



global witness



20 July 2016

Mr. John Kerry
Secretary of State
U.S. Department of State

Dear Secretary Kerry,

We, the undersigned organizations, write to express our disappointment with the U.S. Department of State’s (DOS) recent decision to raise the reporting threshold of the “Reporting Requirements on Responsible Investment in Burma” from \$500,000 to \$5,000,000.¹ **We urge DOS to issue a public statement explaining the reasons and supporting evidence to justify the need to increase the reporting threshold.**

The Reporting Requirements were established in 2013 to support political reform and to promote a democratic state that respects human rights and the rule of law.² The adoption of the Reporting Requirements was a remarkable step forward. The framework provides a critical tool for DOS to assess whether new investments in Burma support or undermine the United States’ policy goals, serve as a basis for DOS to assist U.S. companies to address adverse human rights impacts, and allow civil society to monitor and engage with involved companies.³

These functions were essential when the U.S. government first eased its sanctions on business investments in Burma in 2012, and they remain critical today. Although there have been some positive political changes, corruption is rife, the regulatory environment is weak, and preventing and addressing

¹ OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB NO. 1405-0209, REPORTING REQUIREMENT FOR RESPONSIBLE INVESTMENT IN BURMA (2016).

² 60-Day Notice of Proposed Information Collection: Reporting Requirements for Responsible Investment in Burma, 80 Fed. Reg. 73867, 73868 (Nov. 25, 2015).

³ Reporting Requirements, EMBASSY OF THE U.S. RANGOON, BURMA, <http://burma.usembassy.gov/reportingrequirements.html> (last visited 7 July 2016).

human rights abuses caused by business operations remain a key challenge in Burma.⁴ **There is a particular need to ensure that U.S. investments, large and small, do not exacerbate ongoing human rights abuses.** This is why over 50 civil society organizations and companies, including Coca-Cola and The Gap, submitted public comments this year supporting the renewal of the Reporting Requirements and calling on DOS to further strengthen them.⁵

Nonetheless, DOS responded to the overwhelming support for the Reporting Requirements by raising the reporting threshold tenfold without sufficient justification. DOS provided no adequate response to the many concerns raised by civil society organizations regarding the risk of business involvement in human rights abuses in Burma and the need to improve the reporting framework. Instead, DOS highlighted that comments from two business organizations suggested the Reporting Requirements might deter U.S. investment, and that the increase of the reporting threshold was therefore granted to minimize the burden on small and medium-sized entities.⁶

Such a decision was unfounded. The UN Guiding Principles on Business and Human Rights,⁷ formally supported by the U.S. government,⁸ clearly state that the responsibility to respect human rights applies to all business enterprises regardless of their size.⁹ Even if there are legitimate reasons to adjust policy measures for small and medium enterprises, DOS provided no explanation as to how the proposed reporting threshold was determined, how the new threshold would properly address the concerns raised by stakeholder groups. There is also no analysis on how many companies would no longer have to submit reports, and how many U.S. businesses are expected to invest under the \$5 million threshold in the near future.

In fact, **there is no evidence suggesting that the Reporting Requirements did create an undue burden on businesses that impedes investment in Burma.** On the contrary, two-way trade between the United States and Burma has significantly increased in the past three years.¹⁰ According to a U.S. Chamber of Commerce report published in June, the positive trade relationship is a result of the fact that U.S. companies and investments are well regarded in Burma because they adhere to the “gold standard” of investment, wherein business operations are socially responsible and respect human rights.¹¹ This is precisely what the Reporting Requirements were established to do, and maintaining a robust reporting

⁴ Yanghee Lee, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, 4, 15, U.N. Doc. A/HRC/31/71 (Mar. 18, 2016) available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/055/13/PDF/G1605513.pdf?OpenElement>; Global Witness, *Jade: Myanmar’s Big State Secret* (2015), available at <https://www.globalwitness.org/en-gb/campaigns/oil-gas-and-mining/myanmarjade/>.

⁵ *Reporting Requirements for Responsible Investment in Burma*, REGULATIONS.GOV, <https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=DOS-2015-0070&refD=DOS-2015-0070-0001> (last visited July 7, 2016).

⁶ OFFICE OF MGMT. & BUDGET, *supra* note 1, at 8.

⁷ Special Representative on Business and Human Rights, *United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy” Framework*, adopted by the Human Rights Council, 17th Sess., Mar. 21, 2011, U.N. Doc. A/HRC/17/L.17/31 (June 16, 2011) [hereinafter *Guiding Principles*].

⁸ U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. GOVERNMENT APPROACH ON BUSINESS AND HUMAN RIGHTS 3 (2013), available at <http://www.humanrights.gov/wp-content/uploads/2013/06/usg-approach-on-business-and-human-rights-updatedjune2013.pdf>.

⁹ *Guiding Principles*, *supra* note 7, at princ. 14.

¹⁰ U.S. CHAMBER OF COMMERCE, U.S.-MYANMAR COMMERCIAL RELATIONS: THE NEXT PHASE 42 (2016), available at https://www.uschamber.com/sites/default/files/us_-_myanmar_commercial_relations_-_the_next_phase_-_pdf.

¹¹ *Id.* at 43.

framework will further assist U.S. businesses while ensuring that all existing and incoming companies in Burma uphold this “gold standard.”

In conclusion, the dramatic increase of the reporting threshold is unwarranted and in total disregard of civil society’s recommendations. We are deeply disappointed in DOS’s decision. We urge DOS to properly respond to civil society’s concerns by issuing a public statement explaining the reasons and supporting evidence for the need to increase the reporting threshold.

Respectfully,



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