

Testimony of Marco Simons in Front of the Tom Lantos Human Rights Commission:
Business and Human Rights in Burma (Myanmar)

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Business and Human Rights in Burma (Myanmar)
Testimony of Marco Simons¹

Tom Lantos Human Rights Commission
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Chairman McGovern, Chairman Wolf, and members of this Commission, thank you for inviting me to testify on this important and timely topic.

Overview

This submission describes the emerging landscape as U.S. businesses reengage in Burma and identifies specific human rights concerns associated with current and prospective corporate activities in Burma (Myanmar). A number of companies, including General Electric, have already invested in Burma, and U.S. oil supermajors are considering participation in upcoming auctions for oil blocks. Increased foreign investment has already been linked to large-scale displacement of local communities and loss of traditional livelihoods in Burma. The legal framework for land rights is inadequate to protect the fundamental human rights of those whose homes and fields stand in the way of economic development; indeed, it facilitates arbitrary and inadequately compensated alienation of land. Moreover, violence and gross human rights abuses continue to occur in association with natural resource development projects, as at the Letpadaung Copper Mine at Monywa, and in Shan State along the Shwe Gas Pipeline corridor.

Having decided that public disclosure, rather than regulation, is a more appropriate tool to address the human rights and environmental concerns associated with Western investment in Burma, the U.S. Government has proposed Reporting Requirements for Responsible Investment in Burma that are expected to take effect prior to April 2013. While they may assist government and civil society to monitor the human rights implications of the relaxation of U.S. sanctions on Burma, these Reporting Requirements have a number of troubling weaknesses that may allow serious human rights risks to avoid detection. Moreover, while the U.S. is now allowing the World Bank and the Asian Development Bank to extend loans to Burma, such projects are already being met with complaints over lack of transparency and consultation.

I. Background

A. Brief History of Business and Human Rights Issues in Burma

Once one of Southeast Asia's wealthiest nations, Burma dramatically deteriorated over fifty years under military rule, leaving a country that is now riddled with poverty, corruption, and serious human rights violations.² Despite the recent progress in political and economic affairs,

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² *Burma*, FREEDOM HOUSE, <http://www.freedomhouse.org/report/freedom-world/2013/burma>.

the new civilian government remains beholden to the military, which continues to engage in human rights abuses with impunity.

Under the military junta that exercised absolute power in Burma until recently, many forms of economic development were closely linked to armed conflict and human rights abuses. Security forces in Burma – often in conflict zones, which have the highest concentrations of natural resources and fertile land in the country – have a long history of committing acts of brutal repression in the course of securing areas for extractive operations and agribusiness. As ERI's testimony will show, this pattern, which includes most prominently abuses such as land confiscation, forced labor, arbitrary detention, torture, and killings, continues under the present regime.

The Yadana pipeline project, which carries natural gas from the Andaman Sea across southeastern Burma to Thailand, has been Burma's largest source of export revenue for over fifteen years and is emblematic of the business and human rights link in the Burmese context. During the construction of the Yadana pipeline, Burmese security forces working on behalf of Unocal, a U.S. oil company now owned by Chevron, and Total S.A. committed a variety of egregious human rights violations against local villagers. These abuses included forcible relocation of villages to make way for pipeline facilities or to clear out populations believed to support rebel armed groups; conscription of villagers into forced labor for construction of the pipeline and associated facilities, and multiple incidents of rape, torture, and murder.³ These abuses were the subject of the groundbreaking *Doe v. Unocal* lawsuit in the United States. And although the intensity of human rights abuses abated after the construction of the pipeline was complete, ERI's researchers have continued to observe violations of fundamental rights by military forces associated with the companies and the pipeline.⁴

Similar abuses have long been reported in association with jade and ruby mining – historically also a major source of export revenue. Military authorities and mining companies together 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.⁵ Burma's regime continues to tightly control the gemstone industry and reap significant revenues from it.⁶ Moreover, control over jade-producing areas may be an important factor in the continued violence in Kachin State.⁷

³ See generally ERI & SOUTHEAST ASIAN INFORMATION NETWORK, TOTAL DENIAL: A REPORT ON THE YADANA PIPELINE PROJECT IN BURMA (July 1996); ERI, TOTAL DENIAL CONTINUES: EARTH RIGHTS ABUSES ALONG THE YADANA AND YETAGUN PIPELINES IN BURMA (Dec. 2003).

⁴ See ERI, ENERGY INSECURITY: HOW TOTAL, CHEVRON, AND PTTEP CONTRIBUTE TO HUMAN RIGHTS VIOLATIONS, FINANCIAL SECRECY, AND NUCLEAR PROLIFERATION IN BURMA (MYANMAR) 9-13 (July 2010).

⁵ See generally 8808 FOR BURMA, BLOOD JADE: BURMESE GEMSTONES AND THE BEIJING GAMES (2008), at <http://www.burmalibrary.org/docs5/bloodjade-red.pdf>.

⁶ See U.S. State Dept., 2009 Human Rights Report: Burma, at <http://www.state.gov/j/drl/rls/hrrpt/2009/eap/135987.htm> (child labor in ruby mining); Dan McDougall, *The curse of the blood rubies: Inside Burma's brutal gem trade*, DAILY MAIL, Sept. 18, 2010, available at <http://www.dailymail.co.uk/home/moslive/article-1312382/The-curse-blood-rubies-Inside-Burmas-brutal-gem-trade.html> (forced labor and corruption in rubies trade).

⁷ See, e.g., *More displaced as Kachin war intensifies*, KACHINLAND NEWS, Aug. 22, 2012, at <http://kachinlandnews.com/?p=22202> (Kachin communities flee Burmese Army march on Hpakant jade mining area); Zin Linn, *Burma Must End War In Kachin State To Show Empathy For Refugees – Op Ed*, EURASIA REVIEW, Sept. 3, 2012, at <http://www.eurasiareview.com/03092012-burma-must-end-war-in-kachin-state-so-show-empathy-for-refugees-oped/> (heavy fighting around jade mines).

In the last years of the military regime, land confiscation for large-scale agricultural concessions increased in pace.

B. Imposition and Relaxation of Sanctions

In the wake of the 1988 repression and over the following twenty-two years, the U.S. Government imposed, enlarged, and reauthorized a mosaic of interlocking economic sanctions on Burma by legislation, Executive Order, and regulation. Together, these sanctions effectively blocked all new investment in the country; prevented Americans from importing a variety of Burmese goods and natural resources; froze the assets of Burmese individuals who were involved in human rights abuses, corruption, or armed conflict; and prohibited the provision of financial services to Burma.⁸ Other Western nations and political entities followed suit, enacting crippling but less far-reaching sanctions regimes.⁹

In the aftermath of the 2011-12 political transition, the sanctions regimes changed rapidly. Encouraged by the perceived success of parliamentary elections, the European Union, Canada, Australia, and Switzerland announced that they would suspend most sanctions against Burma in April 2012,¹⁰ leaving in place only an arms embargo.

The United States, with its more comprehensive sanctions architecture, began to ease sanctions a few months later. In May 2012, President Obama continued for one year the state of emergency with respect to Burma that activates the Executive's powers under the International Emergency Economic Powers Act (IEEPA) – the statutory basis for the investment and financial transactions sanctions.¹¹ In July 2012, the U.S. Government announced broad waivers to allow new investments and financial services, except with respect to entities associated with the military and other Burmese armed groups, or with persons on the sanctions list. Simultaneously, it proposed a new requirement for new investors to report extensively on human rights, environmental, and other policies and procedures, as well as on their security arrangements and their payments to the Burmese Government.¹² In August 2012, Congress voted to reauthorize the

⁸ See Michael F. Martin, *U.S. Sanctions on Burma* 1-3, CONGRESSIONAL RESEARCH SERVICE, Oct. 19, 2012

⁹ For an overview of international sanctions regimes, see BURMA INDEPENDENCE ADVOCATES, BURMA SANCTIONS REGIME: THE HALF FULL GLASS AND HUMANITARIAN MYTH 10-11, 18-19 (2011), at <http://www.burmaadvocates.org/Burma%20Sanctions%20Assessment.pdf>.

¹⁰ See *Australia softens sanctions on Myanmar; UK favors suspension*, CNN, Apr. 18, 2012, at <http://www.cnn.com/2012/04/16/world/asia/myanmar-australia-sanctions>; *EU agrees to suspend most Burma sanctions*, BBC, Apr. 23, 2012, at <http://www.bbc.co.uk/news/world-asia-17813656>; *Most trade sanctions against Myanmar lifted*, SWISS BROADCASTING CORPORATION, Apr. 26, 2012, at http://www.swissinfo.ch/eng/politics/foreign_affairs/Most_trade_sanctions_against_Myanmar_lifted.html?cid=32557826; *Canada suspending Burma sanctions*, CANADIAN BROADCASTING CORPORATION, Apr. 24, 2012, at <http://www.cbc.ca/news/politics/story/2012/04/24/burma-canada-sanctions.html>.

¹¹ President Barack Obama, *Notice – Continuation of the National Emergency with Respect to Burma*, May 17, 2012, at <http://www.whitehouse.gov/the-press-office/2012/05/17/notice-continuation-national-emergency-respect-burma>.

¹² U.S. Dep't of the Treasury, Office of Foreign Assets Control, *Release of Executive Order Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma; Burma Designations; Release of Burma General Licenses*, July 11, 2012, at <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120711.aspx>.

import ban for three years; three months later, President Obama announced a waiver of that ban for all goods except Burmese rubies and jade.¹³

C. Key Features of U.S. Economic Reengagement in Burma

With the relaxation of economic sanctions and the eagerness of the new regime to open the economy to foreign investment, many predicted a “gold rush” of Western companies rushing in to exploit Burma’s untapped markets and rich natural resources, an expectation that has been, in some ways, justified.¹⁴ However, Burma’s rampant corruption, crumbling infrastructure, and practically nonexistent banking and legal architecture have given pause to many investors – in particular, to U.S. companies.¹⁵

That said, a number of major U.S. firms have already jumped at the opportunity to invest. General Electric became the first major U.S. company to invest in Burma, opening an office in Yangon and signing deals involving aviation, health care, and energy within months of the easing of sanctions.¹⁶ Both PepsiCo and Coca Cola are competing to bottle and market soft drinks to consumers in Burma.¹⁷ Western telecommunications companies are eyeing the Burmese market,¹⁸ raising questions of privacy and electronic surveillance similar to those that have dogged companies operating in China.

The U.S. Government is seeking to promote U.S. investments in Burma; at the time of this writing, a government delegation including Assistant Secretary of State José Fernandez was accompanying dozens of U.S. business executives in Burma to assist them with securing lucrative contracts. The Assistant Secretary’s visit has underlined some of the particular risks of investment in Burma at this time; he has already been photographed shaking the hand of a Burmese business leader who is currently on the U.S. sanctions list.¹⁹ Moreover, his visit coincided with the removal of four Burmese banks from the sanctions list, two of which are

¹³ *Congress reauthorizes import ban on Myanmar*, REUTERS, Aug. 2, 2012, at <http://www.reuters.com/article/2012/08/02/us-usa-myanmar-sanctions-idUSBRE8710YC20120802>; *U.S. eases import ban on Myanmar ahead of Obama trip*, REUTERS, Nov. 16, 2012, at <http://www.reuters.com/article/2012/11/16/us-usa-myanmar-imports-idUSBRE8AF1E120121116>.

¹⁴ See, e.g., Nirmal Ghosh, *Gold rush to Burma as country opens up*, JAKARTA POST, Feb. 1, 2012, at <http://www.thejakartapost.com/news/2012/02/01/gold-rush-burma-country-opens.html>; Eric Rosenkranz, *The Myanmar gold rush is on*, THE NATION, Aug. 11, 2012, at <http://www.nationmultimedia.com/opinion/The-Myanmar-gold-rush-is-on-30188060.html>.

¹⁵ See, e.g., Erika Kinetz, *Eased Myanmar sanctions no gold rush for U.S. firms*, AP, Nov. 22, 2012, at <http://news.yahoo.com/eased-myanmar-sanctions-no-gold-rush-us-firms-014944723--finance.html>; see also Joshua Kurlantzick, *Why Investors Should Tread Warily in Myanmar*, BLOOMBERG BUSINESSWEEK, Nov. 18, 2012, at <http://www.businessweek.com/articles/2012-11-18/why-investors-should-tread-warily-in-myanmar#p2>.

¹⁶ See Kathy Chu, *GE Sets Sights on Myanmar*, WALL STREET JOURNAL, Jan. 17, 2013, at <http://online.wsj.com/article/SB10001424127887323468604578248602074102308.html>.

¹⁷ See *PepsiCo to sign Myanmar bottling deal as rivalry with Coke grows*, REUTERS, Nov. 13, 2013, at <http://www.reuters.com/article/2012/11/13/us-pepsico-myanmar-idUSBRE8AC09A20121113>.

¹⁸ 4 telecoms firms eye Myanmar, MYANMAR BUSINESS NETWORK, Jan. 23, 2013, at <http://www.myanmar-business.org/2013/01/4-telecom-firms-eye-myanmar.html>.

¹⁹ See Erica Kinetz, *US caught in awkward embrace of Myanmar 'crony'*, AP, Feb. 25, 2013, at <http://www.usnews.com/news/world/articles/2013/02/25/us-caught-in-awkward-embrace-of-myanmar-crony>.

owned by Burmese businessmen who have been identified by the U.S. government has cronies of the former military regime.²⁰

Burma is also making great efforts to attract Western oil companies to bid for offshore and onshore oil blocks. A planned 2012 bidding round for offshore oil blocks was delayed at the last minute because of concerns from Western firms about transparency – particularly the continued involvement of the Myanmar Oil and Gas Enterprise (MOGE), which has been widely identified with the formerly military regime and is notorious for corruption.²¹ There are, however, reports of more interest from U.S. supermajors Chevron, Exxon Mobil, and Conoco Phillips in an upcoming onshore round, scheduled for March 2013.²²

II. Emerging Business and Human and Rights Concerns in Burma

The past decade in Burma has seen large-scale confiscation of land from small farmers in Burma for agricultural and natural resource extraction projects. Unfortunately, the pace of confiscation appears to be continuing unabated under the current government, and may accelerate due to a new legal framework that offers fewer protections than before, as well as increasing foreign investment. At the same time, conflicts arising out of land use, especially natural resource extraction projects, are increasing, and have resulted in violent abuses in several high-profile cases.

A forthcoming report by the Karen Human Rights Group provides extensive documentation on a wide range of economic development projects – notably, extractive, infrastructure, and plantation agriculture projects – in eastern Burma. The report concludes that such projects are frequently carried out unilaterally, without consultation or information disclosure; are often associated with militarization at project sites; have limited benefits for local communities; and cause widespread displacement. Local communities commonly suffer serious additional human rights impacts, including forced labor, environmental degradation, physical threats and arbitrary detention, and destruction of livelihoods. And their ability to deter these impacts is compromised by the paucity of information on projects, legal barriers to redress, threats of violence, and the lingering effects of past trauma.²³

These trends should serve as a warning to U.S. and other investors considering projects that involve the use of large areas of land, especially in rural areas.

A. Land Confiscation in Burma

1. Recent trends in land confiscation

²⁰ See Aung Hla Tun, *U.S. gives banking green light to Myanmar tycoons*, REUTERS, Feb. 25, 2013, at <http://www.reuters.com/article/2013/02/25/myanmar-usa-banks-idUSL1N0BP0GI20130225?rpc=401>.

²¹ See William Boot, *MOGE-Linked Contractor Co-Hosts Energy Ministry Oil Conference*, THE IRRAWADDY, Feb. 23, 2013, at <http://www.irrawaddy.org/archives/27562>.

²² See *Myanmar welcomes Western oil giants*, MYANMAR BUSINESS NETWORK, Feb. 2, 2013, at <http://www.myanmar-business.org/2013/02/myanmar-welcomes-western-oil-giants.html>.

²³ KAREN HUMAN RIGHTS GROUP, *DISENFRANCHISING DEVELOPMENT: LAND CONFLICTS AND COLLECTIVE ACTION IN EASTERN MYANMAR* (forthcoming).

Burma remains a mostly rural country, in which the majority of the population relies on small farms for their livelihoods. Unfortunately, landlessness has been on the rise for years, and the pace of land confiscation may be increasing.

The importance of small farmers²⁴ in Burma is difficult to overstate. According to the Land Research Action Network:

[N]early three-fourths of the population or about 40 million people – live in rural areas and rely on farmland and forests for their daily needs and livelihoods. Agriculture (including livestock and fisheries) contributes about one-third of the country's gross domestic product (GDP) and 15 percent of total export earnings, and employs over 60 percent of the nation's labour force (2008-09 government data).²⁵

For example, in six villages that will be relocated to make way for the Dawei Special Economic Zone, about 6,000 out of 10,000 villagers are farmers. Most of the remainder work on local plantations. Locals have traditionally been able to provide for most of their food, water, and housing needs from the land and rivers; as one villager put it, "There is no other place like our village... I am very concerned that we cannot access such a place elsewhere."²⁶

Support for small farmers can promote equitable social development, help to resolve conflict, protect food security, improve gender equality, and encourage sustainable agricultural practices.²⁷ Research by the Food and Agriculture Organization (FAO) has found, for example, that small farmers invest more in their land when they have secure land rights, and that small farmers in general produce more food than mono-crop plantations.²⁸ Moreover, land disputes are often traceable to insecure tenure, and have the potential to derail progress towards a lasting peace in the ethnic minority states of Burma.²⁹ Rampant land confiscation and landlessness, by contrast, have been associated with malnutrition and food insecurity.³⁰

Rural landlessness has been on the increase in Burma for a variety of reasons, including civil war, indebtedness, and outright land grabbing. As of 2012, nearly one quarter of Burma's farmers were estimated to be landless – a fraction that reached more than half in some areas.³¹ Moreover,

²⁴ In Burma, small farms are considered to be those that do not exceed 10 acres; this definition is complicated, however, by the situation of farmers who practice shifting cultivation, who may range over larger areas of land, as well as widespread use of common resource land. See Land Core Group of the Food Security Working Group, *The Role of Land Tenure Security for Smallholder Farmers in National Development* 1 (2012).

²⁵ Land Research Action Network, *Land Not For Sale in Myanmar* (Oct. 12, 2012), at <http://www.landaction.org/spip.php?article666>.

²⁶ Thukha Thakin, *Dawei Development Project is Creating the Negative Impacts of Land Confiscation, Changing Lifestyles, and Lack of Livelihoods for Local People East and West of Dawei* 144-45, in EARTHRIGHTS INTERNATIONAL, *WHERE THE CHANGE HAS YET TO REACH: EXPOSING ONGOING EARTH RIGHTS ABUSES IN BURMA (MYANMAR)* (2012).

²⁷ Land Core Group 2012, *supra* note 24, at 2.

²⁸ FAO, *Land Tenure and Rural Development*, 3 FAO LAND TENURE SERIES ¶ 2.1 (2002); Land Core Group 2012, *supra* note 24, at 2.

²⁹ Land Core Group 2012, *supra* note 24, at 4-5.

³⁰ See, e.g., TRANSNATIONAL INSTITUTE, *FINANCING DISPOSSESSION: CHINA'S OPIUM SUBSTITUTION PROGRAMME IN NORTHERN BURMA* 35 (Feb. 2012).

³¹ Land Research Action Network 2012, *supra* note 25.

in many areas the average plot size has shrunk to under 5 acres, which is below subsistence level.³²

A key driver of land loss has been the reallocation of farmers' land for economic development projects. Reports of land grabbing fill the newspapers in Burma, and the total amount of farmed land turned over to private entrepreneurs in recent years has reached between 1.5 and 2 million acres.³³ While land confiscation is common in a number of sectors, at least one important factor has been the Ministry of Agriculture and Irrigation's 30-year Master Plan for the Agriculture Sector (2000-01 to 2030-31), which aims to convert 10 million acres of "wasteland" for private industrial agricultural production.³⁴ Overall, it is estimated that 28 million acres of "arable land" could eventually be turned over to investors.³⁵ Moreover, the anticipation of high prices has already led to cases in which wealthy business interests have bought up large tracts of land in hopes of getting compensation from the government when that land is confiscated, thereby distorting prices and making land unaffordable for locals.³⁶

The areas that have been hardest hit by large-scale land confiscations have been ethnic minority states such as Kachin State and Shan State, as well as Tenasserim Region, which is populated mainly by ethnic Karen, Tavoyan, and Mon peoples. Over a million acres of land in Tenasserim have been transferred to developers, while the largest increases in recent years have been in Kachin State and northern Shan State, both conflict zones where China has financed private enterprise schemes to replace opium cultivation.³⁷

2. Causes of land confiscation

Displacement of small farmers has occurred primarily for the following types of economic activity: commercial agriculture, oil and gas, and Special Economic Zones (SEZs).

