

Mr. Kanthan Shankar
The World Bank
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Yangon, Myanmar

February 10, 2014

Dear Mr. Shankar,

Thank you for your timely response to our civil society submission on the World Bank's Telecom Sector Reform Project. We appreciate your commitment that the Bank will "help the government conduct a due diligence review of a suite of laws including privacy, data protection, cyber-crime, access to and freedom of information." We urge the Bank to incorporate this commitment into the IDA loan agreement and into an amended PID.

We note, however, that a due diligence *review* of such laws should be oriented toward concrete and meaningful *revision* of Burma's legal and regulatory framework. We reiterate our recommendations that the project loan agreement include clear provisions that condition the implementation of components 2 and 3 on the realization of a legal and regulatory telecom framework that is in line with international human rights standards. Without the realization of such a framework, the government will retain the ability to wield abusive powers and violate the privacy, freedom of expression, and other basic rights of Burma's people.

Basic privacy and security reforms must predate increased telecom capacity through World Bank-enabled infrastructure building (component 2) and eGovernment platform (component 3). We refer the Bank to the list of recommendations attached to this letter – drawn from our civil society submission – that will ensure the Telecom Sector Reform project is implemented in an ethical manner.

The World Bank has the resources and global expertise to inform the necessary amendments of the Telecom Sector Reform project to ensure that the Burmese government will not be further empowered to violate the public trust. As one way to address the substantive concerns in the civil society submission, the Bank should prioritize meaningful consultations on the design and execution of each of the 3 project components.

We look forward to engaging with you further on this issue and would welcome further discussion via conference call with the Bank and our partners.

Sincerely,
Khin Ohmar
Burma Partnership

CC:

Ulrich Zachau, Country Director, Southeast Asia
World Bank Executive Directors

Recommendations

Recommendations for the Pre-Project Phase

Before implementing the Telecom Sector Reform project, the World Bank must conduct the following due diligence assessments:

1) An assessment of the risk of illegal surveillance and violations of the right to privacy related to the expansion of mobile and internet communications in Burma.

Increasing telecom infrastructure and capacity in Burma will enable internet and telecom operators to collect and retain a growing amount of user data. Operators have the capacity to facilitate real-time surveillance of phone calls or internet use by security agencies. As a result, operators will likely be asked by authorities to hand over user information or facilitate real-time surveillance. In Burma, there are no laws in place to protect the privacy of phone and internet users from public or private service providers and the government. There are no laws governing when and how governments can engage in surveillance or when security agencies can compel telecom operators to hand over user information. Prior to implementing the Telecom Sector Reform project, the World Bank must conduct a full assessment of the risk of surveillance and privacy violations through digital communications operations and infrastructure, and the need for legal and policy safeguards against their abuse.

2) An assessment of the risk of censorship and violations of the right to freedom of expression, including access to information.

Burma's historic and continued state censorship and surveillance, and failure to protect freedoms of expression, speech, and assembly, mean that developing the telecom sector comes with great risk of enabling government censorship and rights violations such as internet filtering or shutdowns.¹ Prior to implementing the Telecom Sector Reform project, the World Bank must conduct a full assessment of the risk of censorship and basic rights violations, including access to information.

Recommendations for Project Component 1 and Component 3

¹ See *Burma Country Profile*, OpenNet Initiative, Aug. 6, 2012, at <https://opennet.net/research/profiles/burma>; see also A/HRC/23/40, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, Apr. 17, 2013, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf

During Components 1 and 3 of the Telecom Sector Reform project, the World Bank must specifically help the Burmese government address the following:

1) *Privacy and surveillance*

- a. As part of Component 1(d) *Restructuring of MPT*, implement complete legal, regulatory, and technological separation between Ministry of Communications and Information Technology (MCIT), service operators (MPT and private), and security agencies (law enforcement, national security, etc.). The relationships of these organizations to each other must be made clear legally. Furthermore, the internal systems of telecom operators must be equipped with security mechanisms ensuring encryption and anonymization of user data and the transmission of user data over encrypted channels, preventing access by unauthorized agencies or officials.
- b. Design and implement legal and regulatory limits in line with international human rights standards on the government's powers to restrict telecommunications services, block content, conduct surveillance, and collect/access user data from the government telecom operator and new private operators.
- c. Enact new laws and regulations governing how security agencies and government officials can procure user data and network access (to intercept communications) from the government telecom operator and private operators.
 - i. Require that the government request be submitted in writing, and include an explanation of the legal basis for the request, and identify who is specifically making the request. Ensure that all requests comply with international human rights laws and standards, serving a clearly defined and legitimate public purpose. Allow operators to legally contest requests through independent courts.²
- d. Ensure proper ethical procedures on developing and implementing privacy and surveillance regulation by involving other ministries/organizations (e.g. parliamentary committees) besides the World Bank's project partners (e.g. MCIT).
- e. Provide publicly accessible channels for people to express their concerns and grievances about government telecom policies and activities, restrictions on access, freedom of expression, and privacy.
- f. In public and eGovernment activities, the government must strive to be

