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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

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Comment on DOS-2012-0046-0001

Submitter Information

Name: Catherine Martin

Address:

Chiang Mai, Thailand,

Email: info@bewg.org

Phone: +66810210176

Organization: Burma Environmental Working Group

General Comment

The Burma Environmental Working Group is a network of Myanmar-focused environmental and social organizations working closely with Myanmar's vulnerable ethnic communities.

We welcome these draft requirements, but we are concerned that gaps in the requirements weaken their effectiveness. We recommend the following changes:

1. To adequately address the risk of forced displacement, companies must be required to report on all land acquisitions, regardless of size.
2. All information regarding human rights, worker rights, and environmental risks, and the measures that companies take to address these risks, should be present in the public report, not solely in the confidential report.
3. U.S. investors should be required to provide responses to each reporting requirement not just for themselves, but also for their partners and subsidiaries, including non-U.S. partners and subsidiaries.

4. Companies should be required to disclose their practices on the ground, as well as their procedures and policies.

Please see the attached file for specific evidence for why these changes are necessary, based on the Burma Environmental Working Group's experience and research.

Attachments

US Reporting Requirements Submission - Burma Environmental Working Group Final

Submission to the U.S. Government Regarding Draft Reporting Requirements for Companies Investing in Myanmar

The Burma Environmental Working Group welcomes these draft reporting requirements for companies investing in Myanmar. While we commend the fact that the U.S. government has decided to take this step to mitigate the potential negative effects of foreign investment in Myanmar, we are concerned that gaps in the draft requirements weaken their effectiveness.

We recommend the following changes in order to strengthen the draft reporting requirements:

1. The draft requirements only require companies to report on land acquisitions of over 30 acres. However, the average size of a farm in Myanmar is a mere 6.24 acres, and an increasing number of families in rural areas hold only one acre or less each.¹ Land concessions to both foreign companies and foreign-backed domestic companies have led to mass displacement of small-scale farmers in rural Myanmar. BEWG's research, and that of its member organisations, shows that in many cases, Myanmar's government has evicted local landholders without compensation or consultation in order to grant land concessions to foreign investors or to development or extraction projects funded by foreign companies.² Such evictions have deprived local people of their livelihoods, led to food insecurity, and exposed these displaced persons to physical danger. Over 1.7 million acres of farmland has been allocated to large agricultural companies alone, much of it formerly small farms and land used for shifting cultivation (agriculture that rotates between fields, allowing the land time to lie fallow and regain its fertility).³ Hundreds of thousands of people in Myanmar's ethnic states have been forcibly displaced since the country was first opened to large-scale foreign investment in the late 1980s.⁴

The draft requirements clearly recognise that due diligence, and the transparent reporting of this due diligence, are necessary to ensure that companies are not obtaining land that has been forcibly taken from the previous inhabitants. **To adequately address the risk of forced displacement, companies must be required to report on all land acquisitions, regardless of size.**

In many areas of Myanmar's ethnic states, small-scale farmers do not hold official legal title to lands that their families have farmed for many

¹ Shwe, Tin Maung. "Agriculture Development Issues and Strategies, Myanmar: Background Paper for the Development Policy Options." Yangon, Myanmar: United Nations Development Program and Agribusiness and Rural Development Consultants (ARDC), 2011.

² Earthrights International. "The Burma-China Pipelines: Human Rights Violations, Applicable Law, and Revenue Secrecy." Chiang Mai, Thailand: Earthrights International, 2011. <http://www.earthrights.org/publication/burma-china-pipelines>

³ Burma Environmental Working Group. "Burma's Environment: People, Problems, Policies." Chiang Mai, Thailand: Burma Environmental Working Group, 2011. <http://bewg.org/en/reports/beppp>

⁴ Giannini, Tyler R. "Destructive Engagement: A Decade of Foreign Investment in Burma." Chiang Mai, Thailand: Earthrights International, 1999. <http://www.earthrights.org/publication/destructive-engagement-decade-foreign-investment-burma>

generations. Companies may feel that this presents an obstacle to reporting on land acquisitions in these areas. However, a number of NGOs working in Myanmar are helping rural populations to informally record their land holdings, and, in some cases, to formally register their land. The work of these NGOs, including groups like the Karen Environmental and Social Action Network (KESAN), will help reduce the burden on reporting companies.

