirement is also inappropriate, considering Burma/Myanmar's economy and low costs in many sectors that may present risks. The U.S. government should revise the Reporting Requirements so that they apply to all new investments. Similarly, the \$500,000 or 30-acre threshold for reporting property acquisitions should be eliminated. All property acquisitions should be subject to disclosure.

Finally, there is a need to ensure effective compliance by detailing the consequences for failure to report or to do so fully and accurately. An explicit reference is needed to indicate that the mandatory nature of the Reporting Requirements is backed by civil and criminal penalties. The Reporting Requirements also should specify that the U.S. government will carry out audits to monitor and ensure compliance.

ICAR welcomes the issuance of the Reporting Requirements and urges that the recommendations above be adopted in developing a final set of requirements.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Amol Mehra', written in a cursive style.

Amol Mehra
Coordinator
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