

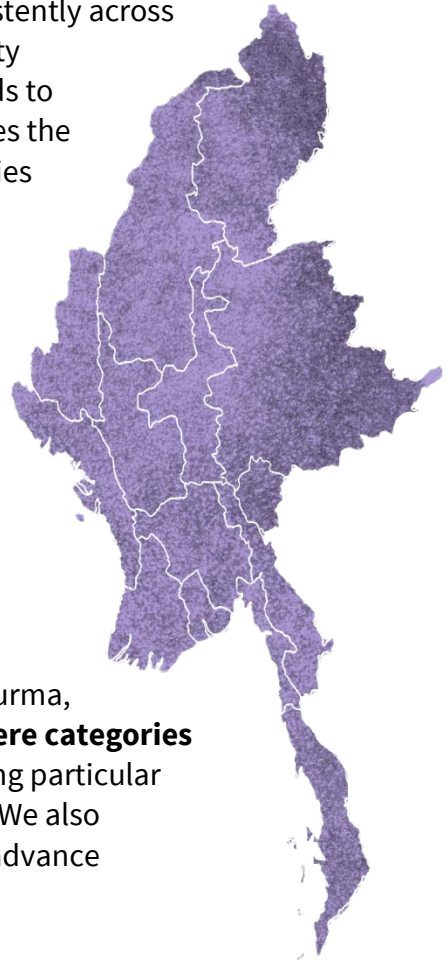


## Human Rights and Democratic Reform in Burma

We are global investors, seeking to apply our standards consistently across markets. For certain markets that present unique sustainability challenges, however, we have developed specialized standards to guide our ESG research and review process. This paper outlines the factors we consider when evaluating the eligibility of companies for our portfolios that operate in Burma (Myanmar). We hope that it will help to illustrate how Domini addresses these key challenges, as well as provide guidance to other investors and corporations.

While the democratic transition in Burma (Myanmar) is widely welcomed and foreign investments are critically needed, challenges remain. The country remains a high risk environment for business operations due to weak human rights protections, weak environmental regulations and weak institutional governance.

Domini's policy is to assess each company's involvement in Burma, on a **case-by-case** basis. In this analysis, we consider **ten severe categories of human rights violations and governance concerns**, paying particular attention to certain **high risk sectors** and business activities. We also evaluate **positive actions** companies are taking in Burma to advance democratic reform and improve lives.



### Background

For many years, Domini's policy was to exclude from our mutual fund portfolios any companies with significant involvement in Burma, a country run by a military regime that held its democratically elected leader under house arrest. By avoiding investment in companies doing business in Burma, and encouraging companies to leave, we sought to highlight the critical importance of democracy to both human rights and long-term investment returns, avoid a variety of human rights risks, and apply leverage to an unjust regime.

We were proactive in addressing these concerns as well. For example, our research on **Toyota Motor** uncovered previously unknown connections between a key trading affiliate and the Burmese military regime. Although we have consistently excluded the



company from our funds, we helped to lead a three-year engagement by responsible investors, culminating in the company's announcement in 2010 that its trading affiliate had divested itself from the joint venture.

In 2011, following a historic election that brought long-imprisoned democratic leader Aung San Suu Kyi to the Burmese parliament, the U.S. government began the process of lifting long-standing economic sanctions, and corporations announced that they would soon resume business there.

The U.S. State Department developed a set of reporting requirements to ensure that companies doing business in Burma disclose sufficient information to allow the U.S. government to evaluate their impact on human rights and democratic reform. In 2012, Domini participated in an in-person meeting with National Security Council (NSC) directors to share our concerns, including: the continued imprisonment of political prisoners; weak rule of law, including a weak judicial system; continuing violence against ethnic minorities; and the potential financing of notorious human-rights violators. We then worked independently and with other members of the *EIRIS Conflict Risk Network* to develop and submit concrete recommendations<sup>1</sup> to inform that reporting process. Although the State Department adopted at least two of our recommendations, our most important concerns regarding public transparency in several key areas were not addressed. Leading companies, however, chose to issue public reports, which served as a basis for engagement with responsible investors and a framework for accountability.