Commercial agriculture

In recent years, more land has been taken from communities for large-scale agricultural plantations than for any other commercial activity. As a result, land in some areas has become a speculative commodity, and powerful politicians, landowners, and entrepreneurs bribe land registry officials or use powerful connections to register occupied land or obtain concessions in

³² *Id.*

³³ See DISPLACEMENT SOLUTIONS, MYANMAR AT THE HLP CROSSROADS: PROPOSALS FOR BUILDING AN IMPROVED HOUSING, LAND AND PROPERTY RIGHTS FRAMEWORK THAT PROTECTS THE PEOPLE AND SUPPORTS SUSTAINABLE ECONOMIC DEVELOPMENT 5-6 (Oct. 2012); Land Research Action Network 2012, *supra* note 25. The majority of this land has not been developed for the purposes for which it was originally granted, and in some cases farmers have been allowed to remain on the land as before. However, the promised flood of investment is now leading some entrepreneurs to reassert their ownership rights and expel their tenants in preparation for expansion. See, e.g., *Burmese land ownership a work in progress*, MIZZIMA NEWS (Aug. 23, 2012), at <http://www.mizzima.com/news/inside-burma/7829-burmese-land-ownership-a-work-in-progress.html>.

³⁴ Land Research Action Network 2012, *supra* note 25.

³⁵ DISPLACEMENT SOLUTIONS 2012, *supra* note 33, at 7.

³⁶ *Id.* at 9.

³⁷ Land Research Action Network 2012, *supra* note 25.

their name in hopes of being bought out by the government, or receiving investment to develop the land.³⁸

Few farmers in Burma have formal title to their land, and all land in the country has long been owned by the state. In order to allow large-scale agricultural development, the government simply allocates land to companies. Under the laws governing these concessions, the land is supposed to be cultivated within a few years, but in many cases it is simply taken; one group has estimated that only 20-30% of these concessions are actually under cultivation.³⁹

In Tenasserim Region, the Burmese Government has promoted palm oil production, leading to the transfer of over 1 million acres of farmland to private investors – most notably the Yuzana Company, owned by Htay Myint, who is subject to U.S. sanctions.⁴⁰ The large-scale conversion of land to palm oil plantations has led to the widespread clearing of forests on which communities rely; in many cases, the land has not even been used for plantations but rather has been clearcut for timber sales.⁴¹ PTT, the Thai energy company, has recently announced plans to develop a 100,000 hectare plantation in Tenasserim.⁴²

Kachin and Northern Shan State have seen the highest growth rate of land grabbing in recent years.⁴³ This trend is fueled largely by China's opium substitution program, in which the Chinese government provides various forms of financial and administrative benefits to Chinese businesses that establish monocrop plantations in border areas that have traditionally been key locations for poppy cultivation.⁴⁴

These developments have turned the uplands of Kachin and Northern Shan States into a “rubber belt,” with over 100,000 acres planned in 2010-11 – nearly all financed by the Chinese opium substitution program.⁴⁵ Much of this acreage constitutes confiscated land that previously was used by villagers; as described in greater detail below, the legal architecture of land tenure makes *taungya* (shifting cultivation) land that is an important part of uplands agriculture in these areas particularly vulnerable.

In addition to rubber, two Burmese companies with rumored Chinese financial backing – Yuzana and Jadeland – received concessions of approximately 200,000 hectares total to grow cassava and other crops in Hugawng Valley Tiger Reserve, leading to environmental damage, conflicts

³⁸ See, e.g., TNI 2012, *supra* note 30, at 61 (describing loss of community forest to well connected private investor who was able to receive land concession despite informal demarcation of traditional territory).

³⁹ Land Research Action Network 2012, *supra* note 25.

⁴⁰ Land Research Action Network 2012, *supra* note 25; *Tracking the Tycoons*, THE IRRAWADDY (Sept. 2008), at http://www2.irrawaddy.org/article.php?art_id=14151&page=5;

⁴¹ Land Research Action Network 2012, *supra* note 25; TNI 2012, *supra* note 30, at 35.

⁴² *PTT buying up palm oil farms*, DAWEI PROJECT, June 1, 2012, at <http://daweiproject.blogspot.com/2012/06/ptt-buying-up-palm-oil-farms.html>.

⁴³ *Id.*

⁴⁴ See TNI 2012, *supra* note 30, at 22-23. While China ostensibly provides this support in order to fight the drug trade, it reaps the benefits of increased imports of Chinese-grown rubber, an important strategic commodity. *Id.* at 28.

⁴⁵ *Id.* at 40-42. As Myanmar official statistics are notoriously inaccurate, it is difficult to ascertain whether these goals are being met.

with local villagers and the confiscation of 1,450 hectares of village land by mid-2010.⁴⁶ The transfer of so much land to Chinese-backed business interests – both in government-controlled and ceasefire areas – has caused widespread loss of farmland, decreased the available amount of land for traditional swidden agriculture, reduced average farm plot sizes, and decreased food security in the affected provinces, where rates of landlessness now reach 50 percent and more in many townships.⁴⁷

To date, most agricultural concessions have been granted to Burmese companies. As described below, however, the new foreign investment laws allow greater participation of foreign companies in large-scale commercial agriculture, and will likely increase the pace of land confiscations.

Oil and gas projects

Pipeline construction in Burma has historically been associated with serious human rights abuses – including forced displacement – and the pattern continues along the route of the Shwe pipelines, which are currently under construction.⁴⁸ The Shwe Oil and Gas Project is a major energy development linking the Shwe natural gas fields in the Bay of Bengal off southwestern Burma with Yunnan Province in China. Comprising two parallel pipelines – one to carry natural gas and the other to carry crude oil from a new port facility on Madaya Island – the project crosses the entirety of Burma, including environmentally sensitive areas and conflict zones in Northern Shan State.⁴⁹

Displacement along the Shwe pipelines began in 2010 at the latest. Villagers on Madaya and Ramree Islands and other areas of Kyaukpadaung Township in Rakhine State reported that their land, including subsistence farming plots, had been confiscated by Daewoo International and China National Petroleum Corporation (the principle foreign investors in the pipelines), and by Asia World Company Ltd. (a Burmese contractor and construction company that is closely linked to the former military regime) to build onshore facilities for the Shwe Gas Project.⁵⁰ Many people have no warning that the government is planning to take their land, or hear about it only second-hand, until the order arrives for them to clear out. Villagers elsewhere in Arakan State have word that they too will be displaced; compensation has been inconsistent at best and non-existent at worst.⁵¹

This pattern has been replicated along the entire pipeline route. At the other end of the pipeline corridor, in the ethnic Ta'ang area of Namkham Township in Northern Shan State, surveyors

⁴⁶ *Id.* at 63.

⁴⁷ *Id.* at 35, 44, 74

⁴⁸ Physical displacement and land confiscation are not the only forms of displacement that communities have suffered as a result of the Shwe project. Fishermen in Kyaukpadaung Township have reported that waters that previously were their traditional fishing grounds have been closed to them, leaving them unable to sustain their customary livelihoods. See EARTHRIGHTS INTERNATIONAL, BROKEN ETHICS: THE NORWEGIAN GOVERNMENT'S INVESTMENTS IN OIL AND GAS COMPANIES OPERATING IN BURMA (MYANMAR) 28 (Dec. 2010).

⁴⁹ ERI, THE BURMA-CHINA PIPELINES, *supra* note 50, at 2-3; see also TSYO 2012, *supra* note 55, at 15.

⁵⁰ EARTHRIGHTS INTERNATIONAL, THE BURMA-CHINA PIPELINES: HUMAN RIGHTS VIOLATIONS, APPLICABLE LAW, AND REVENUE SECRECY 8 (Mar. 2011); ERI, BROKEN ETHICS, *supra* note 48, at 25-26.

⁵¹ ERI, THE BURMA-CHINA PIPELINES, *supra* note 50, at 8-9.

have repeatedly entered farmers' land, erected barriers, and summarily informed villagers that their land is being appropriated. Farms have been destroyed, and villagers have been forced to stop growing crops on large portions of their land.⁵² Information on the project is often unavailable, and neither the Burmese Government nor the pipeline companies have conducted consultations with villagers.⁵³ Altogether, approximately 2,000 Ta'ang households in Northern Shan State have been forcibly relocated and lost land because of the pipeline project.⁵⁴ Compensation is expected to be inadequate and inconsistent with international standards, which require resettlement and assistance in adjusting livelihoods strategies.⁵⁵ Moreover, government officials have informed villagers that only those with official land titles will receive compensation, a particularly severe problem in a region where only one-sixth of small farmers actually possess legal land documents and shifting *taungya* cultivation is the norm.⁵⁶

Land confiscation along the Shwe pipeline has created tremendous opportunities for corruption, further imperiling the farmers who are displaced. ERI field interviews have revealed that MOGE, Burma's notoriously corrupt state-owned petroleum company, has in some cases retained up to 50% of land compensation payments made by construction companies that destroy farmers' land. ERI has also discovered that Infantry Battalion (IB) 34 in Kyauk Phyu and the naval squadron based at Dyanawaddy, both on Ramree Island, Rakhine State, have confiscated local farmers' untitled land and sold it to Myanmar Golden Crown (Burma) and Punj Llord (India), two construction companies that are building the onshore gas terminal for the Shwe project.⁵⁷

Special Economic Zones

Land grabbing has become a particular concern in communities surrounding the planned Dawei Special Economic Zone (SEZ) in Tenasserim Region. Since 2008, the Thai company Italian-Thai Development Corp. has been developing Dawei pursuant to a Memorandum of Understanding with the Burmese Government. Plans for the SEZ include heavy industries, a petrochemicals complex, major road and rail links, and a deep seaport that could provide Thailand with a direct transport link to India and the Middle East.⁵⁸ Thailand has been criticized for using the Dawei SEZ project to export some of its most polluting industries to neighboring Burma.⁵⁹

⁵² Mai Mao Dang, *The Negative Impacts of Burma-China Natural Gas and Oil Pipelines on Local Villagers through Land Confiscation in Western Namkham Township, Ta'ang Area, Northern Shan State*, in ERI, WHERE THE CHANGE HAS YET TO REACH, *supra* note 26, at 228-29, 231-32, 234

⁵³ *Id.* at 232, 236.

⁵⁴ *Id.* at 233.

⁵⁵ *Id.* at 232; see also TA'ANG STUDENTS AND YOUTH ORGANIZATION, PIPELINE NIGHTMARE: SHWE GAS FUELS CIVIL WAR AND HUMAN RIGHTS ABUSES IN TA'ANG COMMUNITY IN NORTHERN BURMA 30 (Nov. 2012); compare Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, *Basic Principles and Guidelines on Development-Based Evictions and Displacement* ¶ 61, U.N. Doc. A/HRC/4/18 Annex 1; International Finance Corporation, *Performance Standard 5* ¶¶15-16, 19.

⁵⁶ Mai Mao Dang 2012, *supra* note 52, at 229.

⁵⁷ For information on findings of military land confiscations associated with the Shwe project, see *Investigation body discloses military's land confiscations in western Myanmar*, MYANMAR NEWS LINKING SITE, Dec. 15, 2012, at <http://www.news.myanmaronlinecentre.com/2012/12/15/investigation-body-discloses-militarys-land-confiscations-in-western-myanmar/>.

⁵⁸ See Dawei Development Company Limited, *Project Overview*, at <http://www.daweidevelopment.com/index.php/en/dawei-project/project-overview->.

⁵⁹ See, e.g., Stuart Deed, *How will the Dawei project benefit Myanmar?*, MYANMAR TIMES, Nov. 5, 2012, at <http://www.mmtimes.com/index.php/opinion/2883-how-will-the-dawei-project-benefit-myanmar.html> (quoting Thai

Official figures suggest that 32,274 individuals will be displaced from 52,361 acres of land in order to make way for the SEZ, and that hundreds more will be displaced for a dam that will provide power to the development. According to research by Paung Ku, a local Burmese civil society network, however, the official numbers fail to recognize the full number of people subject to “direct” land grabs, and the total displaced population is likely to be up to 50,000.⁶⁰ The displaced are slated to be resettled on smaller plots of land than they originally farmed, isolated from their former communities and with no plan for restoring their livelihoods.⁶¹

Paung Ku also notes that the number of direct land grabs does not take into account “indirect” land grabbing, by which well-connected speculators invest in Dawei real estate, driving up prices astronomically and effectively pricing locals out of the land market. These entrepreneurs then sell land rights to Italian-Thai and other development companies, often without the knowledge of the traditional occupiers of the land, who are deprived of their access to the land without compensation.⁶²

Moreover, the farmers subject to land confiscation also suffer at the hands of corrupt officials. For example, the Dawei Development Association (DDA) has informed ERI that U Tin Maung Swe, the former Chairman of the government-sponsored Supporting Committee for the Dawei SEZ, was removed from his post in late 2012. According to DDA’s interviews with local community members, he had been helping himself to 10% of the compensation paid to farmers displaced by the development in return for expediting payments. And ERI field interviews reveal that wealthy business people have registered land farmed by small farmers in their own name, thereby successfully claiming the compensation paid by Italian-Thai – which should be due to the farmers – by virtue of their fraudulently held titles.

In addition to Dawei, another major SEZ project is underway in Kyauk Phyu, the site of the Shwe oil and gas terminal. This project, which will be centered on a major oil transshipment port and possibly petrochemical plants, threatens to present similar problems as have already been witnessed in connection with the Dawei SEZ.⁶³

3. Legal framework contributing to land confiscation

For decades, all land in Burma has been formally owned by the state; that continues under the 2008 Constitution, which provides in Article 37(a) that the state “is the ultimate owner of all lands and all natural resources above and below the ground.” Virtually no small farmers have title, even where they have been farming the same land for generations. The legal protections for

Prime Minister Abhisit Vejjajiva as saying, “Some industries are not suitable to be located in Thailand. This is why they decided to set up there,” referring to Dawei).

⁶⁰ PAUNG KU & TRANSNATIONAL INSTITUTE, LAND GRABBING IN DAWEI (MYANMAR/BURMA): A (INTER)NATIONAL HUMAN RIGHTS CONCERN 7 (Sept. 2012). Ironically, the increased number includes farmers who will be resettled from the relocation sites.

⁶¹ *Id.* at 12.

⁶² *Id.* at 10-11.

⁶³ William Boot, *Thailand Losing out to China in Battle of the Burma Ports*, THE IRRAWADDY, Feb. 21, 2013, at <http://www.irrawaddy.org/archives/27320>.

these small farmers have been eroding; unfortunately, laws passed by the Burmese Parliament, or Hluttaw, following the transition from absolute military rule have contributed to this insecurity.

The legal architecture for land ownership and transfer in Burma has historically facilitated the accumulation of land by wealthy private businessmen, and recent changes will make it even easier for farmers to lose their land without recourse. This weakness in the land laws is already disproportionately affecting *taungya*, or shifting cultivation, land, which means that its effects are felt most acutely in upland conflict areas like Kachin and Shan States.

For decades, the government has used the 1991 Prescribing Duties and Rights of the Central Committee for the Management of Cultivable Land, Fallow Land and Waste Land Law (“Wastelands Law”) to allocate 30-year leases on large tracts of untitled land to investors for industrial crop production. The recipients have mostly been domestic businessmen, but the list recently includes foreign companies, mostly from China.⁶⁴ However, restrictions on private land transfers, in particular, remained in place, at least in theory.⁶⁵ Then, in March 2012, as part of a slate of new legislation meant to promote foreign investment and liberalize the economy, the Hluttaw passed several important land laws that are expected to further destabilize land tenure for poor farmers.

Farmland Law

First, the Farmland Law, Pyidaungsu Hluttaw Law No. 11 of 2012,⁶⁶ legalized for the first time the private purchase and sale of official farming use rights.⁶⁷ In the current atmosphere of intense speculation and intimidation of farmers, especially in high-priority areas like Dawei, this provision could allow for large-scale alienation of land from titled small farmers.

Conversely, the Farmland Law discriminates against the vast majority of small farmers who have no official title, and who therefore have no share in the rights conferred by the Law.⁶⁸ Although the law sets up a system for conversion of customary land interests to formal land title, this system is inadequate and subject to corruption. Local administrative bodies known as Farmland Management Committees are tasked with scrutinizing and granting applications for land title certificates; these committees are appointed by the central government, with no provision for independent decision making and no guidance as to the criteria for membership on these committees.⁶⁹ And the Farmland Law removes jurisdiction for almost all land rights disputes from the courts and instead vests it in the very same politically appointed bodies that make the decisions in the first place: the Farmland Management Committees.⁷⁰ Farmers who are denied land title or whose land is taken from them before they have a chance to apply for title have no legal recourse to the courts, but instead must seek remedies from local officials who are likely to have participated in the land confiscation.

⁶⁴ TNI 2012, *supra* note 30, at 31; *see also* DISPLACEMENT SOLUTIONS 2012, *supra* note 33, at 35-36.

⁶⁵ *Id.*

⁶⁶ An unofficial English translation of this law by UN-Habitat is attached to this submission as Annex A.

⁶⁷ *See* DISPLACEMENT SOLUTIONS 2012, *supra* note 33, at 11 (analyzing Farmland Law Ch. III cl. 9).

⁶⁸ Land Research Action Network 2012, *supra* note 25.

⁶⁹ DISPLACEMENT SOLUTIONS 2012, *supra* note 33, at 12-13 (analyzing Farmland Law Ch. IV & V).

⁷⁰ *Id.* at 13 (analyzing Farmland Law Ch. VIII).

Vacant, Fallow, and Virgin Land Management Law

The second recent law – the Vacant, Fallow, and Virgin Land Law, Pyidaungsu Hluttaw Law No.10 of 2012 (“VFV Land Law”)⁷¹ – completes the evisceration of protections for the vast majority of small farmers by providing a legal framework for the reallocation of untitled land. Under the VFV Land Law, a Central Committee for the Management of Vacant, Fallow and Virgin Lands, composed of high government officials and appointees, has sole discretion to grant concessions to companies for agriculture, animal husbandry, mining, aquaculture, and other uses, on land judged to be either abandoned or uncultivated.⁷²

The import of this law is enormous. The determination of whether land is abandoned or uncultivated – vacant, fallow, or virgin – as well as the decision of how to allocate it – to Burmese companies or foreign investors – is made by the Central Committee itself, and is not subject to review by any court or administrative body.⁷³ It is generally expected that farmers without official title will be subject to arbitrary expropriation through this mechanism. Moreover, the definition of “vacant” or “fallow” land is startlingly broad, extending to land that was “worked by the tenant previously, and then abandoned by the tenant for *any reason*. . . [.]”⁷⁴ This definition could make it nearly impossible for those who practice shifting *taungya* cultivation – primarily upland farmers in Kachin and Shan State – to show that land they cultivated in previous years but have left fallow on a rotational basis is, in fact, still cultivated land. Shifting cultivation works only if large areas are left fallow on a regular basis, a practice that could lead directly to the loss of the land under the VFV Land Law.

Rules enacted in January 2013 to operationalize the VFV Land Law provide no additional comfort on this point. They simply note that if it is reported “with sound evidence” that allocated land “had long been the cultivated lands of the local peasants currently doing agricultural work,” the Central Committee is expected to negotiate with them and “ensure they are not unfairly or unjustly dealt with.”⁷⁵ This vague mandate provides little basis for small farmers to expect that their use of the land will be respected.

Foreign Investment Law and foreign land ownership under the new land laws

Overall, the new legal architecture for land administration is expected to increase the reallocation of land farmed by small farmers to both foreign and domestic investors, without adequate protection or provisions for resettlement and compensation. As noted above, the Burmese government has allowed transfer of land rights to foreign investors in recent years, and the Farmland Law explicitly contemplates this. In November 2012, the Hluttaw approved a new Foreign Investment Law, continuing the previous law’s provision for 100% foreign-owned

⁷¹ An unofficial English translation of this law by UN-Habitat is attached to this submission as Annex B.

⁷² Vacant, Fallow, and Virgin Land Law Ch. III, Pyidaungsu Hluttaw Law No.10 of 2012 (Myan.).

⁷³ *Id.* Ch. III cl. 5(d) & (e); *see also* DISPLACEMENT SOLUTIONS 2012, *supra* note 33, at 13.

⁷⁴ *Id.* Ch. I cl. 2(e) (definition of “Vacant land and fallow land”) (emphasis added).

⁷⁵ Republic of the Union of Myanmar, Ministry of Agriculture and Irrigation, Notification No. 1/2012, Vacant, Fallow and Virgin Land Management Rules, Ch. VI cl. 52(b) (2012). An unofficial English translation of these Rules by UN-Habitat is attached to this submission as Annex C.

investments in Burma and providing for new 50-year leases on land.⁷⁶ Thus foreign investors could obtain the right to use land that is cultivated by small farmers who do not have land title under the VFV Land Law, and then apply to local authorities for a Land Use Certificate under the Farmland Law, thereby abrogating the rights of any previous users of the land without any compensation or other livelihoods assistance.

