



Call for Comments: Amnesty International Submission to US State Department on Burma Reporting Requirements

25 January 2016

I. Ongoing Need for Safeguards relating to Foreign Investment in Myanmar

Myanmar is at a critical juncture when it comes to determining whether investment projects will benefit the wider population and be carried out in line with international human rights law and standards. Since 2011, some positive political and economic reforms made by the government led western states (including the USA) to ease sanctions that had previously been imposed on the country. This resulted in an increase in foreign investment. The historic general elections in November 2015 provide an even greater opportunity for the new government to prioritize much needed human rights reforms.

Despite this, the economy of Myanmar is still dominated by the interests of Myanmar's military and a small number of powerful individuals known as 'cronies'. For decades, military-led governments gave preferential access to business opportunities to those in or connected to the military - including the military-owned conglomerate, the Union of Myanmar Economic Holdings Limited (UMEHL). It is important to note that until today UMEHL remains on the list of "Specially Designated Nationals" as part of the US sanctions programme.¹

The US Government must continue to enforce the "Reporting Requirements for Responsible Investment in Burma" (Reporting Requirements), as well as take steps to strengthen them. It is clear that poverty continues to be a problem in Myanmar and that investment has the potential to bring social and economic benefits to the people living there. As US companies continue to invest in Myanmar following the easing of sanctions, it is vital that they comply with their responsibility to respect human rights and that the US Government continues to use effective regulatory measures to ensure they do so. Without these, US companies risk exacerbating the human rights situation in Myanmar.

Amnesty International investigations in 2014-2015 show that foreign companies investing or operating in Myanmar are still causing or contributing to human rights abuses.² Our research confirms that Myanmar's regulatory framework continues to be very weak; the country still lacks basic legal safeguards to prevent business-related abuses. Land laws do not protect people against forced evictions and other abuses in the context of land acquisition for commercial uses such as mining. Despite reforms to environmental laws, Myanmar lacks both adequate standards and the technical capacity necessary to protect against the human impacts of pollution (e.g. health, livelihoods) caused by business.

¹ Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury, Specially Designated Nationals List (SDN), available at: www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx

² Amnesty International, *Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine*, February 2015, available at: www.amnesty.org/en/documents/ASA16/0003/2015/en; see also summary briefing available at: www.amnesty.org/en/documents/asa16/0004/2015/en

Amnesty International has also documented human rights violations and repression by security forces, including in response to community protests against extractive projects.³ A particularly egregious example was the police's use of white phosphorus munitions against monks and villagers who were peacefully protesting against the Letpadaung mine in central Myanmar in 2012. Amnesty International concluded that this act amounted to torture, and that the company operating the mine, Wanbao Mining, provided material assistance to the police.⁴ State investigations into such allegations are rare, perpetrators are seldom brought to justice, and there are no effective accountability mechanisms.

Amnesty International has called on other states that have companies investing in Myanmar to put in place safeguard measures to ensure that any company operating in the country respects human rights. The organisation sees the US Reporting Requirements as an important mechanism for achieving this goal, and as the leading precedent for other states to follow.

II. Corporate Human Rights Abuses Linked to the Monywa Mine Project

Amnesty International has conducted a detailed investigation into illegality and related serious human rights abuses linked to the Monywa copper mining project, in Sagaing Region.⁵ The Monywa project is a cautionary tale of how weak (or an absence of) legal protection can lead to abuses in the context of extractive operations in Myanmar. The abuses and illegal activity span two decades and involve the Myanmar authorities and Burmese, Chinese and Canadian companies. There remains a significant risk of further abuses at Monywa, including forced evictions, environmental pollution, and the excessive use of force by police in responding to community protests.

The project has a long history of forced evictions. In 1996 and 1997, thousands of villagers were driven from their homes and farmland - without any due process, consultation, or payment of adequate compensation - when the government nationalised land to make way for the Sabetauung and Kyisintaung (S&K) mine, operated by the State-owned ME1 and a subsidiary of Canadian company Ivanhoe Mines (now Turquoise Hill Resources). Ivanhoe Mines could not have been unaware of the impact of the land acquisition on affected people, but neither it nor ME1 took any corrective action.