In October 2016, as a final step in the process of lifting sanctions, the US government announced that it would no longer require US firms operating in Burma to report on their human rights risk assessments, a decision that faced strong objections from various human rights organizations due to an array of ongoing serious human rights violations, as reported by the US State Department.<sup>2</sup>



## Challenges Facing the Democratic Transition

As investors evaluate corporate activity in Burma, it is important to understand that, despite important steps towards democracy, very serious challenges remain. All corporate activity in Burma should be evaluated against the backdrop of the following ongoing human rights violations:

Violence by the security forces against ethnic minorities, particularly the Rohingya people <sup>3</sup>	Aggressive land grabs across the country, particularly for agricultural use <sup>4</sup>
Pervasive use of child labor	Rampant corruption and bribery, partially helped by the cash economy

These violations are compounded by a number of governance concerns, including:

Weak human rights protections, <sup>5</sup> accompanied by various forms of discrimination, violence and forced migration	Weak environmental regulations
Lack of proper law enforcement practices, including arbitrary detention, inhumane treatment of detainees, use of violence	Lack of proper judicial due processes, including lack of fair and public trials
Military control of certain sectors and resources, most notably in oil and natural gas	Restrictions on freedom of speech



Despite what appears to be a green light from the U.S. State Department, these concerns will continue to present material legal, operational and reputational risks to businesses operating in Burma including the ongoing potential for:

- Violations of the U.S. Foreign Corrupt Practices Act
- Violations of the regulations prohibiting the importation of goods made with child or forced labor
- Consumer boycotts
- Complicity in severe human rights violations.

The potential failure of democratic reform in Burma represents even greater risks to its citizens and the region, risks that also carry economic import.

Based on these observations, it is important to consider any business operations in Burma with enhanced due diligence. At the same time, it is also true that foreign investment is a key to economic development for the country, providing access to essential products and services, and needed improvements to the country's infrastructure.

We believe that responsible investors can play an important role in Burma's progress towards democracy and prosperity by shifting from a strategy of avoidance and divestment to one of careful scrutiny and engagement.

For Domini, this means that we will devote particular scrutiny to a select group of high risk sectors and business operations. In recognition of the difficulty in addressing these problems, and the critical need for foreign investment, we will also seek to incorporate into our analysis positive actions companies are taking to advance democracy and human rights in Burma.



## High Risk Sectors/Areas of Business

We consider the following sectors highest risk, requiring the closest scrutiny:



**Energy**, particularly fossil fuel exploration and production operations,<sup>6</sup> including oil-field service providers and wholesale trading companies where a government stake or ownership is required in the projects. Investors should pay particularly close attention to operations where joint ventures with government entities are required, as the risk of corruption is particularly high.<sup>7</sup>



**Infrastructure Projects** raise the possibility of corruption, land grabs, forced migration or displacement, and labor rights concerns. Companies should undertake careful and transparent environmental and societal impact assessments before undertaking such projects, and be prepared to discuss these assessments with investors.



**Agricultural projects** raise risks of child labor, land grabs, and forced migration or displacement. Again, companies should undertake careful and transparent environmental and societal impact assessments prior to investment and on an ongoing basis.<sup>8</sup>



**Information and Communications Technology (ICT)**. While this sector provides critical services needed to advance both democracy and economic development, companies and investors should pay careful attention to risks of government censorship and surveillance, including requirements in government contracts to customize services to enable censorship and surveillance.<sup>9</sup> Domini encourages companies to comply with guidelines developed by the *Global Network Initiative* to address these risks.<sup>10</sup>



**Materials & Wholesale Trading**. Investors should pay particular attention to timber, minerals and gems such as ruby and sapphire, for potential environmental and human rights violations.<sup>11</sup>