B. Violence and Other Abuses Linked to Natural Resource Extraction

Even as land-related abuses have come to dominate domestic attention in Burma, the pattern of security- and corruption-related abuses associated with natural resource extraction has continued unabated. Two emblematic cases – the Shwe Oil and Gas Project and the Letpadaung Mine at Monywa – demonstrate clearly the human rights risks that extractive companies in particular may run when investing in Burma. In both cases, projects that involve control of large amounts of land have relied on brutal security forces to facilitate their operation. The Shwe pipeline passes through conflict zones in Shan State and may be one of the driving forces behind that conflict; military units are displacing villagers and conscripting forced labor in the course of securing the pipeline route. The Monywa mine, although located in central Burma far from any conflict area, has met with such strident local opposition that security forces have recently committed large-scale violence against protestors.

1. Shwe Oil and Gas Project

In addition to simple land confiscation, as described above, the Shwe Oil and Gas Project is contributing to conflict and security-related human rights abuses. In 2009, General Gam Shawng Gunhtang of the Kachin Independence Army predicted in an interview with the New York Times, “The pipeline will be a tool and an opportunity for the [Burmese military regime] to eliminate the armed groups.”⁷⁷ Sure enough, as pipeline construction moves into the Kachin and Shan areas, the conflict zones have become increasingly militarized, and violent human rights abuses associated with the pipeline corridor have been reported.

Government armed forces are moving to secure the pipeline corridor, creating a flood of internally displaced persons without adequate access to food, water, and shelter.⁷⁸ The Ta’ang Students and Youth Organization (TSYO) notes that fighting is largely focused on the pipeline construction area itself, where the armed forces are responsible for the security of Chinese construction workers.⁷⁹

As occurred during the construction of the Yadana and Yetagun pipelines in southeastern Burma,⁸⁰ forced labor has been widely reported at all stages of the Shwe project. This notorious practice of the Burmese armed forces can take numerous forms, including forcing villagers to join militias and other military support units; to guide them through dangerous areas subject to

⁷⁶ See Aung Hla Tun, *Myanmar state media details new foreign investment law*, REUTERS (Nov. 3, 2012), at <http://www.reuters.com/article/2012/11/03/us-myanmar-investment-idUSBRE8A204F20121103>.

⁷⁷ Thomas Fuller, *Ethnic Groups in Myanmar Want Peace but Gird for a Fight*, NEW YORK TIMES, May 10, 2009.

⁷⁸ TSYO 2012, *supra* note 55, at 19-20.

⁷⁹ *Id.* at 20; see also ERI, *THE BURMA-CHINA PIPELINES*, *supra* note 50, at 6 (noting arrangement between CNPC and Burmese Government providing that the government will guarantee the safety of the pipeline).

⁸⁰ See *supra* note 3 and accompanying text.

civil war and attack; and to build pipeline facilities and associated infrastructure. In 2011, ERI reported incidents of forced labor at the construction site on Madaya Island, where villagers were required to join a fire brigade, in the central Dry Zone, where community members were forced to build a health clinic that was part of project partner Daewoo International's corporate social responsibility commitment, and in Shan State, where villagers were forced to join a militia.⁸¹ In 2012, TSYO reported incidents of forced guiding and portering for military patrols in Shan State,⁸² as well as ongoing conscription of villagers to carry pipeline equipment and dig drains, enforced by Namtu Township Police and Infantry Battalion 324.⁸³

2. Monywa Mine

While the Shwe pipelines pass through ethnic conflict zones, the Letpadaung Copper Mine at Monywa is located in a predominantly ethnically Burman region in central Burma, near the city of Mandalay. The mine is owned by the Union of Myanmar Economic Holdings, a Burmese military conglomerate, and Wanbao Mining, a subsidiary of Chinese industrial and arms manufacturer China North Industries Corporation.⁸⁴ Unfortunately, recent events at the mine demonstrate that serious abuses associated with land use and resource extraction can occur anywhere in Burma.

On November 29, 2012, Burmese security forces attacked six protest camps at the mine.⁸⁵ Villagers in the Monywa area have long complained that the mine has contaminated their natural environment and causes serious health problems; moreover, around 8,000 acres have been seized from farmers since 2011.⁸⁶ ERI interviews with Monywa residents confirm reports of birth defects, cerebral palsy, and other congenital problems, as well as severe water contamination. Over the previous year, locals had organized a number of protests, with the ultimate aim of stopping a major expansion of the mining project. Locals had sought permission for the earlier protests but decided to move ahead with the November demonstration despite not having obtained a permit under the 2011 Peaceful Assembly and Marching Law, which requires extensive and intrusive information about the identities of demonstrators and the texts of speeches that will be delivered.⁸⁷

The attack came while protesters were sleeping and severely injured nearly fifty protesters, including a large number of Buddhist monks who suffered horrific burns while trying to prevent the destruction of religious buildings.⁸⁸

⁸¹ ERI, THE BURMA-CHINA PIPELINES, *supra* note 50, at 11-12.

⁸² TSYO 2012, *supra* note 55, at 25.

⁸³ *Id.* at 38-39.

⁸⁴ Press Release, Human Rights Watch, Burma: Investigate Violent Crackdown on Mine Protesters (Dec. 1, 2012), at <http://www.hrw.org/news/2012/12/01/burma-investigate-violent-crackdown-mine-protesters>.

⁸⁵ *Id.*

⁸⁶ *Id.*; Gwen Robinson, *Violence casts shadow over Myanmar reform*, FINANCIAL TIMES, Dec. 1, 2012, at <http://www.ft.com/intl/cms/s/0/152b40b8-3acb-11e2-b3f0-00144feabdc0.html#axzz2LeOjhWnR>; Ingjin Naing & Khet Mar, *Dozen Mine Protesters Arrested*, RADIO FREE ASIA, Sept. 10, 2012, at <http://www.rfa.org/english/news/burma/arrested-09102012185605.html>.

⁸⁷ Press Release, Asian Human Rights Commission, BURMA: Former Activist Monk and Demonstrators Among Detainees in Wave of Arrests (Dec. 6, 2012), at <http://www.burmapartnership.org/2012/12/burma-former-activist-monk-and-demonstrators-among-detainees-in-wave-of-arrests/>.

⁸⁸ HRW 2012, *supra* note 86; Robinson 2012, *supra* note 86.

The Burmese Government initially issued a formal statement asserting that security forces had used riot control measures, a claim that did not fit well with the facts: that armed forces had used tear gas, smoke bombs, and fire against sleeping protesters. Shortly thereafter, the President's office withdrew the statement.⁸⁹ A subsequent investigation by Justice Trust (US) and Burma Lawyers Network (Burma) has found that at least some of the burns were caused by white phosphorus,⁹⁰ a military grade incendiary material that is primarily used to create smoke to hide troops' movements. White phosphorus may be considered a chemical weapon that is prohibited under international law when used against human targets.⁹¹ The Burmese government has not denied the use of white phosphorus but has declined to draw any conclusions until the completion of an official government probe that is being led by opposition leader Aung San Suu Kyi.⁹²

On the same day that the security forces attacked protesters at the Letpadaung Mine, police in Rangoon arrested six leaders of a rally in support of the mine demonstrators. These leaders were charged under Sections 18 and 505(b) of the Penal Code for "inciting unrest and disturbing public tranquility."⁹³ Other Monywa protesters had previously been detained in September for demonstrating against the mine.⁹⁴

III. Policy Opportunities

The trends outlined above demonstrate the need for an economic approach to Burma that avoids contributing to destabilizing land confiscations and does not encourage projects with a high likelihood of human rights abuses. While economic reengagement in Burma does present tremendous human rights risks, it also creates opportunities for U.S. policy makers to lead the world in managing those risks. This Section of ERI's testimony focuses on two of these opportunities: the Reporting Requirements for Responsible Investment in Burma, and U.S. participation in the governance of international financial institutions.

A. Reporting Requirements for Responsible Investment in Burma

On July 11, 2012, the U.S. Treasury issued General Licenses No. 16 and 17 for doing business in Burma, broadly waiving investment and financial services sanctions⁹⁵ and proposing a

⁸⁹ HRW 2012, *supra* note 86.

⁹⁰ Jonah Fisher, *Burma police 'used white phosphorous' on mine protesters*, BBC, Feb. 14, 2013, at <http://www.bbc.co.uk/news/world-asia-21455087>.

⁹¹ See, e.g., Paul Reynolds, *White phosphorus: a weapon on the edge*, BBC, Nov. 16, 2005, at <http://news.bbc.co.uk/2/hi/americas/4442988.stm>.

⁹² Myanmar rejects 'white phosphorus' claim report, AGENCE FRANCE-PRESSE, Feb. 16, 2013, at <http://www.google.com/hostednews/afp/article/ALeqM5hQxTJQhN1kHIFr37KKIdLlOj882w?docId=CNG.6988c5e89d951a9cbbd78bddff02d02.4d1>.

⁹³ *Burmese riot police crack down on anti-mining protest*, IFEX, Nov. 29, 2012, at http://www.ifex.org/burma/2012/11/29/copper_mine_protest/.

⁹⁴ Ingin Naing & Khet Mar 2012, *supra* note 86.

⁹⁵ Sanctions remain in place for transactions or investments with persons whose property is blocked, as well as with the Myanmar military, other armed groups, and companies owned by the military or armed groups. See U.S. Dep't of the Treasury, Office of Foreign Assets Control, General License No. 17 – Authorizing New Investment in Burma, ¶ (c) & (d) (July 11, 2012).

mandatory reporting regime for U.S. persons investing in Burma. The Reporting Requirements for Responsible Investment in Burma (“Reporting Requirements”) have yet to be finalized; the final comment period under the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, ends on March 25, 2013.⁹⁶ When finalized, the Reporting Requirements will require all U.S. persons with investments in Burma totaling \$500,000 or more to submit annual reports to the U.S. State Department. Information on investors’ human rights, labor, environmental, anti-corruption, stakeholder engagement, and land acquisition policies and practices, as well their security arrangements and payments to the Burmese Government, are subject to public disclosure, although investors may redact information and disclose it confidentially to the State Department if they believe it to be privileged and confidential commercial information that would be exempt from disclosure under the Freedom of Information Act. Information on investors’ contacts with the military and the steps they have taken to mitigate human rights, labor, environmental, and corruption risks will be submitted in confidence to the State Department.⁹⁷

1. Importance of the Reporting Requirements

In his May 17, 2012, communication to Congress, President Obama declared that a national emergency still exists with respect to Burma,⁹⁸ justifying an Executive Order continuing application of economic sanctions and investment restrictions. This Order is based on the prevalence of human rights abuses and ethnic conflict in Burma, which present an extraordinary risk to US foreign policy.⁹⁹

Based on the evidence cited above, it is clear that the decision to waive these sanctions and allow U.S. investment in Burma creates a substantial risk that U.S. investment will facilitate human rights abuses. The Reporting Requirements are a valuable means of both monitoring and advancing human rights and political reforms, consistent with the U.S. Government’s foreign policy priorities in Burma. ERI is primarily concerned with ensuring that U.S. investment in Burma does not contribute to human rights abuses and believes that the proposed disclosure regime will help the U.S. Government, civil society, and Burmese communities themselves to assess and mitigate the negative impacts of corporate activity.

Importance for the U.S. Government

The Reporting Requirements are an important tool that will assist the State Department in carrying out U.S. foreign policy goals in Burma. The information provided to the State Department will allow it to evaluate whether the decision to allow new investments is supporting or undermining U.S. efforts to advance human rights and political reform in Burma, consistent with U.S. foreign policy goals. The State Department will be able to analyze important indicators, including the extent to which investments are concentrated in industries or geographic areas

⁹⁶ Because the Reporting Requirements mandate private persons to submit information to the U.S. Government, they are subject to approval by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act. At the close of the current 30-day public comment period, OMB will decide whether to approve them.

⁹⁷ See U.S. State Dep’t, *Reporting Requirements on Responsible Investment in Burma*, at <http://www.humanrights.gov/wp-content/uploads/2013/02/Burma-Reporting-Requirements.pdf>, also attached as Annex D.

⁹⁸ President Barack Obama, *Notice – Continuation of the National Emergency with Respect to Burma*, *supra* note 11.

⁹⁹ Exec. Order No. 13,619, 77 Fed. Reg. 41,243 (July 11, 2012).

associated with human rights abuses, whether companies have appropriate policies in place to address potential consequences, and whether mitigation and remediation efforts have been undertaken.

The disclosures will also enable the State Department to identify and engage with investors whose operations and policies pose a risk of contributing to human rights abuses, corruption, and armed conflict. The State Department should be especially concerned about investments in sectors that pose a high risk of exacerbating the national emergency in Burma, such as extractive industries and plantation agriculture. Similarly, investment in particular geographic regions – ethnic minority areas, conflict zones and zones of great environmental value and sensitivity – may contribute to violence or the illegal trade in natural resources. The basic information about investors’ activities in Burma will make it possible for the government to focus on investors who engage in unusually risky activities without appropriately robust policies and procedures for identifying, mitigating, and remedying the risks. The public component of these reports is especially important, because the Bureau of Democracy, Human Rights and Labor does not have the resources to investigate every investment project, and will need to rely on civil society groups within and outside Burma to assist in identifying projects of concern.

The information reported will also be important for other bureaus – both within and outside the State Department – that engage with the Burmese Government and seek to assist in the development of strong institutions and the resolution of conflict. This vital engagement would not be possible without an understanding of economic activity in various sectors and the Burmese Government’s receipts from foreign investment.

While the information contained in the required disclosures is not typically considered confidential, much of it would otherwise be difficult or impossible to obtain. For example, payments to the Burmese Government, including problematic agencies such as MOGE, are completely nontransparent. Information about security arrangements is not publicly available either. In ERI’s experience, foreign companies operating in Burma decline to disclose information about security not because they are contractually obligated to keep such arrangements confidential, but for fear of embarrassment or of alienating the Burmese Government. Similarly, environmental, social and human rights impact assessments, resettlement and land acquisition policies are generally not made public, despite the obvious legitimate interest of affected local populations in such information.

Importance for civil society

Civil society organizations will utilize disclosures to engage with investors on human rights and conflict issues, to monitor corporate activities, and to raise concerns with the U.S. Government that will in turn further assist the State Department and other agencies to target particular investors for investigation and engagement.

Disclosure of payments made to the Burmese Government, for example, will enable civil society inside and outside of Burma to monitor the government’s use of investment revenue and address well-founded concerns that government revenues resulting from foreign investment are not used for the public benefit. Such information will advance efforts to overcome Burma’s legacy of

opaque budgets, rampant corruption, and diversion of government revenues by the military. This information will empower civil society within Burma to press the government to allocate revenue fairly, consistent with the government's obligations to uphold economic and social rights. Information about the government's income from foreign investment would be unavailable without the Reporting Requirements. The only other source for even a portion of this information will be the disclosures mandated by U.S. Securities and Exchange Commission's recently approved revenue transparency rules, which apply only to publicly traded oil, gas and mining companies.¹⁰⁰ The Reporting Requirements will supplement the SEC disclosures with information from *both public and privately held* U.S. persons investing in *all* sectors.

In addition to helping to stop human rights abuses, promote transparency, and ensure corporate accountability, the publicly available information will also enable civil society groups such as ERI to share knowledge, expertise, and recommendations, including sector or issue-specific standards for responsible business practices, with reporting companies. The reports could prompt constructive dialogue and action to prevent human rights abuses from occurring in the first place, and could help to hold investors accountable when abuses do occur. Groups will also use the disclosures to seek mitigation for the corruption and human rights abuses that may be associated with U.S. investment, as ERI did when it raised evidence of the diversion of gas revenues to offshore accounts with the U.S. Government.¹⁰¹

In Burma, local communities often have little information on the ownership structures of foreign investors. Foreign companies may operate through local subsidiaries, partners, contractors, and subcontractors, increasing the challenges for local communities to identify those responsible for negative impacts and those with the power to change them. Disclosures on operations, partners, subcontractors, and suppliers will greatly assist local communities and civil society to engage with investors. ERI works closely with fact-finders, attorneys and, other community advocates in Burma; in situations where the business partners and affiliates of U.S. investors are contributing to conflict, human rights, abuses, and corruption, the information disclosed will assist ERI and its partners to identify the investors and engage them on policies and practices that would better prevent or mitigate such negative outcomes.

Overall, the publicly available information about U.S. investment will contribute to civil society's efforts to demand greater transparency and accountability of the Burmese Government to its citizens and improved respect for rule of law.

2. Weaknesses in the Reporting Requirements

The Reporting Requirements are a significant step toward a responsible foreign investment regime in Burma, but they are not perfect. The current draft of the Reporting Requirements¹⁰²

¹⁰⁰ U.S. Sec. & Exch. Comm'n, *Disclosure of Payments by Resource Extraction Issuers*, 77 Fed. Reg. 56,365 (Sept. 12, 2012). Reporting under these requirements is due to begin in the spring of 2014, at the earliest.

¹⁰¹ Importantly, ERI's ability to estimate the diversion of funds and trace the payments was made possible in part by documents made public through the *Doe v. Unocal* litigation. Without the Reporting Requirements, such information is unlikely to be available in future cases.

¹⁰² U.S. State Dep't, *Reporting Requirements on Responsible Investment in Burma*, at www.humanrights.gov/2013/02/22/reporting-requirements-on-responsible-investment-in-burma/ (last updated Feb. 22, 2013).

reflects submissions made by various stakeholders during a 60-day notice and comment period in August and September 2012.¹⁰³ Although the latest revisions have clearly improved the original draft in ways that will better assist both the U.S. Government and civil society to evaluate U.S. investment in Burma, the Reporting Requirements continue to suffer from a number of fundamental weaknesses that limit their effectiveness and undermine what would otherwise be meaningful incentives for companies to use responsible business practices.

Risk of excessive withholding of information from the public

As currently drafted, the Reporting Requirements allow investors to withhold information from their public reports if they conclude that it contains privileged and confidential commercial or financial information or trade secrets that would be exempt from disclosure under the Freedom of Information Act.¹⁰⁴ This provision threatens to weaken the utility of the reports because it is the investors, not the government, that decide whether information should be withheld from the public, and there is no procedure to challenge this decision.

From ERI's experience, investors in Burma are often reluctant to report on issues that touch on their relations with the Burmese Government, either for fear of disclosing information that could subject them to public criticism, or based on a misguided belief that disclosure will disadvantage them in their access to commercial opportunities. For example, in 2010, Chevron claimed it was unable to disclose payments to the Burmese Government, insisting that "contractual obligations related to the Yadana Project do not permit disclosure of payments or other confidential information relative to the Project."¹⁰⁵ Yet Chevron's joint venture partner, Total, has disclosed some of the same information that Chevron refuses to; moreover, the Yadana Project contracts became public through the *Doe v. Unocal* lawsuit, and no such prohibition on disclosure of payments appears in them.

By allowing investors complete discretion to determine which information should be withheld, the State Department lends credence to these false claims of confidentiality and risks empowering businesses to hide any information that might be seen as controversial. Civil society organizations, which otherwise would have the ability to fact-check company reports, will be unable to do so for information that investors choose – correctly or incorrectly – to designate as confidential, undermining what would otherwise be a powerful incentive for companies to provide full and accurate disclosures. Civil society cannot play the integral role envisaged by the State Department in monitoring U.S. investment in Burma if they cannot see all required disclosures, including the information submitters would prefer not to disclose.

The Reporting Requirements also allow investors to withhold from their public reports information on communications with the Burmese military and measures taken to mitigate risks, despite the fact that this information is important for informed engagement by civil society.

¹⁰³ See U.S. State Dep't, *60-Day Notice of Proposed Information Collection: Reporting Requirements on Responsible Investment in Burma*, 77 Fed. Reg. 46,786 (Aug. 6, 2012).

¹⁰⁴ See 5 U.S.C. § 552(b)(4) (FOIA exemption 4).

¹⁰⁵ Chevron Corp., *Response to "A Call for Total, Chevron, and PTTEP to Practice Revenue Transparency in Burma (Myanmar)"* (May 24, 2010), at <http://www.reports-and-materials.org/Chevron-response-re-revenue-transparency-Burma-24-May-2010.pdf>.

Military communications are relevant to the public debate because, as detailed in the evidence cited above, human rights abuses occur with alarming frequency in Burma when security forces act to protect corporate operations. In many cases, civil society groups, especially groups inside Burma, will have greater knowledge than the State Department or the companies themselves about the operations of particular military units, but they cannot assist in identifying risks and potential problems without information on which military commanders and units are involved in which projects. Likewise, the public must know whether an investor carried out due diligence regarding human rights, workers' rights or environmental risks and whether any risks or actual impacts were identified in order to promote responsible business conduct in Burma.

Moreover, by allowing companies to hide from public view the impact risks that they identify, the Reporting Requirements fail to meet at least two international standards that are officially endorsed by the United States: the OECD Guidelines on Multinational Enterprises ("OECD Guidelines"), which require timely disclosure of environmental and other risks to affected parties,¹⁰⁶ and the UN Guiding Principles on Business and Human Rights ("GPs"), which counsel the public communication of steps taken to mitigate human rights risks.¹⁰⁷

Inconsistent application to business partners, subsidiaries, and related entities

The Reporting Requirements refer inconsistently and ambiguously to business partners, subsidiaries, affiliates, and other related entities. The current draft of the Reporting Requirements mandates disclosure on whether and to what extent an investor's human rights, workers' rights, and environmental policies and procedures are required of or communicated to subsidiaries, subcontractors and other business partners. This requirement is, however, inexplicably omitted for other required information, such as security arrangements and property acquisition policies.