In 2011, the project was taken over by a Chinese company, Wanbao Mining, and the military-owned Union of Myanmar Economic Holdings Limited (UMEHL). Between 2011 and 2014, more people were forcibly evicted from their homes and farmland after land was acquired for development of the Letpadaung mine. The authorities failed to meet necessary requirements under international human rights law. Wanbao's subsidiary both provided material assistance to the Myanmar authorities and also directly engaged in forced evictions itself. Thousands of people remain at risk of forced eviction.

³ Amnesty International, *Myanmar: Violent police crackdown against protesters must end*, 10 March 2015; Amnesty International, *Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine*, February 2015 pp. 41 – 60

⁴ Amnesty International, *Open for Business?* pp. 49 – 52

⁵ Amnesty International, *Open for Business?*

The government has also targeted activists and individuals who have opposed the Letpadaung mine and has repressed protests against it. On 29 November 2012 police used white phosphorus against villagers peacefully protesting against the mine, in an attack that left some people with severe and lifelong injuries. Amnesty International considers that this action amounted to torture, but no police officer or official has been investigated or prosecuted for their role in the attack. In another incident on 22 December 2014, Daw Khin Win, a farmer, was killed after police opened fire on protesters.

There are also ongoing concerns over the environmental impacts of the project. Hazardous waste materials were discharged from the S&K mine in 1995 and 1996 over a large area of land and into the local river. Up to present day the Government has allowed new mining operations to commence without ensuring a clean-up, and has left companies to self-monitor the environmental impacts of the new Letpadaung mine's operations. The Environmental and Social Impact Assessment for the mine contains fundamental gaps and weaknesses.

UMEHL illegally set up and operated a sulphuric acid factory, to supply acid to the mining operations, for six years without obtaining permission from the government. UMEHL has abused the right to health of villagers who live about 200 metres from the factory, but the government has taken no action against the company and allowed operations to continue. Overall, the Government has shown an unwillingness to monitor or hold companies accountable and this has been exacerbated by the role of UMEHL in the project.

III. Upholding the Reporting Requirements

Companies have a responsibility to respect all human rights wherever they operate. This is the prevailing global standard of expected conduct, as endorsed by the UN, governments and regional bodies and recognised in various international standards.⁶ Companies must carry out effective due diligence in order to identify, prevent and address actual or potential adverse human rights impacts resulting from their own activities or those of other parties with which they have a relationship.⁷

The seriousness of the ongoing human rights situation in Myanmar calls for enhanced human rights due diligence by any US business who is considering entering into investments or business relationships in Myanmar or has already done so. In some circumstances, this may mean that the company should decide not to pursue or continue that investment or relationship.

The US Burma Reporting Requirements are the leading precedent when it comes to home state's acting to hold their companies to account for their investment practices in Myanmar. They

⁶ See for example the UN Guiding Principles on Business and Human Rights

⁷ The type and scale of due diligence will vary depending on the nature and context of the company's operations and the risk of severe human rights impacts. As such, in certain circumstances, companies should be undertaking enhanced human rights due diligence to deal with the human rights risks specific to that situation.

indirectly provide for some human rights and environmental safeguards and this is essential given the proven unwillingness of the government of Myanmar to regulate companies for human rights abuses at the national level. Until these regulatory improvements are made, home states need to put measures in place to ensure that their companies operating there respect human rights.

In meeting these objectives, Amnesty International makes the following recommendations to the US Government:

Recommendations to the US Government

- Continue to collect data from US companies in line with the Reporting Requirements.
- Undertake diplomatic efforts to encourage other western states to implement similar measures.
- Strengthen the Reporting Requirements to require companies seeking to enter Myanmar to disclose publicly both their human rights due diligence policies and their actual practices.
- Eliminate the \$500,000 threshold for reporting investment in Myanmar.
- Impose meaningful sanctions if businesses fail to carry out such requirements.