

BURMA: Letter to President Obama

November 15, 2012

The Honorable Mr. Barack Obama
President of the United States of America
The White House
1600 Pennsylvania Ave, NW
Washington, DC 20500

Dear President Obama,

We write this letter to express our concern about the possibility that the administration will act soon to relax the import ban on Burma, as announced by Secretary Clinton on September 26, 2012, before proper safeguards are in place. Given the potential human rights implications, this decision should be made deliberately, and in consultation with all relevant stakeholders – most importantly, with Burmese civil society and the democratic opposition. In this letter, we advocate for reasonable, pragmatic measures that would help address concerns about the human rights impacts of U.S. economic re-engagement and assist the U.S. Government to manage the national emergency with respect to Burma.

Overall, the U.S. should consult with Burmese civil society and encourage compliance with the OECD Guidelines for Multinational Enterprises. In addition, to help address specific sectorial concerns that present heightened risks of human rights abuse, the U.S. should take the following steps:

- Put in place targeted measures to block the import of jade and rubies
- Prevent blocked persons from benefiting from U.S. importing activities
- Encourage sustainable harvest of teak and hardwoods
- Screen goods produced in sectors with a heightened risk of forcible land acquisition
- Promote compliance with International Labor Organization (ILO) core labor standards.

Background

Despite the rapid changes and reforms that the Burmese Government has undergone in recent months, the conditions still exist that led you to announce in May that a state of emergency persists in Burma. Specifically, ethnic conflict still rages in Rakhine State, Kachin State, and Shan State. Communities seeking to engage in peaceful protest have been subject to arbitrary arrest and infringements of their rights to physical integrity, especially in connection with infrastructure and natural resource development projects. Widespread land confiscation impoverishes small-holder farmers and practitioners of shifting cultivation, particularly in ethnic minority areas. The military retains its hold over key sectors of the economy, and corruption is rampant. And despite rhetoric to the contrary, Burma remains defiantly un-transparent where it counts the most – in accounting for its oil and gas revenues, which provide the lion's share of the country's foreign revenue.

It was precisely these conditions that led the administration to enact calibrated safeguards in conjunction with waiving the investment and financial services bans for Burma. Specifically, the U.S. declined to waive the bans for armed groups and companies owned by armed groups, or for persons on the Specially Designated Nationals (SDN) list. Moreover, the U.S. issued Reporting Requirements for Responsible Investment in Burma that apply to new U.S. investments under General License No. 17. These measures were intended to ensure that U.S. economic reengagement does not privilege those who abuse human rights, foment conflict, and benefit from corruption; they will also serve to provide the U.S. Government with critical information to engage strategically with corporations newly investing in Burma, and to assess whether its economic policies are supporting or hindering efforts to manage the national emergency.

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In many ways, allowing Americans to import Burmese goods poses similar risks as the relaxation of the investment and financial services bans. Therefore, the decision to roll back the import ban should be approached with caution and attention to impact mitigation. We believe it is imperative that any relaxation of the import ban be accompanied by the following measures.

General Recommendations

Consult with Burmese Civil Society

We are deeply concerned that the administration is planning to relax the import ban without first consulting with and eliciting the concerns of Burmese civil society. If the U.S. sanctions regime is truly aimed at mitigating the human rights impacts of U.S. economic activity in Burma, it would surely be unduly hasty and inappropriate to take any major step without first consulting with the groups that have safeguarded the rights of the people of Burma through years of repression and violence.

Encourage Compliance with OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises provide a wide-ranging and internationally accepted framework for responsible business conduct that has been accepted and endorsed by the United States. The Guidelines cover many of our substantive concerns with U.S. economic reengagement in Burma, including environmental performance, human rights accountability, corruption, child labor and forced labor, and consumer protection. The Guidelines complement protections encoded in U.S. law, including the prohibition on importing goods made with forced labor. U.S. importers should commit to conducting themselves in a manner consistent with the Guidelines in all their operations, and the U.S. should make clear that the Guidelines apply to importers. Moreover, the U.S. National Contact Point for the OECD Guidelines should be strengthened and permitted to make findings of fact and issue determinations in specific instances.