Without information on *all* related entities over which investors have control or significant influence for *all* matters, neither the U.S. Government nor civil society will be able to take the full measure of the impact of an investor's activities in Burma. Moreover, this approach is inconsistent with both the OECD Guidelines and the GPs, which mandate an approach that covers impacts incurred through all forms of business relationships.¹⁰⁸

Lack of clarity on enforcement

The collection of information through the Reporting Requirements is authorized under section 203(a)(2) of the International Emergency Economic Powers Act, and the obligation to respond is mandatory for companies investing in Burma. Violations of the Reporting Requirements are subject to enforcement by the U.S. Treasury Department's Office of Foreign Assets Control.¹⁰⁹ The Reporting Requirements do not, however, clearly state what penalties would apply if a company provided incomplete or inaccurate information, or failed to report at all.

¹⁰⁶ OECD Guidelines for Multinational Enterprises, Ch. VI. Environment, ¶ 2(a) (2011).

¹⁰⁷ Prof. John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, Principle 21, U.N. Doc. A/HRC/17/31 Annex (Mar. 21, 2011).

¹⁰⁸ See OECD Guidelines, *supra* note 106, Ch. IV – Human Rights, ¶ 3; GPs, *supra* note 107, Principle 13(b).

¹⁰⁹ See OFAC, General License No. 17, *supra* note 95, ¶ (e).

Insufficient focus on outcomes

The Reporting Requirements focus overwhelmingly on policies and processes without clearly mandating reporting on concrete outcomes.¹¹⁰ Companies' reporting should address how policies and procedures are implemented and with what result. This further information would be critical for the U.S. Government and civil society to ascertain whether particular investments are contributing to human rights abuses.

Omission of Free, Prior, and Informed Consent (FPIC)

Stakeholder engagement is critical to all phases of a project, and all current international standards and best practices stress the importance of meaningful stakeholder engagement. This is particularly true when a project may affect vulnerable populations, such as ethnic minorities, women, and indigenous peoples.

The U.S. Government announced its support for the U.N. Declaration on the Rights of Indigenous Peoples in January 2011, including a recognition of "the significance of the Declaration's provisions on free, prior and informed consent, which the United States understands to call for a process of meaningful consultation."¹¹¹ Unfortunately, this stated support has not made its way into all aspects of administration policy, including the Reporting Requirements. The current draft makes no direct reference to practices or policies regarding free, prior and informed consent (FPIC), other than a footnote directing companies to look to Performance Standard 7 of the International Finance Corporation. Nor do the Reporting Requirements include disclosure of impacts on indigenous communities in particular. This omission is troubling in light of the U.S. Government's longstanding recognition that human rights abuses against ethnic minority communities are of particular concern in Burma.

B. International Financial Institutions

As Western countries have proceeded toward economic reengagement with Burma, international financial institutions (IFIs) – in particular, the World Bank and the Asian Development Bank (ADB) – have rapidly moved to reestablish normal operations that include the development of interim country strategies, economic sector assessments, and project grants. While much work needs to be done in this early phase, there are indications that the World Bank, at least, is moving hastily and without due attention to stakeholder engagement and the risks of human rights abuses such as forced displacement.

For the last two decades, Burma has been ineligible for investment lending due to massive accumulated arrears at both the World Bank and ADB.¹¹² Furthermore, U.S. law required the

¹¹⁰ The only exception is Reporting Question 7(d), which requires investors to report on compensation arrangements to previous owners of land. Reporting Question 11 requires investors to report confidentially on measures taken to mitigate risks, but this response will not be disclosed to the public, nor will it necessarily address the *outcomes* of such measures.

¹¹¹ See *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, Jan. 12, 2011, at <http://www.state.gov/s/srgia/154553.htm>.

¹¹² See *ADB, World Bank to step up work in Myanmar after arrears paid*, REUTERS, Jan. 27, 2013, at <http://www.reuters.com/article/2013/01/27/us-myanmar-economy-adb-idUSBRE90Q0CJ20130127>.

U.S. Executive Director in each IFI to vote against assistance to Burma – a policy that was, in practice, sufficient to block any loan – subject to presidential waiver.¹¹³ In October 2012, however, U.S. policy shifted with the enactment of a law allowing the U.S. to support IFI assistance to Burma.¹¹⁴ Continued oversight is needed, however, to ensure that this assistance is constructive.

From the beginning of the IFIs' reengagement in Burma, civil society groups have met with the IFIs' Executive Directors and Management, reiterating the need for broad and meaningful stakeholder engagement. They have also raised the inadequate access to and amount of information about assessment reports, consultation missions, and project preparations; and the mitigations measures included in particular projects. For example, civil society organizations in Burma were largely excluded from the process of developing the World Bank's Interim Strategy Note (ISN) for Burma.¹¹⁵ According to the Bank Information Center, the primary IFI watchdog group, local groups had little access to information about the ISN and were hardly involved in formal consultations¹¹⁶ until they publicly urged the World Bank Board of Directors and Management to include them. In addition, more than 50 Burmese civil society and ethnic organizations from various parts of Burma as well as the Thai-Burma border area submitted substantive recommendations to the strategic pillars of the draft ISN.¹¹⁷ Despite copious constructive propositions from non-state actors, the World Bank neither responded with a written reply and nor committed to reflect any of the collective recommendations in the final ISN.

Similar concerns have arisen with respect to the World Bank's first project investment in Burma in twenty-five years: the \$86.3 million National Community Driven Development Project.¹¹⁸ Since early 2012, local Burmese civil society organizations have repeatedly called on the Bank to involve them in its conflict diagnosis and in developing its consultation strategy to shape the structure and mitigation measures of the project, which involves infrastructure, livelihood and social services in approximately 3200 poor and conflict-affected villages. In late October, local Burmese civil society organizations filed an official complaint with the Bank's Inspection Panel, alleging that despite the Bank's claims of broad and ample consultation,¹¹⁹ the Bank rushed the project through the approval process without conducting adequate consultation or complying

¹¹³ See CRS 2012, *supra* note 8 at 34.

¹¹⁴ Pub. L. No. 112-192, 126 Stat. 1441 (2012).

¹¹⁵ The World Bank prepares ISNs "in countries re-engaging after extended periods of time, or going through significant political or economic change." The ISN is used to guide the Bank's actions pending the completion of a medium-term assistance strategy. World Bank, *World Bank Prepares Interim Strategy Note for Myanmar*, Aug. 10, 2012, at http://www.worldbank.org/en/news/feature/2012/08/10/world-bank-prepares-interim-strategy-note-for-myanmar?cid=EAP_TwitterWorldBankAsia_P_EXT.

¹¹⁶ See Letter from Burmese Civil Society Organization to World Bank Directors, Aug. 7, 2012, reproduced at Bank Information Center, *World Bank finally posts the summary ISN for Burma after CSO demands*, Aug. 15, 2012, at <http://www.bicusa.org/updates/world-bank-finally-posts-the-summary-isn-for-burma-after-cso-demands/>.

¹¹⁷ See *Recommendations from Burma Civil Society on the World Bank Group's Draft Interim Strategy Note on Burma/Myanmar*, Sept. 7, 2012, at <http://www.bicusa.org/wp-content/uploads/2013/02/UpdatedISN+Bottomlines.pdf>.

¹¹⁸ See generally The World Bank, *Myanmar National Community Driven Development Project*, at <http://www.worldbank.org/projects/P132500/myanmar-national-community-driven-development-project?lang=en>.

¹¹⁹ See, e.g., The World Bank, *Myanmar National Community Driven Development Project Consultations Schedule*, Dec. 20, 2012, at <http://www.worldbank.org/en/news/feature/2012/12/20/myanmar-national-community-driven-development-project-consultations-schedule>.

with mandatory disclosure and safeguard policies.¹²⁰ The World Bank justified the project's hasty design and the lack of public comment for appraisal documents on the basis that 1) the fund can only be accessed as a "pre-arrears clearance" grant, and 2) the project responds to a rapid emergency or disaster, a claim on which Bank failed to elaborate. Rather than engaging with the organizations' concerns, Bank officials have instead accused them of "blocking aid for the people."¹²¹

One particular concern is that the Bank has not developed an adequate resettlement framework or an indigenous peoples' plan, should communities choose to use their funding for projects that would require compulsory land acquisition. Instead, the Bank simply assumes that "the need for land acquisition is likely to be limited" and notes that if land were to be acquired, it should either be donated voluntarily by the landholder or compensated "at replacement cost" by "the communities."¹²² Sub-projects that do involve land acquisition are governed by the project's Environmental and Social Screening and Assessment Framework (ESSAF), but the ESSAF is problematic in several aspects; it repeats the emphasis on "voluntary land donations," and seems to contemplate compensation only for farmers who have title to their land.¹²³

Given the history and current frequency of forcible displacement for development projects in Burma, it seems overly optimistic to predict that local officials will not choose projects that require displacement, that landholders will voluntarily donate their land, that communities will have adequate funds to compulsorily purchase land, or that compensation will proceed in an orderly and just manner without more careful planning.¹²⁴ The use of the term "voluntary" is especially troubling, given that the Burmese military regime long referred to forced labor as "voluntary labor."¹²⁵

Although the World Bank has conducted some civil society consultations, its efforts are hampered by the fact that a large number of civil society groups and community-based

¹²⁰ See Burma Partnership, *World Bank Breaches Own Policy and Ignores Civil Society's Request for Postponement of Project*, Nov. 6, 2012, at <http://www.burmapartnership.org/2012/11/world-bank-breaches-own-policy-and-ignores-civil-society/>.

¹²¹ *Id.*

¹²² The World Bank, *Myanmar Community Driven Development Project Consultations Summary*, Jan. 23, 2013, at <http://www.worldbank.org/en/news/feature/2013/01/23/myanmar-cdd-project-consultations-summary>.

¹²³ See Government of the Republic of the Union of Myanmar, *National Community Driven Development Project, Environmental and Social Screening and Assessment Framework*, October 2012, at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/10/12/000356161_20121012021223/Rend ered/PDF/E40320P132500000disclosed0100100120.pdf.

¹²⁴ Another civil society concern has been the suggestion by Burmese government officials that World Bank funding would be used to develop "model villages." See *World Bank to fund 'model villages' in Burmese townships*, MIZZIMA NEWS, Aug. 16, 2012, at <http://www.mizzima.com/business/7770-world-bank-to-fund-model-villages-in-burmese-townships.html>. Model villages were historically associated with forced labor, economic displacement, land grabbing, famine, and social fragmentation in military-run Burma. See, e.g., HUMAN RIGHTS WATCH, *BURMESE REFUGEES IN BANGLADESH: STILL NO DURABLE SOLUTION* 12 (May 2000). The World Bank asserts that project funding will *not* be used for model villages. The World Bank, *Myanmar Community Driven Development Project Consultations Summary*, *supra* note 122.

¹²⁵ See, e.g., U.S. Dep't of Labor, Bureau of Int'l Labor Affairs, *Report on Labor Practices in Burma*, September 1998 (noting that "more than eighty major infrastructure projects have been identified which were reported to have been built with contributions of 'voluntary labor'"), at <http://www.dol.gov/ILAB/media/reports/ofr/burma1998/main.htm>.

organizations inside Burma are unregistered, which makes them ineligible to participate in government-run development initiatives such as the Community Driven Development Project. The Bank's response to this problem has been to suggest that the Burmese Government would assist these groups to register,¹²⁶ which ignores the fact that many groups have remained unregistered due to security concerns.

Burmese civil society groups have called for the IFIs to develop comprehensive consultation strategies as they restart project lending in Burma. They have sought the assistance of the U.S. Congress in ensuring that this occurs in a manner that is consistent with international standards, and in particular with the definition of "meaningful consultation" included in the ADB's 2009 Safeguards Policy Statement.¹²⁷ The ADB has responded to this call for more adequate stakeholder engagement by agreeing to work with local organizations to design a stakeholder analysis and communications and participation strategy; the World Bank has declined to follow suit and instead continues with the same consultation practices that have raised such concern among Burmese civil society.¹²⁸

IV. Recommendations

This Commission and the U.S. Congress can better prevent and mitigate the human rights risks of U.S. economic reengagement in Burma by taking the following steps:

- Reauthorize the President's power to impose the full range of economic sanctions on the Burmese Government and individuals in case of complicity in human rights abuses, as necessary.
- Prohibit U.S. Government entities – e.g., the Export-Import Bank, the Overseas Private Investment Corporation, and the Department of Commerce – from providing assistance to U.S. or foreign persons who are complicit in human rights abuses in Burma.
- Protect and strengthen – as necessary – U.S. laws that provide accountability for corporations that are complicit in human rights abuses in Burma, such as the Alien Tort Statute.

¹²⁶ See *Myanmar Community Driven Development Project Consultations Summary*, *supra* note 122.

¹²⁷ See E-mail from Jolie Schwarz, Legislative Affairs Research Assistant, Bank Information Center, to Aaron Ranck & Daniel McGlinchey, U.S. House of Representatives Financial Services Committee Senior Professional Staff (Dec. 17, 2012, 9:34 p.m. EST), on file with ERI. According to the ADB, "meaningful consultation" is a process that:

(i) begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) provides timely disclosure of relevant information that is understandable and readily accessible to affected people; (iii) is undertaken in an atmosphere free of intimidation and coercion; (iv) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues." ADB, Safeguard Policy Statement, Appendix 2, ¶ 28 (June 2009).

¹²⁸ Interview with Jelson Garcia, Asia Program Manager, Bank Information Center (Feb. 21, 2013).

- Conduct further hearings on U.S. companies and human rights abuses and risks associated with oil and gas pipelines and plantation agriculture in Burma.
- Exercise their power over appropriations to IFIs to require the U.S. Executive Directors for the World Bank and the ADB to use their vote to support comprehensive stakeholder engagement and consultation strategies.
- Exercise their power over appropriations to IFIs to require the U.S. Executive Directors for the World Bank and the ADB to use their vote to support reform of Burma's new land administration laws to better protect small farmers and ethnic minorities.

Annex A

Farmland Law, Pyidaungsu Hluttaw Law No. 11 of 2012

Farmland Law

(Pyidaungsu Hluttaw Law No.11 of 2012)

Day of 8th Waxing of Tagu 1373 ME

(30th March, 2012)

The Pyidaungsu Hluttaw enacted this Law.

CHAPTER I.

NAME, ENFORCEMENT AND DEFINITIONS

1. This Law shall be called the Farmland Law.
2. This Law shall enforce on the date as the President of the Republic of the Union of Myanmar may, by notification, direct.
3. The following expressions contained in this Law shall have the meaning given here under:
 - (a) "farmland" means designated lands as; paddy land; ya land; kiang land; perennial plant land; dhani land; garden land; land for growing of vegetables and flowers; and alluvial island. In this expression, it does not include land situated within any town or village boundary used for dwelling, religious building and premises, and public - owned land which is not used for agriculture purpose;
 - (b) "paddy land" means land mainly grow for rice paddy, rain fed or irrigated.
 - (c) "alluvial island" means land has flooded yearly and it's land texture and location can vary in accord with water channel.
 - (d) "right for farming" is defined that as the State is original owner of all lands, giving permission for farming in conformity with this law and bylaw, rule and regulation of this law so that agricultural production capacity develop, excluding exploring gems, mines, petroleum, gas and natural resources below and above ground;
 - (e) "agriculturist" means any person who is in compliance with any one of the following conditions:-
 - (1) is or was engaged in agriculture (or) livestock breeding (or) both as his principal means of livelihood (or) ;
 - (2) supervises the land use for agriculture (or) livestock breeding (or) both as his principal means of livelihood during years concerned;
 - (3) invests capital and engages directly or supervises in the production of seasonal crops, orchard, perennial crops (or) commercial livestock breeding as his principal means of livelihood (or);
 - (4) engaged in agriculture (or) livestock breeding;

- (5) using farmland for producing (or) breeding and selling of sapling, seed, and breeding in for agriculture production and livestock breeding purposes;
- (f) "agricultural household " means a group of persons related by blood or marriage, living together as a household of whose head thereof, who shall be an agriculturist ;
- (g) "head of household" means any principal member of a household who leads the household activities;
- (h) "repair to gain progress by building" means raising values of land at present land owner's expense or one currently using land's expense or with his or her working power. The amendment also comprises place for one who works agricultural process or buildings, canals, dams, lakes, wells, embankments, roads and other facilities, excluding, but, land clearing works and procedures not for perpetual development;
- (i) "guardian" is defined as one who was vested with authority to keep under-age person or lunatic or their possessions by authoritative court;
- (j) "peasant organization" is the one that is formed to help rural development in conformity with law;
- (k) "Ministry" means the Ministry of Agriculture and Irrigation;
- (l) "Department" means the Settlement and Land Records Department;

CHAPTER II.

RIGHT FOR FARMING

- 4. A person who has the permission of right to use farmland shall have to apply for getting the Land Use Certificate to the Township Land Records Department Office passing it through the relevant Ward or Village Tract Farmland Management Body.
- 5. With respect to Section 4 of this law, the Office of Township Land Records Department shall scrutinize and submit the cases of right to use farmland to the relevant Township Farmland Management Body.
- 6. The Township Farmland Management Body shall issue the Land Use Certificate to the following person or organization with respect to existing farmland on the day of enforcement date of this law, by the approval of District Farmland Management Body, after paid the prescribed registration fees and registered at the Township Land Records Department's Office:
 - (a) If a person who has right for farming shall be;
 - i. an agricultural household (or) member of the household;
 - ii. head of the household (or) a member of the household (or) guardian who is legally holding and working the land in accordance with existing land law, before this law has been enacted;
 - iii. the legal beneficiary either in accordance with this law or rules deriving from this law after its enactment ;
 - iv. completed the age of eighteen years;

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- v. a citizen or guest-citizen or naturalize-citizen
 - (b) If an organization; Government Department (or) Government Organization (or) Non Government Organizations (or) Company shall had been right for farming.
- 7. After this Law has enacted, the Township Farmland Management Body shall issue the Land Use Certificate to the following person or organization with respect to revoking farmland and land reclamation by the State, with the approval of District Farmland Management Body, after paid the prescribed registration fees and registered at the Township Land Records Department's Office:
 - (a) If a person shall be;
 - i. engaged in agricultural process using land
 - ii. lived in relevant ward or village tract as a resident
 - iii. completed the age of eighteen years;
 - iv. a citizen or guest-citizen or naturalize-citizen
 - (b) If an organization; Government Department (or) Government Organization (or) Non Government Organizations (or) Company shall be actually to work with a will for farming.
- 8. The Township Farmland Management Body shall issue the Land Use Certificate to a person who receive the right for farming by buying (or) exchanging (or) giving (or) inheritance in accordance with the provision of this Law (and) a person who has got the grant of right to do, (and) right to utilize the vacant, fallow and virgin land may apply in accordance with this Law whenever cultivation is completed, after paid the prescribed registration fees and registered at the Township Land Records Department's Office.

CHAPTER III.

RIGHTS RELATING TO PERMITTED FARMS

- 9. The following rights shall be enjoyed in connection with the right for farming:
 - (a) right to have such land in hand , right for farming and gain benefit of such farm;
 - (b) right to sell, pawn, lease, exchange, or donate , in whole or in part of the right for farming in accord with prescribed disciplines;
 - (c) disputes arising out of inheritance of farmland shall be decided upon by the law respective court in accord with existing law;
 - (d) the duration of the right for farming shall continue so long as the stipulated conditions are not breached;
 - (e) land development operation are to be carried out by doing joint-venture with the investment of rural cooperative association or private investors;
 - (f) in accordance with Foreign Investment Law, foreigner or organization containing foreigner are to be carried out by doing joint-venture;
- 10. The provisions under the section 4, 5, 6, 7, 8 and 9 of this law shall not apply to the allocation of alluvial land.

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11. The disposal of alluvial land can be effected by means of prescribed rules.

CHAPTER IV.

CONDITIONS IN RESPECT OF THE RIGHT TO WORK FARMLAND

12. The following conditions shall be complied with in respect of the right to work farmland: -
- (a) any person shall work farmland in accordance with the provisions of this law;
 - (b) land-tax and other taxes in respect of farmland assessed by the Ministry shall be paid;
 - (c) It is needed to register at related department with fee when the process such as selling, pawning, lending, and donation of right to work farmland is carried out, and the prescribed stamped-duty and registration of deed fees shall be paid;
 - (d) Whenever inheriting of completely handing over of lands is carried out in accordance with existing law, It is needed to register at related department in accord with prescribed conditions;
 - (e) "pawning" is permitted to acquire investment for agricultural production only, by means of pawning the farmland with a government bank (or) authorized bank;
 - (f) farmland shall not be worked without the permission of the relevant farm management body;
 - (g) farmland is prohibited using for non-agriculture purpose without permission;
 - (h) farmland is prohibited to grow other crop from regular crop without permission;
 - (i) farmland shall not be fallow without a sound reason;
 - (j) during the period of before getting the right for farming or disputing the right for farming, selling, pawning, lending, exchange or donation of right for farming farmland is prohibited;
13. After this Law enacted, whenever land dispute happens, registered farmland at the department can do official solution.
14. A person who has the permission of right for farming should not be sold, pawned, leased, exchanged or donated to any foreigner or organization containing foreigner without the permission of State Government.

