

BURMA: Letter to President Obama on Updating the SDN List

November 5, 2013

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

Dear President Obama,

We are writing to urge your Administration to carefully calibrate its targeted sanctions on select individuals and entities in Burma. In particular, we urge the State Department in association with the Office of Foreign Assets Control (OFAC) of the Treasury Department to update the Specially Designated Nationals (SDN) list with respect to Burma and implement unambiguous criteria for removing and adding persons to the list. We further urge that the criteria be made public. Clear and public criteria are needed to ensure that US companies have the tools to responsibly manage their investments in Burma, maximize the likelihood that American business activity will benefit Burma's population, and avoid the serious risk that persons responsible for corruption or human rights abuses may benefit from US business relationships, contrary to clearly stated US interests.

We have been disappointed by the US Administration's delay in making needed changes to the SDN list, even in the face of escalating human rights abuses, concerns over peace, security, and stability, and an explosion of land confiscation cases and military assaults tied to economic development. We have been particularly troubled that persons engaged in activities that are subject to sanction under Executive Order 13619, which was issued in July 2012 and renewed in May 2013, have not been added to the SDN list. Under E.O. 13619, targeted sanctions are to be imposed on persons who are responsible for human rights abuses, undermine political reforms or the peace process with ethnic minorities, or otherwise act in ways that threaten Burma's security and stability.¹

The Administration's continued failure to add to the SDN list persons who meet those criteria negates the primary purpose of E.O. 13619 and the SDN list – to ensure that such “bad actors” do not benefit from US investment, financial services, and trade. Delay in updating the list undermines US policy goals to promote democratic reforms, revenue transparency, the peace process, and human rights in Burma. It also contradicts the Administration's clear pledge to regularly update the SDN list to help US companies avoid corrupt alliances.

Senior Administration officials have said that the SDN list will be “regularly updated” to sanction those responsible for human rights abuses in Burma.² They have also noted that

¹ See President Barack Obama, *Executive Order 13619*, Federal Register Vol. 77, No. 135, July 13, 2012, available at <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/13619.pdf>.

² US Department of State, *Administration Eases Ban on Imports From Burma*, Media Note, Nov. 16, 2012, available at <http://www.state.gov/r/pa/prs/ps/2012/11/200639.htm>.

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the Reporting Requirements for Responsible Investment in Burma are inextricably linked to a responsibly maintained “ongoing” and “organic” SDN list that provides clarity to companies seeking to respect human rights in a fraught legal and regulatory context.³ They stressed that the State Department endeavors “to be as clear as possible, making things as public as possible” so that US companies can better manage their investments to avoid “bad actors.”⁴ But despite these stated commitments to transparency and to proper maintenance of the SDN list, to our knowledge, your Administration has not taken any concrete steps toward updating the list or implementing clear criteria for the removal of persons from the list. It is incongruous for your Administration to tout the importance of updating the SDN list and of being “as clear as possible” with US companies while simultaneously failing to update it.

The continued failure to update the SDN list is despite the fact that some of our organizations have provided concrete examples, with supporting information, of individuals whom we believe should be designated as blocked persons. For example, although the Burmese military is sanctioned under US law and in visa restrictions for its egregious human rights violations, the SDN list does not name key military entities and individuals, even in cases where they have been directly implicated in human rights abuses. These include Brigade General Tun Tun Naung, the northern commander who oversees the Burmese military’s war against the Kachin Independence Army, in which Burmese troops under his command have carried out serious human rights abuses and violations of international humanitarian law.

Furthermore, we have concerns about your Administration’s decisions to remove and/or waive sanctions on some entities from the SDN list, as with the February 2013 easing of sanctions on four banks owned by the Burmese government or individuals already sanctioned on the SDN list. This decision sent a confusing signal to the people of Burma, particularly given that the US Administration added the Asia Green Development Bank and two other companies fronted by sanctioned businessman Tay Za to the SDN list in November 2012⁵ only to about-face in February when it waived sanctions on the Asia Green Development Bank. We note with concern reports that in January 2013, Tay Za allegedly donated US\$82,000 to the Burmese army as it carried out unlawful attacks against Kachin civilians;⁶ and in late August 2013, other reports alleging that Tay Za’s efforts to extend control over extensive tracts of land for logging, gold, and tourism ventures in Putao and Machyangbaw Townships, Kachin State purportedly helped fuel renewed attacks in these areas.⁷ Changes to the SDN list that benefit such persons without being subject to criteria tied to human rights concerns, do not lend credibility to the State Department’s stated objective to give clarity to investors who seek to help establish ethical business practices in a complex and corrupt environment.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See, e.g., *Tycoon Tay Za gives money for army’s Kachin offensive*, Kachin News, Jan. 29, 2013, at <http://www.kachinnews.com/news/2467-tycoon-tay-za-gives-money-for-army-s-kachin-offensive.html>.

