

PUBLIC SUBMISSION

As of: October 05, 2012 Received: October 04, 2012 Status: Posted Posted: October 05, 2012 Tracking No. 1jw-8183-qu5k Comments Due: October 04, 2012 Submission Type: Web
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Docket: DOS-2012-0046

60-Day Notice of Proposed Information Collection: Reporting Requirements for Responsible Investment in Burma

Comment On: DOS-2012-0046-0001

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Reporting Requirements for Responsible Investment in Burma

Document: DOS-2012-0046-0011

Comment on DOS-2012-0046-0001

Submitter Information

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General Comment

See attached file(s)

Attachments

Burma Partnership Comment on Reporting Requirements



BURMAPARTNERSHIP

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Strengthening Cooperation for a Free Burma

4 October 2012

Comment on Draft Reporting Requirements for Companies Investing in Myanmar

Burma Partnership welcomes the draft reporting requirements for US investment in Burma; this will be an important tool in not only exposing human rights violations but hopefully preventing human rights violations from happening in the first place.

That being said the strength and scope of these reporting requirements is of utmost importance. If the goal is to promote the peace process, prevent human rights violations and support political reforms weak reporting requirements have the potential to hinder these goals. Lenient requirements could easily serve as a smoke screen, allowing actors to behave unethically and in violation of human rights, the peace process and political reforms, and point to the reporting requirements as justification or proof of innocence.

This submission will address three main points: the importance US reporting requirements will have in the ability of Burma Partnership to advocate for the people of Burma, the degree to which they might pose a burden on investors and finally suggestions regarding the quality and strength of the requirements themselves.

The United States reporting requirements must be strengthened to a point where violations are easily identified and circumvention of the spirit of these requirements is near impossible. Anything less fails the people of Burma and risks US complicity in any harm committed by investors to the livelihood and human rights of the people of Burma.

Impact of Reporting Requirements on Burma Partnership's Work

Reporting requirements for Burma, if properly implemented, will provide an extremely useful tool not only for Burma Partnership but all civil society organizations working towards a free and democratic Burma, that upholds the principles of human rights, equality and justice.

There have been many past issues and are many current issues that Burma Partnership is working on which would greatly benefit from adequate reporting requirements. Burma Partnership has advocated on numerous environmental, human rights, ceasefire/peace process, and economic issues in the past, with one of our overarching goals being to bring transparency to each of these issues.

With the lifting of sanctions there has been a huge increase in business and investment related work. We feel very strongly in the need for transparency in these projects and, with regards to the

past history of Burma, are greatly concerned that outside investment comes with an increased risk of corruption and human rights abuses. The US reporting requirements have the potential to become a powerful tool in fulfilling both our and the US government's stated foreign policy goal for Burma of establishing "a peaceful, prosperous and democratic state that respects human rights and the rule of law."

Some of our current focuses are labor rights, land confiscation, the government's ceasefire agreements with ethnic non-state armed groups and the overall peace process. In all of these areas we would benefit from powerful reporting requirements.

More specifically we feel labor rights is a significant issue and have been coordinating with groups inside Burma to both gather information and insure the protection of workers. US companies were involved the garment industry before sanctions were imposed and we believe they will be again in the future. Therefore transparency in this industry and requirements to treat workers fairly and guarantee both labor and human rights could be a crucial tool in the future.

Burma Partnership is currently involved in preparing a report with partners addressing the growing issue of land confiscation. On this particular issue, the reporting requirement standards for the size and amount of money paid for land by companies is of great importance. We feel this is an area that deserves serious attention, as there is a grave potential for increased abuses.

We are very involved in monitoring the peace process and ceasefire agreements in ethnic areas. Many of Burma's natural resources lie in current or very recent conflict zones. US companies are going to be drawn to these areas and it is specifically these areas where the risk of human rights abuses and corruption is the greatest. In the past the Burma Army has been used for security around extraction and development projects, and without exception this has signaled an increase in human rights abuses. These abuses have included the killing of civilians, forced labor, rape and other sexual assaults, the confiscation and destruction of property, and torture. It is into this potential environment that US companies are going to be drawn and it is exactly for this reason that there needs to be a culture of transparency, of responsible and ethical business practices and extremely strong disincentives to complicity in future human rights violations.