² See Access, "Telco Action Plan," March 2012, at https://s3.amazonaws.com/access.3cdn.net/1f9ab2891a86f3f081_uom6iil1w.pdf.

transparent with users regarding restrictions on access, freedom of expression, and privacy; and develop transparency policies/regulations. The government's collection and use of data in eGovernment activities must also be regulated to ensure privacy of individuals is protected.

- 2) *Include in trainings to government officials as part of Component 1(a) and (b) units on:*
 - a. *Consumer interest:* how the consumer can get the best price point, choice and quality of service; how to ensure that unsolicited calls/sms are mitigated; how to structure complaints redressal for fraudulent billing, etc.
 - b. *Public interest:* how to explore unlicensed spectrum, light-licensed spectrum, shared spectrum, etc. options to ensure that spectrum allocation is not seen only as a revenue generation exercise by the government (e.g. consider licensing regulations requiring owners of back-haul connections to lease some or all bandwidth to third parties).
 - c. *Access to knowledge:* how to design and implement copyright law reform (to ensure affordable content), patent law reform (to ensure affordable devices), and open standards and open content/access for effective eGovernment.
 - d. *Open data:* how big data from networked infrastructure can be used for better governance.
- 3) *Legal reforms*
 - a. *Data protection/consumer privacy:* develop laws and/or regulations governing how state-owned and private operators are able to collect, process, and share data in line with international human rights standards.³
 - b. *The government's own privacy practices:* develop laws and/or regulations delineating the privacy practices of the government (e.g. how and when the government collects personal information from people living in Burma, how they use this information, etc.) in line with international human rights standards.
 - c. Develop laws and/or regulations protecting freedom of expression, internet service provision, content, and addressing cybercrime in line with international human rights standards.
 - d. Repeal the Electronic Transactions Law (2004). This law is not being successfully⁴ “modeled on the UN Model Law on Electronic Commerce (1996, as amended)” or revised to “reflect good practice,” as claimed in

³ *Id.*

⁴ See Simon Roughneen, *Punishments Reduced, But Burma's Harsh Online Law Remains*, Irrawaddy, Oct. 24, 2013 (examining the inconsequential reforms to the Electronic Transactions Law).

the draft Project Information Document (PID).⁵ The law is regularly used to prosecute people who are exercising their basic freedoms under the guise of state security and is incompatible with international law.⁶

- e. Repeal the Computer Science Development Law (1996), which limits communication and internet access by restricting access to consumer technologies such as computers and data-enabled phones.⁷
- f. Ensure that new and upcoming regulations of the Telecommunications Law (2013) are in line with international human rights standards.
- g. Ensure that laws and regulatory frameworks support access to personal devices and other ICTs for civil society in Burma. Provisions (e.g. in the Telecommunications Law) that require prior permission or licensing to own and/or operate equipment and networks must be repealed or clarified to ensure that ordinary consumers/NGOs need not apply for a license to purchase equipment or set up computer networks if the equipment has already been approved to be imported into the country.

Recommendations for Project Component 2

During Component 2, the World Bank must specifically address the following:

1) Due diligence

- a. The World Bank, government, and any appropriate operators must conduct public, rigorous assessments of human rights risks associated with any public and private partners that become involved in the Telecom Sector Reform project, such as the foreign telecom operators (e.g. Telenor and Ooredoo) and any other telecom equipment vendors brought in either by the telecom operators or independently.
- b. The World Bank must ensure public and private sector partners publish and implement human rights, environmental, anti-corruption, and worker rights policies and procedures; publish and implement policies and procedures for arrangements made with security service providers, and property acquisition and publish payments made to government entities, policies and procedures in context of telecom expansion projects in Burma's rural regions.⁸

⁵ World Bank Telecom Sector Reform project, *Project Information Document (PID) Appraisal Stage*, Oct. 18, 2013, at 3.