⁷ See, e.g., *Burmese billionaire Tay Za wants 600,000 acres in Putao for gold project*, Kachin News, Sept. 12, 2013, at <http://www.kachinnews.com/news/2561-burmese-billionaire-tay-za-wants-600-000-acres-in-putao-for-gold-project.html>.

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In order to support the US government's goal of ensuring that US investment in Burma benefits the people of the country and does not empower "bad actors" or contribute to corruption or human rights abuses, we propose below a set of criteria for 1) removing reformed civilian persons from the SDN list, consistent with due process, and 2) adding persons to the SDN list. It is important that these criteria be made public.

Recommendations for Removing Civilian Persons from the SDN List

Civilian persons who seek to be removed from the SDN list should demonstrate that they have verifiably taken the following steps:

- Verifiably ceased to engage in the actions sanctioned under E.O. 13619;
- Provided a public accounting of all such actions in the past, with an explicit acknowledgement that such statements do not confer any immunity from investigation or prosecution, as warranted, by competent authorities, in cases of alleged illegality;
- Provided restitution or just and satisfactory compensation, fully consistent with international human rights standards, for all persons who have suffered loss, injury or damage from evictions or confiscation of land carried out in violation of such standards. Ensured that an adequate judicial or equivalent independent mechanism is available to receive complaints, make factual determinations (e.g., ownership, illegality of evictions or land seizures), make appropriate decisions (e.g., regarding return of land, damages), and enforce its decisions;
- Cut all ties with the Burmese military, border guard forces, and other government security forces, and the military's associated economic ventures and enterprises and their associated entities, including, but not limited to, the Union of Myanmar Economic Holdings Ltd (UMEHL) and Myanmar Economic Corporation (MEC), and ceased furnishing any weapons, related materiel, and/or financial, logistical, or in-kind support for the military;
- Publicly committed to henceforth uphold high standards of conduct, including but not limited to respecting human rights, refraining from corruption, and acting with transparency; and to institute robust due diligence policies and procedures to that end as well as to publicly report on compliance on at least an annual basis;
- Cooperated with a full audit executed by an internationally reputable auditing firm and made a public declaration of all assets, to be updated annually;
- Failure to remain in compliance with the above should constitute grounds for re-listing.

Recommendations for Adding Persons to the SDN List

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Applicable persons should be promptly added to the SDN list in accordance with the criteria set forth in E.O. 13619. In making determinations about additions to the SDN list, your Administration should take into account the various ways in which actors in Burma are actively undermining reform and contributing to human rights abuses. In particular, it should add to the SDN list government officials, legislators, military personnel, police officers, and other actors who are involved in the following activities:

- Inhibiting human rights reforms, for instance, blocking the implementation of the UN joint action plan on the use and recruitment of child soldiers;
- Enacting laws, provisions, and regulations that violate internationally recognized human rights standards and protections, or “have the purpose or effect of undermining or obstructing the political reform process or the peace process with ethnic minorities”;
- Engaging or being complicit in human rights abuses or violations of international humanitarian or human rights laws, for example, violence and discrimination against ethnic and religious minorities; or those cutting off humanitarian aid from persons displaced by the Burmese military.

Thank you for your consideration of these recommendations. We hope that your Administration will act promptly to update the SDN list, drawing on the recommended criteria for removals and additions, and that it will make those criteria public. As always, we are grateful for our continued engagement with senior leadership of your Administration on these critical issues.

Respectfully submitted,

Access
Actions Birmanie-Belgium
AFL-CIO
All Kachin Student and Youth Union
ALTSEAN-Burma
Back Pack Health Worker Team
Burma Campaign UK
Burma Issues
Burma Lawyers’ Council
Burma Partnership
Chin Human Rights Organization
Development for Burma
Fortify Rights
Forum for Democracy in Burma
Freedom House
Grassroots Human Rights Education and Development
Human Rights Foundation of Monland

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Human Rights Watch
Institute for Asian Democracy
International Labor Rights Forum
International Trade Union Confederation
Investors Against Genocide
Kachin Women's Organization
Karen Women's Organization
Karen Environmental and Social Action Network
Karenni Civil Societies Network
Mae Tao Clinic
Nationalities Youth Forum
Network for Democracy and Development
Orion Strategies
Physicians for Human Rights
Shwe Gas Movement
Students and Youth Congress of Burma
Tavoyan Women's Union
United Lahu Youth Organization
United to End Genocide
US Campaign for Burma

CC:

John Kerry, Secretary of State, Department of State
Susan Rice, National Security Adviser
Adam Szubin, Director, Office of Foreign Assets Control, Department of Treasury
House Committee on Foreign Affairs, through Chairman Edward Royce and Ranking
Member Eliot Engel
Senate Committee on Foreign Relations, through Chairman Robert Menendez and
Ranking Member Bob Corker
Original Co-sponsors of the Burmese Freedom and Democracy Act and JADE Act,
Senators Mitch McConnell, Dianne Feinstein, John McCain, Richard Durbin,
Representatives Joseph Crowley and Peter King