## Key Factors to Consider when Evaluating Business Involvement

Each of the high-risk industries present important opportunities for the people of Burma and, therefore, for investors. Without proper attention to the concerns noted above, however, these opportunities can be transformed into long-term, intransigent risks. Careful and responsible judgment is called for, and can make an important difference. Domini recommends the following four key factors to consider when evaluating corporate operations in Burma:

**1**

### **Enhanced Due Diligence & Disclosure**

Investors should assess whether the company has conducted and disclosed enhanced due diligence regarding the environmental and social risks presented, including its supply chain operations. When these disclosures are absent, or unclear, investors should consider reaching out to companies for more information.<sup>12</sup>

Domini recommends that corporations use the *UN Guiding Principles Reporting Framework*.<sup>13</sup>

**2**

### **Specific Incidents or Patterns**

Investors should not rely solely on corporate reporting to evaluate the risks. Government reports, media and expert NGOs should be consulted in order to identify any specific controversies. Investors should pay close attention to patterns of corporate behavior over time, and should not assume that an absence of controversy means “no risk,” particularly in a high risk area such as Burma.

**3**

### **Business Structure & Relationships**

Investors should seek to understand any potential risks arising from the company’s in-country business partners or joint ownership of businesses.

**4**

### **Who benefits from the company’s products and services?**

Investors should question whether the company’s operations create broad public access and benefits, or whether they benefit a select group.



## Positive Efforts to Promote Democratic Transition and Improve Lives

Foreign investment is necessary, but not sufficient, to further advance democratic reform in Burma and to improve the lives of the Burmese people. A company's proactive efforts to address the challenges discussed above can be just as important as the products and services it provides. In particular, we encourage companies to engage in the following:

1. **Participate in, or support, institutional capacity building**, through active involvement in multi-stakeholder collaborations. In particular, reforms are needed to strengthen Burma's legal systems, including independence of the judiciary, environmental protection, and labor rights, including legal protections for labor unions.
2. **Provide education or vocational training to employees and local communities.**
3. **Provide access to products and services to disadvantaged communities.**
4. **Promote international human rights standards** for its supply chain and other partners in Burma.
5. **Mitigation and Remediation.** According to the *UN Guiding Principles on Business and Human Rights*, companies have an obligation to mitigate and remediate potentially adverse human rights impacts and to monitor progress in key areas of concern.

## Conclusion

Companies seeking to do business in Burma face an array of difficult human rights, environmental and governance challenges. As investors, Domini encourages companies to engage in robust human rights impact assessments prior to entry and, if they do choose to enter, to continue to engage and report on how they are addressing these ongoing challenges. Investors with an understanding of these issues can help to advance democratic reforms while mitigating risk to their portfolios.

Peace and prosperity for the people of Burma is in the best long-term interests of investors and corporations. This can only be achieved by a functioning democracy supported by a fair economic system.

We hope that this description of our evaluation process will help to communicate our expectations to corporations while assisting other responsible investors seeking broad-based wealth creation for society as well as their clients.



## About Domini Impact Investments

Domini Impact Investments manages mutual funds for individual and institutional investors who wish to create positive change in society by integrating social and environmental standards into their investment decisions.

Visit [www.domini.com](http://www.domini.com) or call 1-800-582-6757 to learn more

<sup>1</sup> Domini's letter to the State Department regarding Reporting Requirements on Responsible Investment in Burma (Oct. 3, 2012), available at:

<http://www.reginfo.gov/public/do/DownloadDocument?objectID=38146500>; EIRIS CRN letter re: same (Oct. 4, 2012), available at: [https://business-humanrights.org/sites/default/files/media/burma\\_reporting\\_requirements\\_-\\_investor\\_comment\\_4\\_oct\\_2012.pdf](https://business-humanrights.org/sites/default/files/media/burma_reporting_requirements_-_investor_comment_4_oct_2012.pdf) Domini is represented on the EIRIS CRN advisory board.