CHAPTER V.

FORMATION OF FARM MANAGEMENT BODIES

15. The Union Government may form: -
- (a) The Central Farmland Management Body with the Union Minister for Ministry of Agriculture and Irrigation as a Chairman, Deputy Minister for Ministry of Agriculture and Irrigation as Vice Chairman, Director General for the Settlement and Land

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Records Department as Secretary and the relevant government department officials as members of the body;

- (b) The Central Farmland Management Body constituted under the above paragraph (a), can be reconstituted when necessary;

16. The Central Farmland Management Body may form:

- (a) the following farmland management bodies at various levels
 - i. Region or State Farmland Management Body;
 - ii. District Farmland Management Body;
 - iii. Township Farmland Management Body;
 - iv. Ward or Village Tract Farmland Management Body;
- (b) the farmland management bodies at various levels constituted under the above paragraph (a), can be reconstituted when necessary;

CHAPTER VI.

DUTIES AND AUTHORITY OF THE CENTRAL FARMLAND MANAGEMENT BODY

17. The duties and authority of the Central Farmland Management Body are prescribed as follows:

- (a) to prescribe the duties and authority of the farmland management bodies at various levels for the Region or State, District, Township and Ward or Village Tract;
- (b) to give guidance and control in respect of registration the right for farming, issuing the Land Use Certificate, giving the right for farming and solving land dispute;
- (c) to give guidance and control in respect of selling, pawning, leasing, exchange and donation the right for farming;
- (d) revoking the right for farming in accordance with this Law under the section 19 subsection (c) and (d), section 31 and section 37;
- (e) to scrutinize and approve the submission of Region or State Farmland Management Body in respect of using the farmland to be required for human settlements and housing in rural and urban area in which population and household are increasing ;
- (f) to scrutinize and approve the submission of Region or State Farmland Management Body in respect of using the farmland to be required for school, health center, hospital, clinic, library, bazaar, cemetery, and other buildings to develop social life of the rural people;
- (g) to scrutinize and approve the submission of Region or State Farmland Management Body in respect of using the farmland to be required for agricultural sector development transition from primitive farm to modernize farm mechanization in which warehouse, rice mill, silo, godown, farm road and other buildings were needed to be established;
- (h) to give guidance and control in respect of the allocation of alluvial land and prescribe the policy relating to right for farming;
- (i) to give guidance and control in respect of shifting Taungya cultivation;
- (j) to perform the duty assigned by Union Government in respect of farmland periodically;

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18. In accordance with the provisions of this law, the Central Farmland Management Body may delegate authority to the appropriate Farm Management Body for the purpose of farmland valuation in respect of local conditions and current prices related to registration of deeds, transfer of the right for farming which shall be compulsory registered at the office of relevant department in the presence of witness of the Ward or Village Tract Farm Management Body.

CHAPTER VII.

TAKING ACTION ON BREACH OF CONDITIONS

19. If the conditions prescribed in section 12 of this law are not met in all or anyone, the Farmland Management Body appointed by the Ministry in this behalf shall, after making enquiry in accordance with the rules made under this Law, decide one or more than one of the following orders:
- (a) to be paid the prescribed fine;
 - (b) to be utilized the farmland in the prescribed manner;
 - (c) to be evicted from farmland;
 - (d) to be removed the buildings which were built on farmland without permission;
20. If whosoever having the right for farming under this law, fails to obey the order issued by the Farmland Management Body in accordance with this law under section 19, shall accuse to the respective court after the deadline-date is over.
21. Whosoever who having the right for farming under this law, fails to pay revenue levied by the Ministry, recovery shall be made of such revenue under the law as if it were an arrear of land revenue.

CHAPTER VIII.

DECIDING LAND DISPUTES IN RESPECT OF THE RIGHT FOR FARMING AND APPEAL

22. Land disputes in respect of the right for farming shall be decided by the Ward or Village Tract Farmland Management Body, after opening the case file and making actions such as enquiry and hearing about the land disputes.
- 23.
- (a) Whosoever may appeal to the respective Township Farmland Management Body against within 30 days from the date of decision made by the Ward or Village Tract Farmland Management Body in accordance with the section 22 of this law ;
 - (b) Township Farmland Management Body may approve (or) revise (or) cancel the decision made by the Ward or Village Tract Farmland Management Body;
- 24.

- (a) Whosoever may appeal to the respective District Farmland Management Body against within 30 days from the date of decision made by the Township Farmland Management Body in accordance with the section 23 subsection (b) of this law;
 - (b) District Farmland Management Body may approve (or) revise (or) cancel the decision made by the Township Farmland Management Body;
- 25.
- (a) Whosoever may appeal to the respective Region or State Farmland Management Body against within 60 days from the date of decision made by the District Farmland Management Body in accordance with the section 24 subsection (b) of this law;
 - (b) Region or State Farmland Management Body may approve (or) revise (or) cancel the decision made by the District Farmland Management Body;
 - (c) the decision made by the Region or State Farmland Management Body is final;

CHAPTER IX.

COMPENSATION AND INDEMNITY

26. Notwithstanding any provision contained in any other existing law, the Central Farmland Management Body must be coordinated with acted for suitable compensation and indemnity in the case of repossession of farmland either in the interest of the State or in the interest of the public. Confiscated farms are to be compensated without any loss. If farm is upgraded with building, it is required to compensate for such building.
27. Whosoever shall not be entitled for getting compensation, if the right for farming or farmland was revoked by the Central Farmland Management Body in accordance with this Law under the section 17 subsection (d).

CHAPTER X.

UTILIZATION OF FARMLAND

28. In respect of application for permission to grow other crop from regular crop :-
- (a) The Central Farmland Management Body shall give permission to grow other crop on paddy land, after scrutinize the prescribed condition while rice is the main staple crop of the State and not to diminish the rice sufficiency;
 - (b) The respective Region or State Farmland Management Body Shall give permission to grow other crop on farmland except paddy land, after scrutinize the prescribed condition;
29. In the long-term national interest of the State, the respective implemented Ministry shall be utilized the farmland for the Project, by the permission of the Cabinet of the Union Government after getting the remarks of the Central Farmland Management Body.

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30. In respect of the application to utilize the farmland for other purposes in the interest of the public:-
- (a) The Central Farmland Management Body shall give permission to utilize the paddy land for other purposes, with the recommendation of the Region or State Farmland Management Body;
 - (b) The respective Region or State Government shall give permission to utilize the farmland for other purposes except paddy land, with the recommendation of the Region or State Farmland Management Body;
31. The Central Farmland Management Body shall confiscate the farmland if the farmland is not start to use within six months in the prescribed manner from the date of permission order in accordance with the section 30 of this law, or not completed within the prescribed period.

CHAPTER XI.

FARMLAND ADMINISTRATION

32. In confiscating farms in the interests of nation, it is a must to confiscate required least measurement of farm. It is necessary to implement projects within prescribed period as soon as possible. If projects are terminated, farms are to be given back to original legitimate farm owner (person/organization) who has right for farming.
33. Except order or summons of the Union Government or authorities appointed by the Union Government, pasture land and common village land are to remain unchanged.
34. In respect of right to do (or) right to utilize land of vacant, fallow and virgin land which was permitted by the Central Committee for the Management of Vacant, Fallow and Virgin land, for Agriculture purpose, and Livestock Poultry Farming and Aquaculture purposes, shall be considered as stable cultivated farmland under this law when crop production is stable.

CHAPTER XII.

CRIME AND PENALTIES

35. Anyone who has right for farming fails to comply with an order issued by the farm management body in accordance with the section 19, (or) decision of land dispute under this Law, shall be sentenced with imprisonment for a term which may at least six months to maximum two years with fine which may at least three hundred thousand kyat to maximum five hundred thousand kyat.
36. Anyone whomsoever that fails to comply with an order issued in accordance with the section 19 of this law shall be sentenced with imprisonments for maximum years states in section 35 of this law, if he/she has same punishment before.

37. Anyone who has right for farming breach the prohibited states in section 14 of this law, shall be sentenced with imprisonment for a term which may at least one year to maximum three years with fine which may not less than under one million kyat, and then money and materials with relate to crime shall be forfeited to the State.

CHAPTER XIII.

GENERAL PROVISIONS

38. "Agriculturists associations" are allowed to organize in accordance with the laws enacted for improvement of the socio economy of farmers.
39. Every member of the Farm Management Body at various levels constituted under this law shall be deemed to be a public servant within the meaning of section 21 of the Penal Code.
40. No suit, prosecution or other proceedings shall lie in court against any member of Farm Management Body at various levels for action carried out in conformity with this law or rules and regulations of this law.
41. Prosecution in accordance with section 37 of this law shall be deemed as Police case.
42. To undertake the provisions of this law: -
- (a) The Ministry may issue the necessary rules and regulations with approval of the Union Government;
 - (b) The Central Farmland Management Body and the Department may issue necessary notifications, orders, directives and procedures;
43. This law revoked the following laws:-
- (a) 1953 Land Nationalization Act;
 - (b) 1963 The Disposal of Tenancies Law;
 - (c) 1963 The Agriculturist's Rights Protection Law;

I hereby signed in accordance with the Constitution of the Republic of the Union of Myanmar.

U Thein Sein

The President

The Republic of the Union of Myanmar

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Annex B

**Vacant, Fallow, and Virgin Lands Management Law,
Pyidaungsu Hluttaw Law No. 10 of 2012**

The Vacant, Fallow and Virgin Lands Management Law

(Pyidaungsu Hluttaw Law No.10 of 2012)

Day of 8th Waxing of Tagu 1373 ME

(30th March, 2012)

The Pyidaungsu Hluttaw enacted this Law.

CHAPTER I.

NAME AND DEFINITIONS

1. This Law shall be called the Vacant, Fallow and Virgin Lands Management Law.
2. The following expressions contained in this Law shall have the meaning given hereunder:-
 - (a) "Central Committee" means the Central Committee for the Management of Vacant, Fallow and Virgin Lands;
 - (b) "Ministry" means the Ministry of Agriculture and Irrigation;
 - (c) "Department" means the Settlement and Land Records Department;
 - (d) "Task Force" means the Task Force for the Management of Vacant, Fallow and Virgin Lands, has been formed by this Law;
 - (e) "Vacant land and Fallow land" means land which was done by the tenant before, and then that land was abandoned by the tenant in any reason, not only the State designated land but also for agriculture or livestock breeding purposes;
 - (f) "Virgin land" means land which may be new land or other wood land in which cultivation was never done before. It may have or not with forest, bamboo or bushes, even though ground feature may be plane or not ,and includes the land which has been cancelled legally from Reserved Forest, Grazing ground, and Fishery pond land respectively for Agriculture, Livestock Poultry Farming and Aquaculture, Mining, and Government allowable other purposes in line with law;
 - (g) "Security Fees" mean fees prescribed by this law, advance payable to one of the Union Government authorized bank in credit or collateral by persons who are granted the right to do land, right to utilize land in accordance with the type of enterprise;
 - (h) "Land Revenue" means land tax rate prescribed by the rule made under this law payable to the State by persons who are granted the right to do land, right to utilize land in accordance with the type of enterprise;
 - (i) "Perennial Plant" means plants grow in compact plantation to gain the benefit from plantation crop (or) perennial plant within a period of time in accordance with the type of the plant;

- (j) Orchard” means plants grow in either compact plantation or mixed cropping whether it’s no need for replanting as per harvest frequently until the plant is dead;
- (k) “Seasonal Crops” means crops grow within the growing season period, after harvest and getting income, It must be newly tillage operation and sown for further production;
- (l) “Mines Exploitation Enterprise” means as same as define in Section2, Sub-section (j) of the Myanmar Mine Law;
- (m) “Permission Order” means the order of permission has been granted by Central Committee in respect of application for granting right to do land, right to utilize land on Vacant, Fallow and Virgin Lands;

CHAPTER II

FORMATION OF VACANT, FALLOW AND VIRGIN LANDS MANAGEMENT CENTRAL COMMITTEE

- 3. The President may form:-
 - (a) the Central Committee for the Management of Vacant, Fallow and Virgin Lands, with the Union Minister for Agriculture and Irrigation appointed as a Chairman, Director-General of the Settlement and Land Records as Secretary and suitable persons of the concern government department and organizations , and other suitable persons as members, in order to ensure the management task concerning the use of Vacant, Fallow and Virgin Lands for State Economic Development in relation to commercial agriculture, livestock breeding, mining, and government allowable other purposes in line with law;
 - (b) the Central Committee constituted under the above paragraph (a), can be reconstituted when necessary;

CHAPTER III

RIGHT TO DO LAND, RIGHT TO UTILIZE LAND ON VACANT, FALLOW AND VIRGIN LANDS

- 4. The Central Committee shall permit the right to do, (and) right to utilize land of vacant, fallow and virgin land in the country, for the following purposes:-
 - (a) Agriculture;
 - (b) Livestock Poultry Farming and Aquaculture;
 - (c) Mining;
 - (d) Government allowable other purposes in line with law;
- 5. The following persons and organizations may apply to Central Committee in accordance with the prescribed conditions for carry out the purposes which are stated in Section 4:-

- (a) Myanmar citizen investors;
 - (b) Department, Government Organization, and Non Government Organizations;
 - (c) Exemption persons who are eligible in accordance with Section 4 of the Transfer of Immovable Property Restriction Law, 1987;
 - (d) Joint-Venture of Investors who have right to carry out with Department (and) Government' Organization in accordance with Foreign Investment Law;
 - (e) Joint-Venture of Investors who have right to carry out with Myanmar Citizen Investors , in accordance with Foreign Investment Law;
6. The Central Committee shall take the following necessary action in respect of on application matters which are in accordance with Section 5:-
- (a) to get the recommendation of the concern Region or State Government;
 - (b) to get the recommendation of the Ministry of Mines for mining, and other concern Ministry for other purposes prescribe in Section4, Sub-section (d);
 - (c) to coordinate with the Ministry of Environmental Conservation and Forestry ,and other concern Ministries for the prevention of damage and destruction to the Forest land which are Reserved Forest, and Protected Public Forest; and for conservation of natural regions, watershed area and natural fisheries;
 - (d) to submit the necessary suggestion relate to explore the National Land Use Policy to the Union Government;
7. The Central Committee shall permit the grant on application for granting right to do, right to utilize land of Vacant, Fallow and Virgin Lands with the agreement of Myanmar Investment Commission for foreign investment.
8. The Central Committee shall make permission or rejection of the systematic application in order to ensure the management task concerning the use of Vacant, Fallow and Virgin Lands.
9. In accordance with the Section 8,the Central Committee Shall issue the permission order, granting the right to do, right to utilize land of vacant, fallow and virgin lands, after security fees has been paid.

CHAPTER IV

CONDITIONS IN ACCORDANCE WITH RIGHT TO DO, RIGHT TO UTILIZE LAND OF VACANT, FALLOW AND VIRGIN LANDS

10. The Central committee shall permit the following land area of Vacant, Fallow and Virgin Lands in relation to commercial agriculture, and livestock breeding purposes:-
- (a) Agriculture
 - (1) In the case of Perennial Plant, not more than 5000 acres at a time and whenever cultivation is completed on 75 percent of the permitted acres, an additional not more than 5000 acres at a time up to a total of 50000 acres shall be permitted frequently.

- Actual cultivable acre more than 5000 acres at a time shall be permitted for the state interest with the agreement of the Cabinet of the Union Government;
- (2) In the case of Orchard, not exceed 3000 acres;
 - (3) In the case of Industrial Crop, not more than 5000 acres at a time and whenever cultivation is completed on 75 percent of the permitted acres, an additional not more than 5000 acres at a time up to a total of 50000 acres shall be permitted frequently. More than 5000 acres at a time shall be permitted for the state interest with the agreement of the Cabinet of the Union Government;
 - (4) In the case of rural farmer and a family who want to run manageable farm shall be allowed to use not exceed 50 acres by the permission of one of the respective local organization may be managed;
- (b) Livestock, Poultry Farming and Aquaculture
- (1) In case of Aquaculture, not exceed 1000 acres;
 - (2) In case of Livestock breeding and Poultry Farming
 - (aa) Livestock breeding for buffalo, cattle, horse, not exceed 2000 acres;
 - (bb) Livestock breeding for sheep, goat, not exceed 500 acres;
 - (cc) Poultry farming, pig, not exceed 300 acres;
 - (3) Animal husbandry not include in sub-section (1) and (2), suitable acres;
- (c) Mining purpose shall be permitted with the agreement and coordination with the Union Government of the Ministry of Mine;
- (d) Government allowable other purposes in line with law shall be permitted with the agreement and coordination with the Union Government of the relevant Ministry;
11. The Central Committee shall permit the following duration for right to use of Vacant, Fallow and Virgin Lands in relation to commercial agriculture, and livestock breeding purposes:-
- (a) Agriculture
 - (1) For perennial plants and orchard, the duration for right to use land is not exceed 30 years from the year of grant;
 - (2) For seasonal crops, the duration for right to use land shall continue so long as there is no breach of condition;
 - (b) For Livestock, Poultry Farming and Aquaculture, the duration for right to use land is not exceed 30 years from the year of grant;
 - (c) After expire the duration of right to use land in accordance with the above sub-section(a)(1) and sub-section(b), shall continue permission the duration base on type of work ,an additional years frequently up to a total of not exceed 30 years;
 - (d) For Mining purpose the duration of right to use land shall be permitted with the agreement and coordination with the Union Government of the Ministry of Mine;
 - (e) For Government allowable other purposes in line with law the duration of right to use land shall be permitted with the agreement and coordination with the Union Government of the relevant Ministry;

12. The Central Committee shall permit the right to use land in a case where application is made by Investors who have been permitted in accordance with Foreign Investment Law, or by Organizations consisting of Investors who have been permitted in accordance with Foreign Investment Law in areas in which land development operation are unable to be carried out by the citizens.

