

**COMMENTS BY MYANMAR CENTRE FOR RESPONSIBLE BUSINESS
ON THE ARTISANAL OIL PRODUCTION BILL (2017)
SUMMARY ENGLISH TRANSLATION**

Comment 1

Article 4: In order to obtain a permit, person who wishes to carry out artisanal oil drilling and production has to apply for blocks of their preference, specifying the area, location and including a recommendation of relevant state or regional governments or Self-Administered Division and Self-Administered Zone Leading Bodies.

Article 5: The relevant state and regional governments or Self-Administered Division and Self-Administered Zone Leading Bodies shall examine the application with specified terms and submit it to the Ministry in order to obtain a permit if the application is valid.

Article 6: According to section 5, the Ministry shall compare the oil blocks with the list of already approved blocks and submit to the union government if the application and the blocks are lawful.

Our comments relate to Articles 4-6 of Chapter 3, regarding the identification of desired block area. We suggest that an applicant should submit an application to the relevant township level government department, which would then send it to the regional level. The department at regional level should be the one responsible for reviewing and approving or rejecting the application and issuing licenses. The majority of applicants looking to extract artisanal oil are ordinary people for whom the process currently contained in the Bill will be too costly and complicated to implement. The application process needs to be short, easy to understand and low-cost, and in line with the situation on the ground.

Comment (2)

Article 15: The Ministry may examine the application of a person whose operational oil blocks (all or in part) were confiscated for the public benefit under the existing Law.

Article 17 (h): The permit holder shall return the area when the government confiscates all or part of operational oil blocks according to the public benefit under the existing Law. Then the permit holder can request for new substitute oil blocks in suitable areas.

Article 15 (Chapter 5: Duties and Power) and Article 17 (Chapter 7: Duties of Permit Holder) do not offer any guarantees for grassroots permit holders, which will impact their livelihoods. Most artisanal oil drillers are already vulnerable and income from artisanal oil production, in many cases, is the only way they can provide for their families. The sum they have to invest is significant for them, and they rely on income from artisanal oil production for their livelihood. Therefore, the proposal that “the government confiscates operational oil blocks (all or in part) for the public benefit under the existing Law” should be revised, adding a timeframe and conditions. Moreover, the government should ensure protection of the rights of permit holders and allow them to plan. The government should ensure a sufficient timeframe and be prepared to compensate confiscated land to ensure this does not harm livelihoods.

Comment (3)

Article 16: Duties and responsibilities of state or regional governments or Self-Administered Divisions or the Self-Administered Zone Leading Bodies:

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(f) Shall collect the land lease fees and oil tax for the oil released from the artisanal oil drilling blocks.

Article 16 (Chapter 6: Duties and power of the state or regional governments or Self-Administered Division or the Self-Administered Zone Leading Bodies) makes these entities responsible for collecting 'land lease fees' and oil tax from artisanal oil drilling. In this regard, government should re-consider the plan to charge 'land lease fees' if this is a separate payment to the rental fee which artisanal oil workers currently have to pay, or alternatively provide a share of produced oil to the landowner (eg. Rakhine State). A "land lease fee", if additional, would be a double payment.

Comment (4)

Article 17: The permit holder,

(f) The permit holder shall send monthly reports on the amount of oil produced daily to the Ministry through relevant state or regional governments or Self-Administered Division or the Self-Administered Zone Leading Bodies.

Article 17(f) (Chapter 7: Duties of Permit Holder) states that permit holders have to report monthly on their daily oil production to the Ministry through relevant state or regional government or Self-Administered Division or the Self-Administered Zone Leading Bodies. We think this requirement is not realistic for grassroots artisanal oil producers. Most of them lack necessary report writing skills. Instead of producers having to submit separate reports for individual blocks, the relevant department at township level should compile an aggregated monthly report on the area under their supervision for the regional level bodies.

Comment (5)

Article 20: Whoever carries out any oil drilling and/or production without a permit issued under this Bill shall, if convicted, be sentenced for a term of minimum 1 year and up to a maximum of 3 years or with a fine of 5,000,000 Kyat or both. In addition, materials related to the crime will be confiscated.

Article 20 (Chapter 9: Offences and Penalties) should consider the actual situation of the artisanal oil worker, many of whom are likely to drill and produce without a permit, due to challenges with for example delays in the licensing process. Also it is necessary to understand the differences between artisanal oil producing situations in different regions (eg. Rakhine and Magway). Moreover, the government should consider the impact such punishment will have on the lives of artisanal oil drillers and their families. We therefore recommend a reduction in the penalty.

Comment (6)

Article 26(a): The Permit holder-

- (i) Must take responsibility for his blocks and carry out his work according to the law and probe where there are any conflicts of ownership or existing presence of existing owners/delegates.
- (ii) Must take responsibility for settling the dispute if there are any objections from another owner or delegate.
- (iii) According to sub section (2), if the permit holder cannot solve the dispute, he may request the guidelines form from the relevant state or regional government or Self-Administrated Division or the Self-Administrated Zone leading bodies.

(b) In accordance with sub section (a), the drilling license can be revoked by the Ministry if the permit holder is unable to solve the disputes with respect to his blocks.

Article 26 (a-i) of Miscellaneous (Chapter 10) states that the desired block area has to be “clear and not an already permitted area”. The meaning of this statement is not clear to us. At present, artisanal oil drillers rent land from landowners in order to carry out their work. There is limited ‘clear’ land for oil production, and any land, apart from beach or creek/river bank, might have owners.

Article 26 (a-ii) mentions that if a landowner or a delegate has objected to the permitted area, the permit holder has to handle the dispute. There should be more responsibility and accountability on the government to address such disputes and protect the rights of permit holders. According to Articles 4-6 (Chapter 3) which cover identification of desired block area, the government has to inspect the desired block area before approving and issuing the license. Therefore, if a land dispute emerges, with regard to permitted land, the government should be responsible for handling it.

Article 16 (b) states that according to sub-section (a), if the permit holder cannot handle the objection, the Ministry will revoke the license. This statement is unclear and removes the responsibility of government to protect the rights of permit holders. As mentioned above, the government, prior to issuing the license, should resolve land-related disputes. If the government carries out a thorough assessment of a block area, such issues should not arise. If they do, it should be the government’s responsibility to resolve them.

Comment (7)

Article 29 (a): Permit holder shall provide funds to relevant state or regional governments or Self-Administered Division or the Self-Administered Zone Leading Bodies for the social development of project area under specific terms. (b) The relevant regions or regional governments or Self-Administered Division or the Self-Administered Zone Leading Bodies need to be transparent to accept and maintain the funds.

Article 29(a) (Chapter 10: Miscellaneous) states that an artisanal oil production permit holder has to contribute to a ‘social development fund’. We believe this is inappropriate as their income (from artisanal oil drilling) is already insufficient to adequately provide for their families. Indeed, it is reasonable to expect large-scale producers and other projects in areas with artisanal oil drilling blocks to support sustainable development of artisanal oil drilling activities as part of contribution to community development. Therefore we recommend that this requirement in Article 29(a) be omitted.