⁶ See Human Rights Watch, *Reforming Telecommunications in Burma: Human Rights and Responsible Investment in Mobile and the Internet*, May 2013, at 10-11.

⁷ *Id.*, at 11-12.

⁸ For general guidance on developing reporting requirements for public and private sector partners, see the US State Department Reporting Requirements on Responsible Investment in Burma (<http://www.humanrights.gov/wp-content/uploads/2013/05/Responsible-Investment-Reporting-Requirements-Final.pdf>).

2) *Civil society engagement*

- a. Prioritize civil society engagement by ensuring that “free, prior, and informed consultations” at each potential project site are publicly scheduled at least two months in advance in order to allow ethnic minority and/or civil society organizations sufficient time to translate documents/plans/ proposals into ethnic languages and review them. Ensure that project information is accessible to people of various ethnic groups, different levels of education, those with disabilities, etc.

3) *Grievance mechanism*

- a. The World Bank must provide accessible mechanisms for both community members and landowners to communicate concerns about operator activities. These grievance mechanisms must be created and operated in line with international standards on the right to remedy.⁹

4) *Land use*

- a. Burmese law and regulations violate international human rights standards and are not sufficient enough for the operators, MCIT, and World Bank to ensure there are no legacy issues in land transactions. There are negligible legal protections for people attempting to demonstrate land tenure, and negligible protections against eminent domain. Ensure that the operators, MCIT, and World Bank respect land tenure irrespective of Burma’s inadequate land laws. Ensure that the Land Lease Guidelines are in line with international human rights standards.
- b. Ensure that the operators, MCIT, and/or World Bank assume responsibility for comprehensive insurance for all activities related to the project (e.g. a worker falling from the tower during construction, pollution of land related to construction, maintenance of towers, structural failure, emergency labor needs). Ensure that those with land tenure are provided with insurance and protections.
- c. Ensure that the operators, MCIT, and World Bank assume responsibility and abide by appropriate guidelines for all environmental, social, physical, security, and financial needs and impacts of construction and labor related to the project (e.g. building of roads to the towers, transportation of supplies, environmental and labor costs associated with construction and land impact, worker housing).

⁹ For general guidance on non-judicial grievance mechanisms, see the UN Guiding Principles on Business and Human Rights, at Guiding Principle 31 (<http://www.business-humanrights.org/UNGuidingPrinciplesPortal/TextUNGuidingPrinciples>). For specific guidance on remedy in the ICT sector, see the Access “Telco Remedy Plan” (<https://www.accessnow.org/telco-remedy-plan>).

- d. Enact binding regulations to ensure that operators and the government continue to monitor the human rights impact and land rights impact of selected sites after primary acquisition and construction on sites.

5) *Category B designation*

- a. The Telecom Sector Reform project has been proposed as a category B project, but due to 1) the lack of an international-standard legal and regulatory framework, particularly regarding land, labor, and human rights, 2) the government's ongoing record of violations of land, labor, and human rights, and 3) the potential for severe impact moving into and building on selected sites, the project should be listed as category A. The World Bank has downplayed the impacts of moving international service operators into rural, ethnic areas. Burma's pervasive business and land corruption, and ongoing ethnic conflict, necessitate a category "A" designation to guarantee the people of Burma the courtesy of all World Bank safeguards.

6) *Equip MCIT*

- a. Equip MCIT with the institutional and technical capacity to undertake safeguards assessment and mitigation.
- b. Ensure that MCIT is supplied with the trainings, ability, and resources necessary to abide by the Ethnic Minorities Planning Framework and Land Lease Guidelines, respect land tenure, monitor human and land rights impacts, implement proper safeguards, and carry out the aforementioned recommendations in this document.
- c. Ensure that the World Bank's project budget includes support to hire an international-standard Safeguards Specialist.

7) *Budget oversight*

- a. The World Bank must implement a financial oversight process for monitoring MCIT's enactment of the entire project budget.

Recommendations for future civil society consultations

- Organize transparent and comprehensive consultations; allow sufficient time for civil society and ethnic actors to translate documents into ethnic languages and otherwise prepare for these consultations; listen and respond to civil society concerns, rather than assume there are no concerns; and ensure that information is accessible to various ethnic groups, people with disabilities, people of different ethnic groups, etc.