CHAPTER V

SECURITY FEES AND LAND REVENUE

13. The Central Committee may fix the security fees rate to the payable person who will get the permission right to use the vacant, fallow and virgin lands, depending upon the type of enterprise.
14. The Central Committee may fix the land revenue rate to be assessed and suitable period of tax-exemption for granting right to use the vacant, fallow and virgin lands, depending upon the type of enterprise and crop.
15. The Department shall be made in the following manner:-
 - (a) Assessment and collection of land revenue shall be made start from the expire date of tax-exemption period to the person who got the permission for granting right to use the vacant, fallow and virgin land depending upon the type of enterprise and crop;
 - (b) Supervision shall be made on payment of land revenue of person who got the permission for granting right to use the vacant, fallow and virgin lands;

CHAPTER VI

CONDITIONS SHALL BE COMPLIED BY PERSON WHO IS GRANTED THE RIGHT TO USE THE VACANT, FALLOW AND VIRGIN LANDS

16. Person who is granted the right to use the vacant, fallow and virgin lands shall be complied the following conditions:-
 - (a) The land granted shall be used for the purpose granted and in relation to economic enterprise;
 - (b) The enterprise shall carry out to be completed within four years from the date of grant according to the purpose granted. The prescribed period may be revised by the Central Committee for losing time due to natural disaster and unstable security conditions;
 - (c) Land granted shall not be mortgaged, giving, sold, leasing or otherwise transferred or divided without the permission of the Cabinet of the Union Government;
 - (d) Land revenue shall be paid fully for the land granted;

- (e) With respect to land granted the conditions prescribed by the Central Committee, shall be complied;
- (f) Except the purpose granted enterprise, exploring other natural resources below and above ground is prohibited;
- (g) If natural resources are found in the authorized land and the Government being desirous of extracting the same on a commercial basis resumes the area required therefrom, it shall be surrendered as directed by the Union Government;

CHAPTER VII

SUPERVISION

17. The Central Committee shall constitute and prescribed duties of the Task Force and Special Group in respective Region or State, for scrutinizing and co-ordinations with respect to submitted cases of right to use the vacant, fallow and virgin lands.
18. The Central Committee may form occasionally and appoint the Special Board with relevant Departments, to inspect whether the person who is granted right to use vacant, fallow and virgin land shall comply with or not the prescribed conditions to carry out the purpose granted.
19. The Central Committee shall resume the area required in the authorized land, if one of the following situation arises:-
 - (a) If ancient culture heritage are found in the authorized land;
 - (b) If infrastructure project or Special project are desired to be constructed on the authorized land, in the interest of the State;
 - (c) Except the permitted minerals, if other natural resources are found in the authorized land which are permitted for production of mining;
 - (d) If natural resources are found in the authorized land which are permitted for the purposes described in Section 4, Sub-section (a), (b), and (d);
20. For resuming the area required in the authorized land in accordance with the Section 19, the Central Committee will have to be undertaken in coordination with the department, organization concerned for getting the compensation within the prescribed period, calculated by current value to cover the actual investment cost of the legitimate owner, with the agreement of the Cabinet of the Union Government.
21. If the Central Committee found that the person who is granted right to use vacant, fallow and virgin lands, breach any condition of this law; the security fees deposited shall be forfeited to the State and, shall be revoked the right of land use.
22. The person and organizations who have granted the authorized land before this law is enacted, by the permission of the Central Committee for the Management of Vacant, Fallow and Virgin Lands shall be complied the following conditions:-
 - (a) Submit the complete record file to the Central Committee, attach with granted area, order issue date and serial number, the statement of actual cultivated area and remaining uncultivated area with photo and document evidence;

- (b) Comply this law with respect to cultivated area of vacant, fallow and virgin lands;
- (c) It deem as the authorized lands which never reclaimed beyond the prescribed duration, have been revoked by the State;
- (d) If the Central Committee found that those persons who are granted such rights fail to adhere or violate the prescribed conditions or fail to fulfill their commitments during the prescribed time, the security fees deposited shall be forfeited to the State and, shall be revoked the right of land use;

CHAPTER VIII

GIVING HELP TO PERSONS WHO ARE GRANTED RIGHT TO USE OF VACANT, FALLOW AND VIRGIN LANDS

23. The Central Committee shall make the following matter:-
- (a) If the persons who are granted right to use vacant, fallow and virgin lands, contact and request for technical, good quality seeds and other assistance for carry out agriculture or Livestock breeding purposes, then the Central Committee shall take necessary action to help them;
 - (b) If the persons who are granted right to use vacant, fallow and virgin lands, request for getting loan of investment capital or the assistance of materials and services, then the Central Committee shall make necessary recommendation to the concern department and organization;
 - (c) If the persons who are granted right to use vacant, fallow and virgin lands, faced with huge amount of damage and loss by natural disaster like as cyclone, request for getting special loan to the State, then the Central Committee shall make necessary recommendation to the relevant Ministry;
24. The Central Committee shall refund the security fees to the persons who are granted right to use vacant, fallow and virgin lands, when the enterprise completed within the prescribed time and conditions.
25. The Central Committee shall make the following matter :-
- (a) When the person who is granted right to use of vacant, fallow and virgin land submit his suffering of dispute, disturbance, encroachment and destroying the benefits with the local farmers, in carrying out the work, the Central Committee shall make co-ordination with relevant department and organization at first, and if unable to coordinate it shall make in accordance with Law;
 - (b) The Central Committee shall make co-ordination depend on their desire of the local farmers, not to be lost. whether the existing farmland are included in the authorized area of which are not permitted officially, and ever since before growing by the local farmers;
 - (c) The Central Committee shall make in accordance with Law with the agreement of the both sides, if there is an authorized farmers in the authorized area before;

CHAPTER IX

OFFENCE AND PENALTIES

26. Anyone whomsoever that destroy the benefit with respect to immovable property on the authorized land, shall be sentenced with imprisonment for a term which may not exceeding three years or with fine which may not exceed one million kyats or with both.
27. Anyone whomsoever that encroach on the authorized land without the permission of the legitimate owner or his representative, shall be sentenced with imprisonment for a term which may not exceeding two years or with fine which may not exceed five hundred thousand kyats or with both.
28. Anyone whomsoever that obstructs the legitimate owner or the person who is working with the agreement of the legitimate owner in the course of their duties on the authorized land, shall be sentenced with imprisonment for a term which may not exceeding one year or with fine which may not exceed three hundred thousand kyats or with both.
29. Anyone whomsoever that fail to comply with an eviction-order on revoking the authorized land, shall be sentenced with imprisonment for a term which may not exceeding one year or with fine which may not exceed three hundred thousand kyats or with both.

CHAPTER X

GENERAL PROVISIONS

30. Offences in Chapter IX are cognizable offences.
31. The Central Committee have right to call for submitting the situation reports and work completion reports from those persons who are granted the right to use vacant, fallow and virgin lands, to be in line with prescribe conditions.
32. The Central Committee shall submit Half-Yearly Report to the Cabinet of the Union Government on matters concerning the Management of Vacant, Fallow and Virgin Lands. If policy matter happens, submitted systematically to the President for guidance.
33. The Central Committee is formed by this Law, shall handle and carry out the duties and rights of the Central Committee for the management of culturable land, fallow land and waste land which have been formed before this Law is enacted.
34. To undertake the provisions of this law:-

- (a) The Ministry may issue the necessary rules and regulations, with the approval of the Union Government;
- (b) The Ministry and the Central Committee may issue the necessary notifications, orders, directives and procedures;

I hereby signed in accordance with the Constitution of the Republic of the Union of Myanmar.

U Thein Sein

The President

The Republic of the Union of Myanmar

Annex C

**Republic of the Union of Myanmar, Ministry of Agriculture
and Irrigation, Notification No. 1/2012, Vacant, Fallow and
Virgin Land Management Rules**

The Republic of the Union of Myanmar**Ministry of Agriculture and Irrigation****Notification No. 1/2012****August 31, 2012****Vacant, Fallow and Virgin Lands Management Rules.**

The Ministry of Agriculture and Irrigation, exercising its given rights, and with the approval of the Union Government, has issued the following rules in accordance with Section 34, Sub-section (a) of the Vacant, Fallow and Virgin Lands Management Law.

CHAPTER I**TERMS AND DEFINITIONS**

1. These rules shall be called the Vacant, Fallow and Virgin Lands Management Rules.
2. The terms and expressions used in these rules shall have the same meaning as used in the Vacant, Fallow and Virgin Lands Management Law. In addition, the following expressions shall have the meanings as stated below:
 - (a) **Separate Board** means the board formed by the Central Committee to inspect cases and matters relating to the rights to work on and utilize vacant, fallow and virgin lands submitted by the Naypyidaw Council or respective Region or State.
 - (b) **Special Board** means the board formed by the Central Committee on occasion to inspect the situation regarding implementation of projects on vacant, fallow and virgin lands.
 - (c) **Form** means the prescribed form used in these rules.

CHAPTER II**RIGHTS TO WORK ON AND UTILIZE VACANT, FALLOW AND VIRGIN LANDS**

3. The following persons or organizations that wish to carry out agricultural projects, livestock breeding, mining and other government approved legal projects on vacant, fallow and virgin lands may apply to the Central Committee:

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- (a) Myanmar citizen investors
- (b) Government departments, government organizations and non-government organizations
- (c) Those who have been exempted by the relevant ministry in accordance with Section 14 of the 1987 Transfer of Immovable Property Restriction Law, such as foreign diplomatic missions that have diplomatic ties with the government, UN organizations, other organizations or individuals
- (d) Investors with the rights to carry out joint-ventures with a government department or any government organization according to the Foreign Investment Law
- (e) Investors with the rights to carry out joint-ventures with Myanmar citizen investors according to the Foreign Investment Law
- (f) Rural farmers and families who wish to carry out manageable agricultural projects.

4. When submitting an application according to Section 3, the following forms must be used:

- (a) application form for the right to cultivate seasonal crops, industrial plants, perennial plants, and orchard produce (Form – 1)
- (b) application form for the right to utilize land to carry out livestock farming (Form – 2)
- (c) application form for the right to utilize land to carry out mining projects (Form – 3)
- (d) application form for the right to utilize land to carry out other government approved legal projects (Form – 4)

5. When submitting an application in accordance with Section 4, one of the following maps issued by the relevant Township Department Office must be attached:

- (a) if located in a region where a field map is available, 2 copies of a map drawn from the field map according to the scale used in the current year: 16 inches = 1 mile
- (b) if a field map is unavailable, 2 copies of a temporary sketch map drawn according to the scale of 1 inch = 1 mile (or) 1: 50000

6. Upon receiving applications for the rights to work on and utilize vacant, fallow and virgin lands, the Central Committee shall record the relevant details in the Register for Applications for the Rights to Work on and Utilize Vacant, Fallow and Virgin lands (Form -5), and transfer them to the respective Naypyidaw Council or Regional or State task force for inspection and further action.

7. The Naypyidaw Council or Regional or State task force shall forward the applications for the rights to work on and utilize vacant, fallow and virgin lands submitted in accordance with

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Section 6, to the respective Naypyidaw Department Office or Regional or State Department Office.

8. The Naypyidaw Department Office or Regional or State Department Office, shall through the respective District Department Office, forward the applications for the rights to work on and utilize vacant, fallow and virgin lands submitted in accordance with Section 7, to the respective Township Department Office for necessary action.

9. The Township Department Office, upon receiving an application submitted in accordance with Section 8, shall –

(a) record details concerning the application in the Register for Applications for the Rights to Work on and Utilize Vacant, Fallow and Virgin lands (Form - 5).

(b) open a case file for the application regarding the right to work on and utilize vacant, fallow and virgin lands, and on the date of receiving the application, notify the public that if any individual wishes to object, she/he can raise an objection together with sound evidence regarding the application for the right to work on and utilize vacant, fallow and virgin lands according to the Notification for Objection form (Form – 6).

(c) The Notification for Objection form (Form – 6) must be placed on the notice boards of the relevant Naypyidaw Department Office or Regional or State Department Office, the District Department Office, the Township Department Office, and the Administrator's Office of the ward or village tract where the vacant, fallow and virgin lands are located.

(d) In the notification in accordance with Sub-section (b), it must be stated that objections can be made within 30 days from the date of notification.

10. During the period of notification in accordance with Section 9, Sub-section (b), the Township Department Office shall examine the following points and fill in the Inspection Form for the Right to Work on and Utilize Vacant, Fallow and Virgin Lands (Form – 7):

(a) whether the applicant is eligible in accordance with one of the criteria in Section 3

(b) regarding the applied vacant, fallow and virgin lands –

(1) whether the lands are in fact vacant, fallow and virgin lands

(2) whether there is a holder currently utilizing the land

(3) whether there is any encroachment on the land

(4) whether the right to work on or utilize the land had been granted in the past

- (5) whether more than one applicant has applied for the vacant, fallow and virgin land or a part of the land.
- (c) whether the applicant has the means to work on or utilize the vacant, fallow and virgin lands
- (d) whether the vacant, fallow and virgin lands are suitable for the purpose mentioned in the application
- (e) whether the environment will be affected
- (f) whether the applied vacant, fallow and virgin lands are free from involvement with the lands managed by respective enterprises, departments or organizations, and whether the projects of these enterprises, departments or organizations will be affected.

11. In handling the applications submitted in accordance with Sect 8, if there is more than one applicant for the vacant, fallow and virgin lands, the Township Department Office shall issue a notification using the Notification for Objection form (Form – 6) for any objections with sound evidence, and carry out the following:

- (a) Record the facts concerning the application in the Register for Applications for the Rights to Work on and Utilize Vacant, Fallow and Virgin lands (Form - 5)
- (b) In addition to the points in Section 10, examine the following points and fill in the Inspection Form for the Right to Work on and Utilize Vacant, Fallow and Virgin Lands (Form – 7):
 - (1) the conditions regarding the means for investment
 - (2) the conditions for implementation of the proposed project
 - (3) the conditions with respect to the work plan
 - (4) the situation regarding supply of materials used for the project

12. With respect to the application for the rights to work on and utilize vacant, fallow and virgin lands:

- (a) If there is any objection -
 - (1) the Township Department Office shall examine the objection together with the submitted evidence, within 7 days from the date of receiving the objection, and report the findings together with the case file to the respective Naypyidaw Council or Regional or State task force through the respective District Department Office and Regional or State Department Office.

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(2) upon receiving the case file and objection submitted according to Sub-section (1), the Naypyidaw Council or Regional or State task force shall submit the objection, together with relevant remarks or notes, to a Separate Board formed and delegated by the Central Committee, with instructions to carry out an inquiry and report findings.

(3) upon receiving the instructions in accordance with Sub-section (2), the Separate Board shall within 7 days from receipt of the instructions, make a field trip to the location of the vacant, fallow and virgin lands to carry out an inspection, and submit a report with findings, together with photo records as evidence, to the respective Naypyidaw Council or Regional or State task force.

(b) If there is no objection:

(1) the Township Department Office shall submit the case file together with findings and remarks to the respective District Department Office within 7 days from the last date of the objection period.

(2) the District Department Office shall submit the case file together with remarks to the respective Naypyidaw Department Office or Regional or State Department Office within 7 days from the date of receipt of the case file submitted in accordance with Sub-section (1).

(3) the Naypyidaw Department Office or Regional or State Department Office shall submit the case file together with remarks to the respective Naypyidaw Council or Regional or State task force within 7 days from the date of receipt of the case file submitted in accordance with Sub-section (2).

13. Upon receiving the case file concerning the right to work on and utilize vacant, fallow and virgin lands submitted in accordance with Section 12, Sub-section (a) and (b), the Naypyidaw Council or Regional or State task force shall examine the following points and record the findings in the Inspection Report (Form – 8):

(a) details concerning the applicant

(b) details concerning the applied vacant, fallow and virgin lands

(c) findings upon inspection of the applied vacant, fallow and virgin lands

(d) findings regarding investments

(e) findings regarding work plan

(f) findings regarding preparation and utilization of materials for the project

(g) findings regarding ability to complete projects within the prescribed period

(h) other facts or findings

(i) observations or conclusions with regard to the applied vacant, fallow and virgin lands and the subject of application

14. After taking action in accordance with Section 13, the Naypyidaw Council or Regional or State task force shall submit the case file as soon as possible to the Naypyidaw Council or Regional or State government for consideration and remarks.

15. Within 7 days from the date remarks concerning the case file submitted in accordance with Section 14 are received from the Naypyidaw Council or Regional or State government, the Naypyidaw Council or Regional or State task force shall –

(a) with the exception of applications for the right to work on vacant, fallow and virgin lands not exceeding 50 acres by rural farmers and families wishing to carry out manageable agricultural projects, submit all remaining case files regarding applications for the rights to work on and utilize vacant, fallow and virgin lands to the Central Committee with remarks by the Naypyidaw Council or Regional or State government.

(b) with regard to applications for the right to work on vacant, fallow and virgin lands not exceeding 50 acres, by rural farmers and families wishing to carry out manageable agricultural projects, approve or reject the applications in accordance with the remarks given by the Naypyidaw Council or Regional or State government.

16. Upon receiving the case file submitted in accordance with Section 15, the Central Committee shall –

(a) request remarks from the Union Government Ministry of Mining if for the purpose of mining, or remarks from the relevant Ministry of the Union Government if for the purpose of other government approved legal projects.

(b) in order to avoid damage to the forest lands managed by the government, and in order to avoid damage to natural habitats, areas of water diversion, and natural lakes and ponds, request remarks from the Ministry of Conservation and Forestry and other relevant ministries.

(c) with regard to the projects concerning applications for the right to work on and utilize vacant, fallow and virgin lands for the purpose of foreign investment, obtain agreement from the Myanmar Investment Commission.

17. Upon obtaining the views of the relevant ministry in accordance with Section 16, Sub-section (a) and (b), the Central Committee shall approve or reject the application for the right to work on or utilize vacant, fallow and virgin lands after reviewing the concerned case file.

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18. After taking action according to Section 17, the Central Committee shall –

(a) direct the person who has been granted the rights to work on and utilize vacant, fallow and virgin lands to deposit fees as guarantee in the Myanmar Agricultural Development Bank and record details in the Register for Persons Granted Rights to Work on and Utilize Vacant, Fallow and Virgin Lands (Form – 9).

(b) direct the person whose application for the rights to work on and utilize vacant, fallow and virgin lands has been rejected, to record details in the Register for Persons Denied the Rights to Work on and Utilize Vacant, Fallow and Virgin Lands (Form – 10)

19. After taking action in accordance with Section 15, Sub-section (b), the Naypyidaw Council or Regional or State task force shall –

(a) direct the person who has been granted the rights to work on and utilize vacant, fallow and virgin lands to deposit fees as guarantee in the Myanmar Agricultural Development Bank and record details in the Register for Persons Granted Rights to Work on and Utilize Vacant, Fallow and Virgin Lands (Form – 9).

(b) direct the person whose application for the rights to work on and utilize vacant, fallow and virgin lands has been rejected, to record details in the Register for Persons Denied the Rights to Work on and Utilize Vacant, Fallow and Virgin Lands (Form – 10)

20. The Central Committee shall issue a notification using the following relevant form to the person being granted the rights to work on or utilize vacant, fallow and virgin lands:

(a) permission granting the rights to cultivate seasonal crops and industrial seasonal plants
(Form – 11)

(b) permission granting the rights to cultivate perennial plants and orchard produce (Form – 12)

(c) permission granting rights to utilize land for livestock farming (Form - 13)

(d) permission granting rights to utilize land for mining projects (Form – 14)

(e) permission granting rights to carry out other government approved legal projects (Form - 15)

21. The Naypyidaw Council or Regional or State task force shall issue a notification using the following relevant form to the person being granted rights in accordance with Section 15, sub-section (b), in order to carry out agricultural projects:

(a) permission granting rights to cultivate seasonal crops and industrial seasonal plants in a manageable project
(Form – 11 a)

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(b) permission granting rights to cultivate perennial plants or orchard produce in a manageable project (Form – 12 a)

22. The Central Committee shall inform the person whose application to work on or utilize vacant, fallow and virgin lands has been rejected in accordance with Section 18, Sub-section (b), using the form for Notification of Rejection of the Application for the Rights to Work on or Utilize Vacant, Fallow and Virgin Lands (Form – 16).

23. The Naypyidaw Council or Regional or State task force shall inform the person whose application to work on or utilize vacant, fallow and virgin lands has been rejected in accordance with Section 19, Sub-section (b), using the form for Notification of Rejection of the Application for the Rights to Work on or Utilize Vacant, Fallow and Virgin Lands (Form – 16).

24. With regard to the application by an investor for the rights to work on or utilize vacant, fallow and virgin lands in accordance with the Foreign Investment Law, the Central Committee shall, after receiving agreement from the Myanmar Investment Commission in accordance with Section 16, Sub-section (c), open a case file and take action according to these rules.

25. The Central Committee shall submit copies of the permission notification granting the rights to work on or utilize vacant, fallow and virgin lands according to Section 20, to the relevant Union Ministry, Regional or State Government, and Naypyidaw Council or Regional or State task force.

26. The Naypyidaw Council or Regional or State task force shall submit copies of the permission notification granting the rights to work on or utilize vacant, fallow and virgin lands according to Section 21, to the Central Committee and Regional or State government.

27. If the person granted rights to work on and utilize 75 per cent of the vacant, fallow and virgin lands approved by the Central Committee in accordance with Section 29, Sub-section (a) and (d) wishes to extend agricultural activities after completing the actual implementation of the project, shall submit an application using the Form for the Rights to Extend Cultivation of Perennial Plants, Seasonal Crops or Industrial Seasonal Plants (Form -1A) to the Central Committee.

28. With regard to the applications submitted in accordance with Section 27, the Central Committee shall take action according to Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, Section, 15, Sub-section (a), Section 16, Sub-section (b) and (c), Sections 17, 18, 20 and 22.

CHAPTER III

CONDITIONS WITH RESPECT TO THE RIGHTS TO WORK ON OR UTILIZE VACANT, FALLOW AND VIRGIN LANDS

29. With a view to developing business opportunities and development of the country's economy through the utilization of vacant, fallow and virgin lands, with regard to the area of land allowed to work on or utilize vacant, fallow and virgin lands for cultivation of perennial plants, orchard produce, seasonal crops, and industrial seasonal plants and to do other related business projects, the Central Committee can do the following:

(a) if perennial plants –

(1) allow an area not exceeding 5000 acres each time.

(2) if after actual implementation of the project on 75 per cent of the area permitted in accordance with Sub-section (1), an application according to Section 27 is submitted, based on a field visit and endorsement by the task force, a further extension of land not exceeding 5000 acres can be allowed each time, with up to a total of 50,000 acres in successive extensions.

(3) if the project should be allowed in the interests of the state, and if the person applying for the rights to work on or utilize vacant, fallow and virgin lands submits an application in accordance with Section 27 together with a pledge to carry out actual cultivation according to the prescribed rules, an area exceeding 5000 acres can be allowed at one time with the approval of the Union Government.

(b) if orchard produce, an area not exceeding 3000 acres can be allowed.

(c) if seasonal crops or industrial seasonal plants –

(1) allow an area not exceeding 5000 acres each time.

(2) if after actual implementation of the project on 75 per cent of the area permitted in accordance with Sub-section (1), an application according to Section 27 is submitted, based on a field visit and endorsement by the task force, a further extension of land not exceeding 5000 acres can be allowed each time, with up to a total of 50,000 acres in successive extensions.

(3) if the project should be allowed in the interests of the state, and if the person applying for the rights to work on or utilize vacant, fallow and virgin lands submits an application in accordance with Section 27 together with a pledge to carry out actual cultivation

according to the prescribed rules, an area exceeding 5000 acres can be allowed at one time with the approval of the Union Government.