Nominal Burden on Investors

We feel the reporting requirements will not place an undue burden on investors. The requirements, even if strengthened, are in line with and even less comprehensive in some instances than United States reporting requirements already in place such as Sarbanes-Oxley, the Foreign Corrupt Practices Act and the resource extraction component of Dodd-Frank. Moreover, international institutions such as the World Bank also operate in line with stringent reporting and harm mitigation guidelines, such as the Social and Environmental Impact Assessments. The information required is easily available and must be complied regardless, in line with the above-mentioned standards.

In addition to the unstated benefit of strong reporting requirements reducing human rights violations and promoting a peaceful democratic Burma, they also benefit the business themselves. Greater corporate transparency and accountability reduce fraud and increase investor confidence. Companies with strong internal standards in place are rewarded and those without are encouraged to make positive changes.

Reporting requirements protect the people of Burma and encourage positive development in the future, they promote US foreign policy goals and reward well run companies. Any perceived burden on investors pales in comparison to the rewards that strong reporting requirements will bring.

Suggestions for Reporting Requirements

There are areas where we feel the Burma reporting requirements can be improved. A strengthening in the below stated areas will benefit the people of Burma, US foreign policy goals and the investors themselves.

- *The ability of companies to make information confidential threatens the overall effectiveness of the reporting requirements in preventing human rights abuses, promoting harm mitigation policies and encouraging peace and political reform in Burma.*

Interactions with Myanmar Oil and Gas Enterprise (MOGE), including all partner and subsidiary companies should be made public. The potential for human rights abuses and corrupt practices is greatest in the resource extraction sector and specifically in dealing with MOGE. Under the military government a huge number of human rights abuses took place in association with resource extraction. It is not a coincidence that a number of the ethnic conflicts have and still are occurring in resource rich areas. The majority of land confiscations occurring today are done to secure access to natural resources.

- *All subsidiaries, business partners and contractors in relationships with MOGE should also be required to comply with the reporting requirements.*

The relationships between the Burma government, specifically MOGE, and private business has always been an extremely gray area in Burma. Many times generals/government officials, their family members and business associates or cronies have been active in “private” companies. A great deal of the corrupt practices that have occurred have transpired under a system where the lines between the government, MOGE, generals and subsidiary or partner companies are extremely blurred.

The potential for circumvention of the reporting requirements is great through the use of MOGE or government associated companies. In order for the reporting requirements to be effective, to achieve the goals stated by the US Department of State, these associated companies must be included in the reporting guidelines.

- *Companies should be required to publicly report impact assessments, which include risk mitigation plans and policies before any investment is made.*

The purpose of these reporting requirements is to prevent human rights abuses, environmental degradation, armed conflict and inappropriate dealings with the government not only report on them after they’ve occurred.

Reporting prior to investment projects is common, an example being the World Banks safeguard policies, specifically its requirement of Social and Environmental Impact Assessments on projects.

With the goal being to do no harm in its investment, the United States would be well served to follow suit.

Under the proposed requirements, violations or unfair practices could be reported almost a full calendar year after they have occurred. This seriously undercuts the ability of any actor to prevent such abuses from happening. The end goals should be an end to human rights abuses and a free and democratic Burma with a durable peace; transparency in a timely manner is how this is accomplished, not documentation after the fact.

- *The monetary and acreage standards triggering the reporting requirements are set much too low. Burma Partnership feels that a level of US\$100,000 and any land acquisition over 10 acres without regard to how much was paid is appropriate.*

Burma is a developing country, where land prices are extremely low. In our research for a forthcoming land confiscation report, we have found that a common amount of compensation for an acre of land is under US\$3500 and a normal amount of land confiscated ranges from 0.5 to 1.5 acres. Corruption is also rampant, with local administrators embezzling compensation amounts and paying widely different amounts based on family connections.

In order to adequately address this situation of extremely low levels of payment, low levels of acreages confiscated on an individual basis and a history of corruption, a level of US\$100,000 for any transaction is appropriate. Furthermore, any exchange that occurs over 10 acres should trigger reporting requirements. We feel very strongly about a 10-acre minimum regardless of money exchanged. The monetary minimum leaves open avenues for unfair and under payment to small landholders; it is essentially a loophole in the requirement, which not only hinders its effectiveness but does so on the backs of local people and communities who are not protected under Burma's current legislation specifically the recently passed Farmland Bill and the Vacant, Fallow and Virgin Land Management Bill.