<sup>2</sup> U.S. Department of State 2015 Country Report on Human Rights Practices in Burma (April 13, 2016), available at <http://www.state.gov/j/drl/rls/hrrpt/2015/eap/252751.htm>

<sup>3</sup> Attention has focused on the Rohingya population in Rakhine State (formerly known as Arakan state), near the Bangladeshi border, with recurring reports of rape, massacres, torture and extrajudicial executions. See, e.g., Burma: Satellite Images Show Fire-Damaged Villages (Human Rights Watch, Oct. 31, 2016), available at: <https://www.hrw.org/news/2016/10/31/burma-satellite-images-show-fire-damaged-villages>; Dispatches: Burma's Rohingya Muslims in Desperate Straits (Human Rights Watch, April 26, 2016), available at: <https://www.hrw.org/news/2016/04/26/dispatches-burmas-rohingya-muslims-desperate-straits>; Myanmar: Kofi Annan to head Commission on Rakhine state (Amnesty International, Aug. 24, 2016), available at: <https://www.amnesty.org/en/latest/news/2016/08/kofi-annan-to-head-commission-on-rakhine-state/>. Abuses and violence against Karen and Kachin groups has also been reported. See, e.g., The Farmer Becomes the Criminal: Human Rights and Land Confiscation in Karen State (Human Rights Watch, Nov. 3, 2016), available at: <https://www.hrw.org/report/2016/11/03/farmer-becomes-criminal/human-rights-and-land-confiscation-karen-state>. See also, Indigenous Peoples' Rights and Business in Myanmar (Myanmar Centre for Responsible Business, Feb. 8, 2016), available at: <http://www.myanmar-responsiblebusiness.org/publications/indigenous-peoples-rights-and-business-in-myanmar.html>

<sup>4</sup> The Farmer Becomes the Criminal: Human Rights and Land Confiscation in Karen State (Human Rights Watch, Nov. 3, 2016), available at: <https://www.hrw.org/report/2016/11/03/farmer-becomes-criminal/human-rights-and-land-confiscation-karen-state>

<sup>5</sup> See, generally, Human Rights Watch: <https://www.hrw.org/asia/burma>.

<sup>6</sup> Review Domini's policy on fossil fuel exploration and production at <http://domini.com/responsible-investing/key-issues/our-position-fossil-fuel-owners-and-producers>

<sup>7</sup> See Myanmar Oil & Gas Sector-Wide Impact Assessment (SWIA) (Myanmar Centre for Responsible Business), available at: <http://www.myanmar-responsiblebusiness.org/swia/oil-and-gas.html>





<sup>8</sup> Burma: Farmers Targets of Land Grabs (Human Rights Watch, Nov. 3, 2016), available at: <https://www.hrw.org/news/2016/11/03/burma-farmers-targets-land-grabs>

<sup>9</sup> See, Sector-Wide Impact Assessment of Myanmar's ICT Sector (Myanmar Centre for Responsible Business), available at: <http://www.myanmar-responsiblebusiness.org/swia/ict.html>

<sup>10</sup> <http://globalnetworkinitiative.org/> Domini is a founder, and is represented on the Board, of the Global Network Initiative.

<sup>11</sup> See, Myanmar Mining Sector-Wide Impact Assessment (SWIA)(Myanmar Centre for Responsible Business), available at: <http://www.myanmar-responsiblebusiness.org/swia/mining.html>; See, also, Burma's Gem Trade and Human Rights Abuses (Human Rights Watch, July 29, 2008), available at: <https://www.hrw.org/news/2008/07/29/burmas-gem-trade-and-human-rights-abuses>.

<sup>12</sup> From Red to Green Flags - Respecting Human Rights in High-Risk Countries (Institute for Human Rights and Business, (April 27, 2011) available at: <https://www.ihrb.org/focus-areas/commodities/report-from-red-to-green-flags>; Business and Human Rights Guide for Companies in Burma (Myanmar Centre for Responsible Business, April 7, 2015), available at: <http://www.myanmar-responsiblebusiness.org/news/business-and-human-rights-guide.html>

<sup>14</sup> <http://www.ungpreporting.org/> Domini is represented on the *Eminent Persons Group* that has advised on the development of the framework.

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