30. The Naypyidaw Council or Regional or State task force can do the following:

- (a) for a farmer or peasant living in a rural area and for a family wishing to carry out a manageable agricultural project, if the application is submitted with the recommendation of the Administrative Officer of the relevant ward or village tract, rights to cultivate an area not exceeding 10 acres of vacant, fallow and virgin lands can be granted with the approval of the relevant Regional or State Government and in accordance with standard procedures.
- (b) if an application according to Section 27 is submitted, with sound evidence to confirm actual implementation of the project on 75 per cent of the vacant, fallow and virgin lands permitted in accordance with Sub-section (a), and together with the recommendation of the Administrative Officer of the relevant ward or village tract, with the approval of the Regional or State Government, a further extension not exceeding 10 acres can be allowed each time, with up to a total of 50 acres in successive extensions.

31. The Central Committee, with regard to the area allowed to utilize vacant, fallow and virgin lands for the purposes of farming fish, shrimp, and crab, raising buffaloes, cows, horses, sheep, goats, pigs, chicken, ducks, quails, and raising other animals not used as pets, and other related businesses, can—

- (a) allow an area not exceeding 1000 acres for farming fish, shrimp and crab
- (b) if livestock breeding-
 - (1) allow an area not exceeding 2000 acres for raising buffaloes, cows, and horses
 - (2) allow an area not exceeding 500 acres for raising sheep and goats
 - (3) allow an area not exceeding 300 acres for raising chickens, ducks, pigs, quails
- (c) if the project is not relevant to Sub-section (a) and (b), allow a suitable area of land according to similar kinds of stock or breeds.

32. With regard to the area permitted for mining minerals on vacant, fallow and virgin lands, the Central Committee can obtain remarks from the Regional or State Government based on the inspections and recommendations of the relevant Naypyidaw Council or Regional or State task force and coordinate with the Union Government Ministry of Mining for the permitted area.

33. When granting permission for utilizing vacant, fallow and virgin lands for other government approved legal projects and related projects, with regard to the land area, the Central Committee

can grant permission according to the kind of project, and in collaboration with the relevant Ministry of the Union Government.

34. When granting permission to carry out special projects in the interests of the state, the Central Committee can allow an area of land which exceeds that allowed in Section 29, Sub-section (a) and (c), with the official approval of the Union Government.

35. With regard to the period of time for carrying out agricultural projects, livestock farming, mining, other government approved legal projects and business projects related to them, the Central Committee can do the following:

(a) For agricultural projects –

(1) if perennial plants and orchard produce, allow a period not exceeding 30 years from the date of granting permission.

(2) if seasonal crops or industrial seasonal plants, allow an indefinite period as long as prescribed rules are observed.

(b) For livestock breeding projects, allow a period not exceeding 30 years from the date of granting permission.

(c) Upon expiry of the period allowed in accordance with Sub-section (a), Sub-sub-section (1) and Sub-section (b), based on the kind of project, successive extensions can be allowed not exceeding a total of 30 years, for the project that needs to be continued.

(d) For mining projects, a period stipulated by the Myanmar Mining Law can be allowed, in co-ordination with the Union Government Mining Ministry.

(e) For other government approved legal projects, permission can be granted through co-ordination with the relevant Ministry of the Union Government.

CHAPTER IV

GUARANTEE AND LAND TAX

36. The Central Committee shall pay special attention to the following points while prescribing guarantee fees and land tax:

(a) Prevention of situations in the country where large areas are taken as a privilege without actual implementation or utilization of the vacant, fallow and virgin lands;

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(b) Through the requirement of those who have been granted rights to work on or utilize vacant, fallow and virgin lands to deposit appropriate guarantee fees, ensuring correct implementation of projects on the vacant, fallow and virgin lands for which rights have been granted to work on or utilize.

(c) Contributing as much as possible to state revenues, through the land taxes collected from utilization of vacant, fallow and virgin lands.

37. In order to reimburse or pay back the deposited guarantee fees to the person who has the rights to work on or utilize vacant, fallow and virgin lands and who has completed full utilization of the land area in accordance with the prescribed rules, the Central Committee shall conduct constant supervision of the land utilization or cultivation by the person granted rights.

38. In order to take action according to Section 37, the person who has the rights to work on or utilize vacant, fallow and virgin lands, shall deposit the guarantee fees in accordance with the following rules, in the Myanmar Agricultural Development Bank in the township located nearest to the vacant, fallow and virgin lands:

(a) For agricultural projects –

(1) K 3000 (three thousand kyats) per acre if the rural farmer or family wishes to implement a manageable project on less than 50 acres or less.

(2) K 10000 (ten thousand kyats) per acre if the land for the business project exceeds 50 acres.

(b) For livestock breeding projects according to Section 31, K 10000 (ten thousand kyats) per acre.

(c) For mining projects, K 10000 (ten thousand kyats) per acre.

(d) For other government approved legal projects, K 10000 (ten thousand kyats) per acre.

39. The Central Committee may specify the period of land tax exemption for the vacant, fallow and virgin lands for which rights to work on or utilize have been given, starting from the date of granting rights, and according to the kind of project or crops, in accordance with the following:

(a) For agricultural projects –

(1) if the land is for perennial plants 5 years;

(2) if the land is for orchard produce 3 years;

(3) if the land is for seasonal crops or industrial seasonal plants 2 years.

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(b) For livestock breeding –

(1) if farming fish, shrimps and crab 2 years;

(2) if raising animals –

(aa) if the land is used for raising buffaloes, cows, horses 2 years;

(bb) if the land is used for raising sheep and goats 2 years;

(cc) if the land is used for raising chickens, pigs, ducks, and quails 1 year.

(3) if the livestock breeding project is not relevant to Sub-section (b), Sub-sub-sections (1) and (2), an appropriate period for livestock breeding of similar stocks or breeds.

(c) For mining projects, a period specified in co-ordination with the Union Government Ministry of Mining, in accordance with the Myanmar Mining Law.

(d) For other government approved legal projects, a period specified in co-ordination with the relevant Ministry of the Union Government.

40. In order to effectively collect taxes or revenues for the state through the utilization of vacant, fallow and virgin lands, the Central Committee shall instruct the person given the rights to work on or utilize vacant, fallow and virgin lands to pay land tax according to the rates below, and according to the kind of crops or projects, for the utilization of the said lands and arrange for the relevant department to supervise and collect the tax:

(a) For agricultural projects –

(1) if the land is for perennial plants, K 3000 (three thousand kyats) per actual cultivated acre;

2) if the land is for orchard produce, K 2000 (two thousand kyats) per actual cultivated acre;

(3) if the land is for seasonal crops or industrial seasonal plants, K 1000 (one thousand kyats) per actual cultivated acre.

(b) For livestock breeding –

(1) if the land is utilized for farming fish, shrimps and crab, K 3000 (three thousand kyats) per acre;

(2) if the land is utilized for raising animals, K 1000 (one thousand kyats) per acre.

(c) For land utilized for mining projects, K 5000 (five thousand kyats) per acre.

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(d) For other government approved legal projects, tax rates prescribed in co-ordination with the relevant Ministry of the Union Government.

(c) Tax rates resulting from a revision of the above rates, if necessary, based on changes in currency value, with the approval of the Union Government.

41. With regard to the supervision and collection of the prescribed taxes, the Department shall –

(a) in good time, inform the person granted rights to work on or utilize vacant, fallow and virgin lands to pay tax according to the kind of project, or the kind of crop, within the financial year relevant to the date on which land tax exemption expires.

(b) deposit the land tax submitted according to Sub-section (a) as state funds in Myanmar Commercial Bank every year before March 31, which marks the end of the financial year.

(c) supervise and inspect the payment of land tax by the person granted the rights to work on and utilize vacant, fallow and virgin lands.

(d) arrange for the person or organization who was granted the rights to work on or utilize vacant, fallow and virgin lands according to the permission notice by the Vacant, Fallow and Virgin Lands Management Central Organization prior to the enactment of the Vacant, Fallow and Virgin Lands Law, to pay land taxes regarding the utilized vacant, fallow and virgin lands as state funds, in accordance with the land tax rates prescribed by the above central organization.

(e) submit a report on the collected land taxes annually to the Central Committee, during April after the end of the financial year.

42. The Central Committee shall upon receiving the report submitted in accordance with Section 41, Sub-section (e), submit a report to the Union Government on the state governed tax collection situation.

43. The Ministry, with respect to the rights to work on or utilize vacant, fallow and virgin lands, shall give responsibility to the Township Department Officer as the official for collecting land taxes.

44. Upon finding that a person has failed to pay land tax and is avoiding or violating rules, the Township Department Officer shall take action according to existing laws to ensure tax is collected from the person avoiding or failing to pay land tax and in addition, take effective legal action.

CHAPTER V

RULES AND REGULATIONS TO BE OBSERVED BY THOSE GRANTED RIGHTS TO WORK ON AND UTILIZE VACANT, FALLOW AND VIRGIN LANDS

45. Those who are granted rights to work on and utilize vacant, fallow and virgin lands shall

- (a) carry out their project on the vacant, fallow and virgin lands within four years from the date rights are granted, with 15 per cent completed in the first year, 30 percent in the second year, another 30 percent in the third year, and 25 per cent in the fourth year, completing 100 percent of the project within that year.
- (b) if they are rural farmers or a family carrying out a manageable agricultural project, complete each agricultural project in the allowed area within two years.
- (c) only carry out the approved project, and business activities related to it.
- (d) not extract or mine any other natural resources found above and below the surface of the vacant, fallow and virgin lands which they have obtained the rights to utilize.
- (e) pay land tax in full for the vacant, fallow and virgin lands that they have gained the right to work on or utilize.
- (f) comply with the rules regarding the right to work on and utilize vacant, fallow and virgin lands set out by the Central Committee.

46. If the person holding the right to work on and utilize vacant, fallow and virgin lands wishes to extend the stipulated period for working on or utilizing the land, for reasons such as delays caused by natural hazards or lack of security due to other causes, he /she must submit an application which is endorsed by the Naypyidaw Council or respective Regional or State task force, to the Central Committee.

47. Those who are granted rights to work on and utilize vacant, fallow and virgin lands shall-

- (a) upon discovering mineral resources different from the resources originally approved for mining in the vacant, fallow and virgin lands for which they have been granted the right to carry out mining activities, report to the Central Committee immediately.
- (b) return the minimum required area from the granted area as instructed by the Union Government upon repossession for economical and conservation purposes due to discovery of natural resources and artifacts related to cultural heritage.

(c) return the minimum required area from the granted area as instructed by the Union Government upon repossession, in the interests of the state, for the purposes of carrying out basic infrastructure projects such as air fields, highways, railroads and special projects.

(d) return the vacant, fallow and virgin lands to the Central Committee upon failure to continue or complete projects after being granted rights to utilize the land.

48. If a person who was granted rights to work on and utilize vacant, fallow and virgin lands prior to the enactment of the Vacant, Fallow and Virgin Lands Management Law fails to comply with or violates the prescribed rules during the original permitted period, the fees deposited as guarantee will be confiscated and the right to work on and utilize the land will be revoked.

CHAPTER VI

MONITORING

49. Those who were granted the right to work on and utilize land through the authority of the Vacant, Fallow and Virgin Lands Management Central Organization before the enactment of the Vacant, Fallow and Virgin Lands Management Law, must submit a report to the Central Committee regarding the practical implementation of the project, with the date and document number of the document granting the rights to utilize the land, together with supporting documents such as photo records of the actual area of land utilized, and of the remaining areas.

50. The Central Committee, in accordance with Section 49, shall scrutinize each case submitted and do the following:

(a) the Naypyidaw Council or Regional or State task force or a special force designated to monitor each project, shall be sent on a field trip to the relevant vacant, fallow and virgin lands, accompanied by the person holding the rights to utilize the land, or a legal representative, together with the chairman of the relevant ward or village tract, to inspect and monitor the actual progress of the permitted project on the granted land and to report its situation.

(b) contact the people working in the environment of the relevant vacant, fallow and virgin lands and question them.

(c) instruct the Naypyidaw Council or Regional or State task force or a special force designated to monitor each project, to report their findings, together with notes and photos for evidence, and remarks to the Central Committee as soon as possible.

51. For each case submitted in accordance with Section 50, the Central Committee shall carry out the following:

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- (a) check whether the person holding the right to utilize the land has acted in accordance with the rules set out by the Vacant, Fallow and Virgin Lands Management Law with regard to the utilized vacant, fallow and virgin lands.
- (b) repossess, according to the Vacant, Fallow and Virgin Lands Management Law, vacant, fallow and virgin lands which have not been utilized upon expiration of the prescribed period and put out an official announcement as to the repossession of the land in order to legally inform the original holder of the land utilization rights.
- (c) in the case where the holder of the land utilization rights can provide evidence of having utilized the land within the original prescribed period, a decision regarding the currently unutilized vacant, fallow and virgin lands will be made based on the report and findings of the Naypyidaw Council or Regional or State task force or a special force designated to monitor each project.
- (d) manage, according to relevant rules, the vacant, fallow and virgin lands which have been repossessed due to evident failure in utilizing the land within the permitted period according to prescribed rules, or due to evident violation of the rules.
- (e) if it is found that work has not been carried out within the permitted period according to the prescribed rules or if there has been violation of any rule, the fees deposited as guarantee will be confiscated as state funds and deposited in a designated bank as the department's earnings, and the right to work on and utilize the land will be revoked.
- (f) if it is reported that 100 percent utilization of the vacant, fallow and virgin lands has been completed within the prescribed period, the case shall be reviewed and submitted by the Regional or State task force or a specially formed task force.

52. The Central Committee shall –

- (a) if the person who has obtained the rights to work on and utilize vacant, fallow and virgin lands, in implementing his projects, reports that he is affected by a dispute, or obstruction and disturbance or encroachment on the land by local peasants, find out and disclose the true nature of events and take effective legal action.
- (b) if it is reported, together with sound evidence, that the land areas of the vacant, fallow and virgin lands which have been granted the rights to work on and utilize, had long been the cultivated lands of the local peasants currently doing agricultural work, negotiate with the said peasants and take action to ensure that they are not unfairly or unjustly dealt with.
- (c) if there are peasants who had from the past, been given the rights to work on and utilize the land area of the vacant, fallow and virgin lands for which rights to work on and utilize are

granted, carry out negotiations with the said peasants and take action according to the Vacant, Fallow and Virgin Lands Management Law.

53. The Central Committee shall give responsibility to the Nyapyidaw Council or Regional or State task force or a special force to take a field trip to inspect whether the person granted the rights to work on and utilize the vacant, fallow and virgin lands have implemented projects in accordance with the prescribed rules.

54. The Central Committee shall form a special task force to inspect whether the person granted the rights to work on and utilize the vacant, fallow and virgin lands has, according to the contract terms regarding rights to shares of products from agricultural work, given or paid the relevant quantity of goods or the relevant amount of money to the government, and take action as needed.

55. The Central Committee has the right to repossess the minimum required area from the granted vacant, fallow and virgin lands if any of the following occurs:

- (a) discovery of historical and cultural artefacts on the granted vacant, fallow and virgin lands
- (b) implementation of basic infrastructure projects or special projects is required in the interests of the state
- (c) discovery of other natural resources apart from those permitted, on the vacant, fallow and virgin lands where rights are granted to carry out mining projects
- (d) discovery of natural resources on the vacant, fallow and virgin lands where rights are granted to carry out agricultural projects, livestock breeding or other government approved legal projects.

56. The Central Committee, in order to ensure that the person granted rights to work on and utilize the land does not suffer an injustice with regard to the vacant, fallow and virgin lands that will be repossessed according to Section 55, shall calculate the actual costs incurred in work and investments based on current values and with the approval of the Union Government, and give the responsibility to the Regional or State task force to collaborate with respective departments and organizations to take action for compensation to be received within 30 days from the date of repossession of the vacant, fallow and virgin lands.

57. If the Central Committee finds that the person granted the rights to work on and utilize the vacant, fallow and virgin lands has violated any of the rules in the Vacant, Fallow and Virgin Lands Management Law, the originally deposited guarantee fees will be confiscated as state funds and in addition, the rights to work on and utilize the vacant, fallow and virgin lands will be revoked.

CHAPTER VII

PROTECTION AND ASSISTANCE TO THOSE WHO HAVE BEEN GRANTED RIGHTS TO WORK ON AND UTILIZE VACANT, FALLOW AND VIRGIN LANDS

58. The Central Committee may –

- (a) upon being requested assistance by the person granted the rights to work on and utilize vacant, fallow and virgin lands, with regard to modern technology, healthy seeds and other kinds of assistance for agricultural projects, contact respective departments working under the ministry and co-ordinate with the relevant department or organization nearest in location to the vacant, fallow and virgin lands, to give protection and assistance.
- (b) upon being requested assistance by the person granted the rights to work on and utilize vacant, fallow and virgin lands, regarding modern technology, healthy breeds and other kinds of assistance for livestock farming or aquaculture, contact the Union Government's Ministry of Livestock Farming and Aquaculture and co-ordinate with the relevant department or organization nearest in location to the vacant, fallow and virgin lands, to give protection and assistance.
- (c) upon being requested assistance by the person granted the rights to work on and utilize vacant, fallow and virgin lands with regard to investment loans or working materials or services, based on the findings of a field visit by the Naypyidaw Council or Regional or State task force or a special force, and the recommendations of a relevant department or organization, give a recommendation for the applicant.
- (d) if, after implementation of a project, the person granted the rights to work on and utilize vacant, fallow and virgin lands suffers heavy damage or loss caused by natural hazards such as storms, based on the findings of a field visit by the Naypyidaw Council or Regional or State task force or a special force, and the recommendations of a relevant department or organization, submit a recommendation to the relevant ministry for special loans from the government.

CHAPTER VIII

REIMBURSEMENT OF GUARANTEE FEES

59. The Central Committee shall arrange for the reimbursement of the fees deposited as guarantee to the person who has the right to work on and utilize vacant, fallow and virgin lands if implementation of the projects approved by the Vacant, Fallow and Virgin Lands Management Central Organization is completed within the prescribed period in accordance with the rules.

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60. In order to withdraw or reclaim the deposited guarantee fees, the person who has been granted the rights to work on and utilize vacant, fallow and virgin lands shall –

(a) submit an application to the Central Committee or the Naypyidaw Council or Regional or State task force for permission to withdraw the fees deposited as guarantee as work has been completed in accordance with prescribed rules.

(b) in applying according to Sub-section (a) –

(1) With regard to the rights to work on and utilize vacant, fallow and virgin lands for which rights have been granted by the authority of the Vacant, Fallow and Virgin Lands Management Central Organization, a copy of the permit authorized by the Central Organization must be attached.

(2) With regard to the rights to work on and utilize vacant, fallow and virgin lands for which rights have been granted by the authority of the Central Committee, a copy of the permit authorized by the Central Committee must be attached; with regard to the rights to work on or utilize vacant, fallow and virgin lands for which rights have been granted by the authority of the Naypyidaw Council or Regional or State task force, a copy of the permit authorized by the Naypyidaw Council or Regional or State task force must be attached.

(3) A copy of the receipt for the deposited guarantee must be attached.

61. The Central Committee shall forward the application submitted in accordance with Section 60, to the Naypyidaw Council or Regional or State task force for review or examination.

62. When the Naypyidaw Council or Regional or State task force receives the application submitted in accordance with Section 60, or the application forwarded by the Central Committee in accordance with Section 61, it must be sent to the Naypyidaw Department Office or Regional or State Department Office and the following shall be carried out:

(a) The Naypyidaw Department Office or Regional or State Department Office shall, through the District Department Office, forward the application to the Township Department Office and give the Township Department Office (where the vacant, fallow and virgin lands referred to in the application are located), the responsibility of carrying out a field visit for inspection.

(b) The Township Department Office shall take a field trip to inspect the relevant vacant, fallow and virgin lands within 21 days from the date the application is received, and after taking photos recording work progress, and carrying out inspection work, resubmit the application.

63. The Township Department Office shall check the following points when inspecting the land according to Section 62, Sub-section (b) :

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- (a) whether work has been completed according to prescribed rules in all areas of the vacant, fallow and virgin lands where rights have been granted to work on or utilize.
- (b) whether the approved or permitted agricultural projects, livestock breeding or other approved projects have been carried out.
- (c) whether the work is consistent with the original project submitted in the application.
- (d) whether the guarantee fees requested to be withdrawn is consistent with the guarantee fees originally deposited.

64. The Township Department Office shall, after carrying out an inspection according to Section 63, prepare a complete report with findings and photo records, adding remarks as to whether reimbursement of the guarantee fees is recommended, or whether because of not meeting the stated criteria, reimbursement of the guarantee fees is objected to, and resubmit the application together with the case file through the respective District Department Office to the Naypyidaw Department Office or Regional or State Department Office.

65. Upon receiving the resubmitted case file, the Naypyidaw Department Office or Regional or State Department Office can, if deemed necessary, visit the vacant, fallow and virgin lands and carry out inspection during the field trip. If the report by the Township Department Office is regarded as complete and accurate, a recommendation to reimburse the guarantee fees, or in the event the report is considered incomplete or inaccurate, an objection to the reimbursement of guarantee fees should be added as remarks, and the case file submitted to the Naypyidaw Council or Regional or State task force.