Specific or Sectoral Recommendations

Maintain Absolute Ban on Jade and Rubies

The Burmese military continues to control the production of and trade in Burmese jade and rubies, which are important drivers of conflict in Shan and Kachin States. Military authorities and mining companies have been accused of running the gem mines under deplorable conditions, reportedly including rampant land confiscation, extortion, forced labor, child labor, environmental degradation, and hazardous working conditions. Since the mining of jade and rubies primarily benefits the military and others associated with human rights abuses and corruption, and is linked with conflict, the absolute ban on importation of Burma-origin jade and rubies should be maintained.

Prevent Importation of Goods Produced by Blocked Persons

The financial services and investment bans still prevent direct or indirect transactions with persons who are on the SDN list or with armed groups (including the Burmese military) and companies controlled by them. However, these “blocked persons” can still benefit from U.S. economic reengagement if U.S. persons buy goods or services produced by them but sold first to an exporter or middleman. In order to avoid benefiting the persons whom the U.S. has gone to great lengths to block, importers should be required to conduct due diligence in their supply chains and certify that blocked persons did not produce the goods they are importing in part or in whole. Importers should publicly disclose their due diligence procedures and the results so that consumers can make informed choices and civil society can better engage with importers. We note that the U.S. already maintains an import ban with respect to goods produced through forced labor that similarly places the onus on importers to avoid importing such products.

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Allow Importation of Teak and Hardwoods Only in Connection with Certified Sustainability Scheme

It is well documented that the teak and hardwoods harvest in Burma is conducted in a manner that is unsustainable and ecologically devastating to some of the world's most important remaining primary stocks of rare and economically valuable trees. Moreover, the teak trade has been under the control of the military and its allies and has in some instances been linked to ongoing conflict and associated abuses. Importers of teak and hardwoods should be required to report based on country of *harvest*, rather than using standard U.S. Customs country of origin rules. Imports of teak and hardwoods from Burma should be authorized only after the U.S. can certify that the Burmese Government has developed and implemented a framework for the sustainable harvest of those woods.

Screen Goods Produced in Connection with Large-Scale Land Acquisition

Land confiscation for the purpose of private economic activities is among the most common human rights abuses in Burma today, and is an important driver of corruption and armed conflict. Ethnic minorities – particularly practitioners of shifting cultivation – are disproportionately targeted for expropriation, which is aided by inadequate land laws that allow government bodies unfettered discretion to expropriate land designated as unused or fallow. The Reporting Requirements for Responsible Investment in Burma recognize land acquisition as a primary concern, and it would be counter-productive to U.S. policy if importers were permitted to import goods produced in connection with land-related abuses. The goods commonly produced in connection with abusive, large-scale land acquisition in Burma include, most prominently, rubber and other plantation agriculture products, minerals, and metals. Special Economic Zones – particularly the Dawei SEZ – are also associated with large-scale forcible land acquisition.

The U.S. should therefore maintain a ban on importation of all products having a heightened risk of connection with land-grabbing until our government can certify that Burma has developed and implemented a legal framework that protects small-holders and practitioners of shifting cultivation from abusive, forcible acquisition. Alternatively, importers of goods with heightened risk should be required to conduct due diligence as to the circumstances of the land acquisition, and to certify that the land was acquired consistently with international standards on displacement. This due diligence should be publicly disclosed.

Address Concerns about Poor Labor Conditions

Our organizations are concerned that apparel producers and other light manufacturers will take advantage of the relaxation of the import ban to set up production in Burma in order to operate in an environment with inadequate and poorly enforced labor standards. The U.S. should employ lessons learned from past experiences in avoiding the “race to the bottom” for labor standards in South and Southeast Asia and implement proper incentives to ensure compliance with ILO core labor standards.

We thank you for your consideration of these recommendations and hope that you will work with us and with Burmese civil society to ensure that U.S. economic reengagement in Burma benefits the people of Burma broadly and avoids contributing to human rights abuses, conflict, and corruption.

Signed by:
AFL-CIO
Conflict Risk Network
Freedom House
Human Rights Watch
Institute for Asian Democracy

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International Labor Rights Forum
Open Society Foundations
Physicians for Human Rights
United to End Genocide
US Campaign for Burma

Copies Sent To:

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Michael Posner, Assistant Secretary of State, Bureau of Democracy, Human Rights and Labor, Department of State
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