



**Business & Human Rights
Resource Centre**

Comment of Business & Human Rights Resource Centre on the U.S. Reporting Requirements for Responsible Investment in Burma

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Bureau of Democracy, Human Rights, and Labor
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Business & Human Rights Resource Centre welcomes the opportunity to comment on the U.S. Reporting Requirements for Responsible Investment in Burma. We ask the U.S. Government to renew the Reporting Requirements, as they help achieve the policy goal of supporting the establishment of a democratic state in Burma that respects human rights and the rule of law. Since the Reporting Requirements took effect in 2013, public disclosure of important information on US investments has helped promote transparency, and empowered civil society to take an active role in monitoring investment. We also ask that the U.S. Government consider our recommendations for strengthening these requirements.

Business & Human Rights Resource Centre is a non-profit that serves as the main global source of information and analysis on business & human rights. Our mission is to: build corporate transparency, strengthen corporate accountability, and empower advocates to act.

In 2014, we launched the Myanmar Foreign Investment Tracking Project, which seeks to enhance transparency and accountability by mapping together in one place which companies have started investing or operating in Burma, and urging those firms to publicly disclose the steps they are taking to ensure their operations respect human rights. To date it features disclosure by over 60 companies. This project was partly inspired by the Reporting Requirements, which were then welcomed by civil society groups as helping increase the likelihood that U.S. firms in Burma consider the human rights impacts of their operations, conduct due diligence and make relevant disclosures. Through our project, we hoped to close a gap by raising the levels of corporate disclosure for all companies investing in Burma: inviting responses from companies in countries which do not have the same requirements as the U.S., and that rarely see the incentive to report voluntarily.

The concerns and rationale behind the Reporting Requirements remain relevant. We routinely publish reports from civil society and local communities in Burma of human rights abuses, including: unjust or uncompensated land confiscation; labour abuses such as poverty wages, unpaid overtime, child labour and denial of freedom of association; arbitrary arrests and detentions for the peaceful expressions of dissent, and the use of repressive laws to prosecute and harass communities and groups protesting against projects that impact on livelihood, land and the environment; and ongoing conflict and human rights abuses in ethnic areas exacerbated by corporate activities. The military, which continues to control large segments of the economy, including sectors associated with severe human and environmental abuses, like jade mining, remains outside of democratic accountability



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structures under the new constitution. The outcome of the recent elections will also likely lead to an increase in foreign investment, especially in sectors that have long been associated with human rights abuse such as extractives and infrastructure. Removing the Reporting Requirements would weaken the push for transparency and responsible investment at a time when it is still very much needed. A return to secretive foreign investment in an economy that is still controlled by cronies and military owned companies, where ownership and control remains opaque, risks exacerbating conflict, land and labour rights disputes, corruption, and other serious human rights threats.

The participation of U.S. businesses in Burma's economy can be a model for responsible investment and business operations – and heightened transparency and disclosures is a good start. Through the Reporting Requirements, the U.S. has set a standard for communicating human rights-related policies. We have seen how other efforts -- including our tracking project and the local Transparency in Myanmar Enterprises (TIME) of the Myanmar Centre for Responsible Business – are complementing these efforts to include local Burmese companies and other foreign companies, thereby ensuring U.S. companies are not at a competitive disadvantage, and raising the bar for transparency among all investors in Burma.

Specifically, certain disclosures under the Reporting Requirements have helped our organization in approaching other companies by providing positive examples of self-reporting. Some reports have provided a starting point for civil society groups to engage with companies and address issues related to their investment or operations. The reports have also provided investors with information they need to evaluate whether to engage in economic activity in Burma.

Through the process of developing our own foreign investment tracker, a number of local groups intimated that a major hurdle in seeking greater human rights accountability from foreign companies is finding information about them, including their policies and key personnel. The Reporting Requirements addresses this challenge. The Reporting Requirements offer transparency that would not exist if they were not required by the U.S. government. Without access to information about new investment in Burma, the ability of local groups to address human rights abuses and demand accountability from companies and government is severely weakened.

In addition, we urge the U.S. Government to strengthen the Reporting Requirements by: expressly requiring investors to report who their Burmese business partners and contacts are, including complete beneficial ownership information (names of all individuals who ultimately own and control them); specifying what type of business activity qualifies as investment; clarifying that the reporting requirements apply to passive or equity investors; and enforcing penalties or other measures for non-compliance among companies that do not report, or submit false information or incomplete reports after allowing for good-faith efforts to provide accurate and complete information.

Through our consultations for our own tracking project, we have learned about the concern of local groups that despite a higher expectation of transparency among U.S. and other western companies, local companies are not bound by the same and are therefore more difficult to hold to account. By requiring U.S. companies to disclose their Burmese partners, U.S. companies may significantly influence these local partners to improve their policies and practices, starting with greater transparency. Secrecy with respect to Burmese partners undermines the benefits of public disclosure by enabling U.S. companies to hide their responsibilities through unknown Myanmar entities.



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Making all reported information public – including contact with the Burmese military and armed groups, and steps taken to identify and mitigate risks with respect to environmental issues, human rights, worker rights and anti-corruption – will improve the ability of civil society to take an active role in monitoring investments and ensuring that they are in line with U.S. policies and ideals.

There is need to specify what type of business activity qualifies as investment, and to clarify that the reporting requirements apply to passive or equity investors. Previous disclosures from passive investors have lacked sufficient detail to allow meaningful assessment of their actions, especially human rights due diligence efforts. Other companies with significant activities in Burma have also avoided disclosure due to the lack of clarity on what types of activities qualify as investment.

Enforcing implementation by sanctioning companies that do not report, or submit false information or incomplete reports, is important so that companies that diligently report are not unfairly disadvantaged through their efforts at compliance, and that non-complying companies are not unfairly benefitted by their silence.

We support the promotion of public disclosure to help U.S. investment in Burma to improve transparency and accountability – key to achieving U.S. foreign policy objectives; and also in line with our organizational aims of building corporate transparency, strengthening corporate accountability, and empower advocates worldwide. We urge the U.S. Government to renew and strengthen the Reporting Requirements.

Sincerely,

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