66. Upon receiving the case file submitted according to Section 65, the Naypyidaw Council or Regional or State task force shall forward it together with remarks to the Central Committee.

67. The Central Committee shall –

- (a) inspect the rights granted by the Naypyidaw Council or Regional or State task force to work on and utilize the vacant, fallow and virgin lands, and if the facts in the case file are considered complete and accurate, give instructions for the guarantee fees to be reimbursed.
- (b) upon observing failure to carry out work in accordance with prescribed rules or violation of rules, give orders to confiscate the fees as state funds.

68. The Central Committee shall forward the order to reimburse the guarantee fees or the order to confiscate the guarantee fees as state funds, together with the case file, to the Naypyidaw Council or Regional or State task force.

Unofficial Translation by UN-Habitat

69. The Naypyidaw Council or Regional or State task force shall in turn forward the order to reimburse the guarantee fees or the order to confiscate the guarantee fees as state funds, together with the case file submitted in accordance with Section 68, to the Nyapyidaw Department Office or Regional or State Department Office.

70. The Naypyidaw Department Office or Regional or State Department Office shall through the District Department Office, forward the case file submitted in accordance with Section 69, to the Township Department Office.

71. The Township Department office shall –

(a) immediately inform and arrange for the speedy reimbursement of the guarantee fees by the respective bank branch according to instructions given in accordance with Section 67 Sub-section (a).

(b) carry out standard procedures for the transfer of the originally deposited guarantee fees to state funds to comply with the order to confiscate the fees as state funds in accordance with Section 67, Sub-section (b).

72. Regarding the reimbursement of the guarantee fees, the various steps for submitting the case and taking action must be carried out to ensure that the fees are reimbursed to the applicant within 60 days from the date the application is first submitted.

CHAPTER IX

TAKING LEGAL ACTION

73. Legal action can be taken according to the Vacant, Fallow and Virgin Lands Management Law, Sections 26, 27 and 28 against any individual found to cause harm to the property on the vacant, fallow and virgin lands where rights have been granted to work on and utilize, or against those found to encroach on the granted land without permission from the person granted rights to utilize the vacant, fallow and virgin land or from his representative, or those found to obstruct or disturb either the person who has the rights to utilize the vacant, fallow and virgin land or a person working with the permission of the former, or the work being done on the granted land.

74. Legal action can be taken according to the Vacant, Fallow and Virgin Lands Management Law, Section 29 against any individual if it is found that the person has failed to vacate the vacant, fallow and virgin lands for which the right to work on or utilize has been revoked.

CHAPTER X

GENERAL

75. The Central Committee shall submit necessary recommendations to the Union Government for the effective implementation of the government's land management policy.

76. The Central Committee can instruct the person granted the right to work on and utilize vacant, fallow and virgin lands to submit, according to prescribed rules, the conditions and progress in implementation of the work on vacant, fallow and virgin lands, to the Central Committee or the Naypyidaw Council or Regional or State task forces.

77. The Naypyidaw Council or Regional or State task forces shall submit a tri-monthly report with complete details on the conditions and progress in work implementation, and an annual report covering up to the end of the financial year on March 31, to the Central Committee.

78. The Central Committee shall submit a six-monthly report with complete details on the situation regarding management and implementation of work on the vacant, fallow and virgin lands, and an annual report covering up to the end of the financial year on March 31, to the Union Government.

79. The Central Committee formed according to the Vacant, Fallow and Virgin Lands Management Law shall continue to perform the duties and rights of the Vacant, Fallow and Virgin Lands Management Central Organization which was formed before the enactment of the above law.

Myint Hlaing

Union Minister

Ministry of Agriculture and Irrigation

Annex D

**Reporting Requirements on Responsible Investment in
Burma, as posted February 22, 2013**

This form is in public review for 30 days.

Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB).

You may submit comments by the following method:

- E-mail: moira_submission@omb.eop.gov. You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

Reporting Requirements on Responsible Investment in Burma

Pending OMB Approval as of July 11, 2012

Introduction: This document sets forth for U.S. persons (as defined in 31 C.F.R. § 537.321) engaged in new investment in Burma (as defined in 31 C.F.R. § 537.311) pursuant to the Treasury Department's Office of Foreign Assets Control (OFAC) General License No. 17 ("GL-17") reporting requirements relating to such investment. There are two separate reporting requirements associated with new investment in Burma that must be submitted to the Department of State: (1) a requirement that any U.S. person undertaking new investment pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with Myanmar Oil and Gas Enterprise (MOGE) notify the Department of State of such investment ("MOGE Investment Notification"); and (2) a requirement that any U.S. person whose aggregate investment in Burma exceeds \$500,000 provide information as set forth below ("Annual Reporting Requirement"). The second reporting requirement entails two versions: a version for the U.S. Government and a version that will be released publicly.

I. MOGE Investment Notification:

Any U.S. person that has undertaken a new investment pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with the Myanmar Oil and Gas Enterprise (MOGE) must notify the Department of State in writing at MOGEnotification@state.gov within 60 days of such a new investment.

II. Annual Reporting Requirement

This reporting requirement addresses key U.S. foreign policy concerns in Burma. Reports are intended to provide information on issues of concern to the U.S. Government and will help the U.S. Government assess the impact and effects of investment permitted under GL-17, including on the political transition in Burma. The reporting requirement shall not give rise to any liability beyond that which exists under U.S. law. The report is not required to be submitted in any particular format so long as it provides the requested information.

A U.S. person (hereinafter, the "submitter") shall submit two versions of this report, as follows:

U.S. Government Report: The submitter shall submit one version for use by the U.S. Government (the "U.S. Government Report"), containing all of the information requested below (with the exception of item 2, the "Acknowledgement," which is necessary only for the Public Report). The U.S. Government will not make public the information contained in the U.S. Government Report except to the extent authorized by law. The U.S. Government Report shall be submitted to BurmaUSGReport@state.gov.

Public Report: The submitter shall also submit a second version of the report, covering only the information requested in items numbered 1 through 8 below. This version of the report will be made publicly available (the "Public Report"). Public Reports shall be submitted to BurmaPublicReport@state.gov.

Reporting Requirements on Responsible Investment in Burma

Pending OMB Approval as of July 11, 2012

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If the submitter determines in good faith that it considers any information covered by items 1 through 8 provided in the U.S. Government Report to be exempt from public disclosure under FOIA Exemption 4, it shall take the following steps:

- (1) It shall designate by appropriate markings such information in the U.S. Government Report, indicate which information so designated is not included in the Public Report, and provide a detailed explanation for withholding this information.
- (2) The submitter's explanation must specifically identify the reasons why the information is either (a) a trade secret; or (b) commercial or financial information that is privileged or confidential, and must provide any arguments as to why the public release of the information would cause substantial harm to the competitive position of the submitter.
- (3) For each question (1 through 8) in the Public Report, where the submitter has not included information that the submitter included in the U.S. Government Report, the submitter shall indicate in the Public Report that additional information was not disclosed in the Public Report and indicate the basis for not including such information. For example, the submitter could state that additional information was not disclosed in the Public Report because such information is a trade secret exempt from disclosure under FOIA.
- (4) The submitter shall include in the Public Report an acknowledgement that the submitter understands that the Public Report will be made public, and that the submitter has redacted before submission any information it considers in good faith to be exempt under FOIA Exemption 4.

General guidance for completing U.S. Government and Public Reports:

If the submitter does not have information to report with respect to one or more of the reporting questions below, please note in response to the question(s) that there is no information to report and include a brief explanation. For example, a submitter could state that it is not providing a summary of its workers' rights policies because it does not have formal policies in place.

The [Appendix](#) provides a list of references to international standards, principles, guidance, and other human rights tools that may be useful for establishing the types of policies and procedures referenced herein.

Due Date: Reports are due 180 days after the \$500,000 threshold is reached and thereafter annually on July 1. Each submitter may report on either a fiscal year basis or a calendar year basis, but should identify the time period covered by each report. In each report following the initial report, submitter is to report on any changes or updates for each of the Reporting Questions.

Reporting Questions:

1. Name: Name of submitter.

Reporting Requirements on Responsible Investment in Burma

Pending OMB Approval as of July 11, 2012

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2. Acknowledgement (For the Public Report Only): The submitter shall include a signed acknowledgement that the submitter understands that the Public Report will be made public, and that the submitter has redacted before submission any information it considers in good faith to be exempt from public disclosure under FOIA Exemption 4.
3. Point of Contact: Provide contact information for public inquiries regarding this report.
4. Overview of Operations in Burma:
 - a. Name(s) of companies, including all subsidiaries, operating in Burma covered by this report.
 - b. Nature of business in Burma;
 - c. Location(s) of operations in Burma; and
 - d. Approximate maximum number of employees in Burma during the reporting period (broken down by Burmese and non-Burmese employees).
5. Human Rights, Worker Rights, Anti-Corruption, and Environmental Policies and Procedures¹: Provide a concise summary or copies of the following policies and procedures as they relate to the submitter's operations and supply chain in Burma.
 - a. Due diligence policies and procedures (including those related to risk and impact assessments) that address operational impacts on human rights, worker rights, and/or the environment in Burma;²
 - b. Policies and procedures that address anti-corruption in Burma;³
 - c. Policies and procedures that address community and stakeholder engagement in Burma (if the submitter has undertaken any stakeholder engagement to date, also summarize);⁴
 - d. Policies and procedures that address hearing grievances from employees and local communities, including whether grievance processes provide access to remedies, and how employees and local communities in Burma are made aware of said processes;⁵
 - e. Global corporate social responsibility policies, including those that address human rights, sustainability, worker rights, anti-corruption, and/or the environment; and
 - f. Whether and the extent to which the policies and procedures described in Question 5.a through 5.d are applied to, required of, or otherwise communicated to related

¹ For further information on human rights principles and practices, see the United Nations Guiding Principles on Business and Human Rights at the Appendix, which contains a list of relevant human rights and labor rights instruments, as well as the State Department Annual Country Report on Human Rights Practices for Burma for a non-exhaustive list of the range of rights at issue, available at www.humanrights.gov.

² For further information on due diligence, see the OECD Guidelines for Multinational Enterprises ("OECD Guidelines"), particularly Section IV. Human Rights, Section V. Employment and Industrial Relations, and Section VI. Environment, IFC Performance Standard 1, and the OECD's Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence found at the Appendix.

³ For further information on anti-corruption principles and practices, see the OECD Guidelines, Section VII. Combating Bribery, Bribe Solicitation and Extortion, and the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance.

⁴ For further guidance on stakeholder consultation see IFC Performance Standard 7 and the Good Practice Handbook for Companies Doing Business in Emerging Markets at the Appendix.

⁵ For further guidance on grievance processes see Principles 19, 22, and 31 of the UN Guiding Principles on Business and Human Rights found at the Appendix.

Reporting Requirements on Responsible Investment in Burma

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entities in Burma, including but not limited to subsidiaries, subcontractors, and other business partners.

6. Arrangements with Security Service Providers:⁶ Provide the below information regarding any arrangements the submitter has with security service providers.
 - a. Name(s) of security service provider(s);
 - b. Duties and responsibilities of security service provider(s); and
 - c. Whether security service providers are signatories to the International Code of Conduct for Private Security Service Providers⁷ and/or whether they have been certified to any private security provider national or international standards; and
 - d. A concise summary of due diligence policies or practices for engaging and utilizing security services providers including those focused on human rights and anti-corruption, e.g. oversight policies and procedures and whether security service providers are subject to third-party auditing.⁸
7. Property Acquisition: For any purchase, use, or lease of land or other real property, or rights related thereto, by the submitter (including the submitter's subsidiaries) either (a) valued over \$500,000 or (b) larger than 30 acres of land or other real property, provide the information described below. For the purposes of this section, purchase, use, or lease of adjacent or otherwise related land or other real property shall be treated as a single transaction and must be reported where the cumulative value of the related transactions exceeds \$500,000 or is over 30 acres.⁹
 - a. A concise summary of any policies or procedures used to ascertain land or other real property ownership, use rights, dislocation, resettlement, or other claims;
 - b. The city/state or province where the land or other real property was purchased, used, or leased (e.g., "Myitkyina, Kachin State");
 - c. A concise summary of any policies or procedures, including grievance mechanisms, related to the dislocation or resettlement of people with respect to land or other real property
 - d. Any financial/material arrangements made to compensate previous users/residents of such land or other real property (other than to the lessor/owner), of which the submitter is aware; and
 - e. Any information of which the submitter is aware related to any involuntary resettlement or dislocation of people.

⁶ For the purposes of this report, the term "Security Service Providers" includes any individual or entity whose business activities include the provision of security services either on its own or on behalf of another. This includes the guarding or protecting (whether armed or unarmed) of individuals, objects, or activities, including by not limited to convoys, facilities, designated sites, property and other places, or any other activity for which the personnel carry or operate a weapon in the performance of their duties.

⁷ For list of signatories to the International Code of Conduct for Private Security Service Providers see: http://www.icoc-psp.org/uploads/Signatory_Companies_-_December_2012_-_Composite_List_SHORT_VERSION.pdf

⁸ For guidance for the extractives industry see the Voluntary Principles on Security and Human Rights found at the Appendix.

⁹ For guidance in reporting on this section see IFC Performance Standard 5 found at the Appendix.

Reporting Requirements on Responsible Investment in Burma

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8. **Transparency:** Report total payments made by submitter or on its behalf valued over \$10,000 during the reporting year to each Government of Burma entity and/or any sub-national or administrative governmental entity or non-state group that possesses or claims to possess governmental authority over the submitter's new investment activities in Burma. Payments to each entity should be reported by each separate payment type, including but not limited to, royalties, tax obligations, production-sharing arrangements, and fees.¹⁰ If the submitter's aggregate payments to a particular entity during the reporting year are valued at less than \$10,000, there is no need to report on payments to that entity. If no aggregate payments are valued over \$10,000, indicate by "none," "not applicable," or another appropriate response. This reporting requirement is in addition to any other legally required reporting on payments made to government entities.

NOTE: Items 9-11 below do not need to be included in the Public Report but a submitter may include this information in the Public Report if the submitter so chooses.

9. **Point of Contact:** Name and contact information of individuals(s) responsible for preparing this report. The U.S. Government may request additional or clarifying information.
10. **Military Communications:** Has the submitter, or any individual from or representing the submitter, had meetings or other communications with the armed forces of Burma and/or other armed groups related to the submitter's investments in Burma?¹¹ If so, indicate:
- a. Date(s) of meeting and/or communication;
 - b. Name(s) of individual(s), rank, and group(s) affiliation; and
 - c. Nature of and reason for meeting and/or communication. (Note: For frequent / regular meetings on similar topics, the submitter can provide one brief summary of issues discussed with a listing of dates under an appropriate header.)
11. **Risk Prevention and Mitigation:** With regard to human rights, worker rights, anti-corruption, and/or environmental issues, summarize any risks and/or impacts identified, any steps taken to minimize risk and to prevent and mitigate such impacts, and policies and practices on risk prevention and mitigation.

¹⁰ For guidance for members of the extractives industry, see the Extractives Industry Transparency Initiative found at the Appendix.

¹¹ For the purposes of this report, the term "armed forces" and "armed groups" includes the armed forces of the Government of Burma, state-organized militias, and other armed state security forces, as well as non-state armed groups within Burma that are in conflict with or under ceasefires with the Government of Burma.

Appendix: International Principles, Guidelines, Tools, and Global Initiatives Related to Business and Human Rights

This page contains information relating to international principles and guidelines and global initiatives relating to business and human rights. It is provided as a resource for the consideration of businesses in their efforts to operate in a manner that maintains respect for human rights. The listing of principles, guidelines, and initiatives on this page is a sample of such initiatives, should not be taken as comprehensive and does not signify an endorsement of those principles, guidelines, or initiatives by the U.S. Government.

Principles, Guidelines, and Tools

Initiative	Sector	Website
Earth Rights Checklist: U.S. Investment in Myanmar: Specific Reporting on Policies and Procedures	All industry sectors	www.earthrights.org/publications
UN Declaration of Human Rights	All industry sectors	www.un.org/en/documents/udhr
Business & Human Rights Resource Centre: Selected Company Reports	All industry sectors	www.business-humanrights.org/Categories/Companyreports/Reporting/Selectedcompanyreports
European Commission: A guide to human rights for small and medium-sized enterprises	All industry sectors	http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final_en.pdf
Global Compact Business Guide for Conflict Impact Assessment and Risk Management	All industry sectors	http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/BusinessGuide.pdf
Guidance on Responsible Business in Conflict-Affected and High-Risk Areas	All industry sectors	http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf
International Finance Corporation (IFC) Performance Standards	All industry sectors	www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Sustainability+Framework+-+2012/Performance+Standards+and+Guidance+Notes+2012
IFC Handbook for Preparing a Resettlement Action Plan	All industry sectors	http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_resettle/\$FILE/ResettlementHandbook.PDF
International Labor Organization Declaration on Fundamental Principles and Rights at Work	All industry sectors	www.ilo.org/declaration/lang-en/index.htm
International Labor Organization	All industry sectors	www.ilo.org/empent/units/multinational

Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy	sectors	-enterprises/lang—en/index.htm
OECD Guidelines for Multinational Enterprises	All industry sectors	www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html
OECD's Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence	All industry sectors	http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=tad/ecg(2012)5&doclanguage=en
OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas	Mining industry	www.oecd.org/dataoecd/62/30/46740847.pdf
OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones	All sectors	http://www.oecd.org/investment/investmentpolicy/36885821.pdf
Reducing Child Labor and Forced Labor: A Toolkit for Responsible Businesses (U.S. Department of Labor Toolkit)	All sectors	http://www.dol.gov/ChildLaborBusinessToolkit
Report of the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products	Agriculture sector	http://www.fas.usda.gov/info/Child_labor/CGDraftRPTRECS%20-%20final%2012%2015.pdf
Rights Compatible Grievance Mechanisms: A Guidance Tool for Companies and their Stakeholders	All industry sectors	www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible%20Grievance%20Mechanisms_May2008FNL.pdf
Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets	All industry sectors	http://www1.ifc.org/wps/wcm/connect/938f1a0048855805beacfe6a6515bb18/IFC_StakeholderEngagement.pdf?MOD=AJPERES&CACHEID=938f1a0048855805beacfe6a6515bb18
The Global Sullivan Principles of Social Responsibility	All industry sectors	www.thesullivanfoundation.org/about/global-sullivan-principles
UN Declaration on the Rights of Indigenous Peoples	All industry sectors	http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
UN Guiding Principles on Business and Human Rights	All industry sectors	www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples
UNEP Finance Initiative Guidance Tool for the Finance Sector	Financial industry	www.unepfi.org/humanrightstoolkit/index.php
Voluntary Guidelines on the	All industry	www.fao.org/fileadmin/user_upload/nr/l

Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security	sectors	and tenure/pdf/VG_Final_May_2012.pdf
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Global Initiatives and Certifications

Initiative	Sector	Website
Business Social Compliance Initiative	Retail and importing industries	www.bsci-intl.org
Diamond Development Initiative	Diamond industry	http://www.ddiglobal.org
Electronics Industry Citizenship Coalition	Electronics industry	www.eicc.info
Ethical Trading Initiative	Retail and suppliers industries	www.ethicaltrade.org
Equator Principles	Financial industry	www.equator-principles.com
Extractive Industries Transparency Initiative	Extractives industry	www.eiti.org
Fair Labor Association	Footwear, clothing manufacturing, agriculture and electronics industries	www.fairlabor.org
Fair Wear Foundation	Garments Industry	www.fairwear.org
Forest Stewardship Council	Forestry industry	www.fsc.org
Global Network Initiative	Information and communication technology industry	www.globalnetworkinitiative.org
International Cocoa Initiative	Cocoa Industry	www.cocoainitiative.org
International Code of Conduct for Private Security Service Providers	Private security service providers industry	www.icoc-psp.org
Initiative for Responsible Mining	Mining	www.responsiblemining.net

Assurance	industry	
Kimberley Process	Diamond industry	www.kimberleyprocess.com
Roundtable on Sustainable Bio-fuels	Bio-fuel industry	www.rsb.epfl.ch
Public Private Alliance for Responsible Minerals Trade	Industries that source or use tin, tungsten, tantalum and gold	http://www.resolve.org/site-ppa/
Roundtable on Sustainable Palm Oil	Palm oil industry	www.rspo.org
Roundtable on Responsible Soy SA8000	Soy industry All industry sectors	www.responsiblesoy.org http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=937
UN Global Compact	All industry sectors	www.unglobalcompact.org
UN Global Compact/Maplecroft Human Rights and Business Dilemmas Forum	All industry sectors	www.human-rights.unglobalcompact.org
Voluntary Principles on Security & Human Rights	Extractives industry	www.voluntaryprinciples.org
Worker Rights Consortium	Footwear and apparel manufacturing industries	http://www.workersrights.org/