2. **All information regarding human rights, worker rights, and environmental risks, and the measures that companies take to address these risks, should be present in the public report, not solely in the confidential report.** Publicly releasing information uncovered through due diligence to civil society organizations working in Myanmar and in the border regions is in the long-term interest of companies investing in Myanmar. This is because public disclosure will allow civil society and local communities to monitor the social and environmental impacts of investments (and may be their only opportunity to do so, as Myanmar does not currently require social or environmental impact assessments to be published). Civil society organisations representing affected communities will therefore be better informed and equipped to share their expertise and experience with investors to ensure that risks are avoided or mitigated. This, in turn, will protect companies from potential legal and reputational consequences of investments that carry negative impacts.

As an example, when the Yadana gas pipeline was constructed in Myanmar in the mid-1990s, the American and French energy companies' assessment of the environmental and social risks involved was incomplete and inaccurate. This was in large part because affected communities were not consulted, and the assessments therefore lacked the kind of detailed understanding of the local environment and social structures that these communities possessed. Assessment findings were not made public, meaning that these inadequacies were not revealed soon enough to allow the companies to acquire better information. This impeded the companies' ability to effectively manage the risks involved in the project. The pipeline's construction involved widespread human rights violations and unnecessary environmental degradation. One of the companies involved, Unocal, was later sued in a U.S. court and agreed to pay compensation to villagers whose land and human rights had been violated in the course of the project.⁵ Had the potential impacts of the pipeline been publicly evaluated from the start, the companies would have been better equipped to minimize negative impacts.

For the same reasons, **companies should be required to publish reports twice, rather than once, annually.** This will allow civil society to react to the contents of these reports in a timely manner.

3. **U.S. investors should be required to provide responses to *each* reporting requirement not just for themselves, but also for their partners and**

⁵ Burma Environmental Working Group. "Advocating for Sustainable Development in Burma." Chiang Mai, Thailand: Burma Environmental Working Group, 2012. <http://bewg.org/en/news/111-bewg-sd>

subsidiaries, including non-U.S. partners and subsidiaries. Foreign investors in Myanmar frequently work with or act through local Myanmar companies and agents. Most foreign investment in large-scale agriculture, for example, is carried out through local Myanmar companies,⁶ and current large-scale foreign investment projects, such as the Italian-Thai Development Company's Dawei Special Economic Zone, also use a number of local partners. Myanmar does not have strong laws governing corporate transparency or accountability for its own companies. For the safety of both U.S. companies investing in Myanmar and the people of Myanmar who are affected by these investments, all partners and subsidiary companies must be held to the same standards of transparency as their American partners.

4. **Companies should be required to disclose their practices on the ground, as well as their procedures and policies.** This may include companies providing concrete examples of how their policies and procedures for mitigating environmental and social risks are implemented. In the past, Myanmar has seen examples of companies with excellent social and environmental policies on paper failing to live up to these policies in practice. For example, Chevron (formerly Unocal) has extensive environmental and human rights policies, including participation in the global Voluntary Principles on Security and Human Rights (a set of voluntary commitments requiring companies to carefully assess the impact of their arrangements with both private and government security forces)⁷. However, Chevron has been and continues to be linked with environmental and human rights abuses in connection with its operation of the Yadana pipeline, as described above. These include abuses carried out by Myanmar government troops, who are protecting the pipeline through a security arrangement with Chevron that includes almost none of the safeguards outlined in the Voluntary Principles on Security and Human Rights.⁸ Reporting policies and procedures is therefore insufficient, unless companies also disclose their practices.

The Burma Environmental Working Group (BEWG) is a network of Myanmar-focused environmental and social organizations. These organizations monitor Myanmar development policies and advocate for sustainable and peaceful national, regional and international development policies, based on the needs and voices of Myanmar's people, particularly its vulnerable ethnic minority groups.

⁶ Burma Environmental Working Group. "Burma's Environment: People, Problems, Policies." Chiang Mai, Thailand: Burma Environmental Working Group, 2011. <http://bewg.org/en/reports/beppp>

⁷ Chevron. "Business Conduct and Ethics Code." San Ramon, California: Chevron, 2012. <http://www.chevron.com/documents/pdf/chevronbusinessconductethicscode.pdf>

⁸ Michelle Kinman, ed. "The True Cost of Chevron: An Alternative Annual Report." Chiang Mai, Thailand: Earthrights International, 2011. <http://www.earthrights.org/sites/default/files/documents/true-cost-of-chevron-may-2011.pdf>