

Public comments and answers on "JICA Study for Review of JICA Guidelines for Environmental and Social Considerations"

21 February 2020
Japan International Cooperation Agency

JICA invited the comments on the "JICA Study for Review of JICA Guidelines for Environmental and Social Considerations" draft from stakeholders. In total, 10 comments were received and answered respectively as shown below.

1. Submission of public comments

(1) Public comment period

16 October 2019 to 14 November 2019 (30 days)

(2) JICA websites

Japanese:

<https://www.jica.go.jp/environment/guideline/information/opinion.html>

English:

https://www.jica.go.jp/english/our_work/social_environmental/guideline/public_comments.html

(3) Submission method

Email, post, and FAX

2. Results of public comments

Number of comments received in total: 10 (Number of senders in total: 4)

Answers corresponding to the comments: Please refer to Attachment.

3. Contact info for inquiries

Environmental and Social Considerations Review Division

Credit Risk Analysis and Environmental Review Department

Japan International Cooperation Agency (JICA)

E-mail: erte1_pc@jica.go.jp

Attachment: Public comments and answers on "JICA Study for Review of JICA Guidelines for Environmental and Social Considerations"

Public comments and answers on "JICA Study for Review of JICA Guidelines for Environmental and Social Considerations"

No.	Comments	Answers
1	<ul style="list-style-type: none"> • Corresponding area <p>Impacts on society:- Unfair distribution of benefits, local interest, and impacts on local economy.</p> <ul style="list-style-type: none"> • Comments <p>It would be better to start work by telling the local people before the start of the project what the project can do to address the needs of the local people.</p> <p>In Pokhara project now :- Unfair distribution of benefits, same local interest, and impacts on local economy.</p>	<p>JICA Guidelines for Environmental and Social Considerations (April 2010) (hereinafter called 'the JICA Guidelines') specify that projects must be adequately coordinated so that they are accepted in a manner that is socially appropriate to the country and locality in which they are planned.</p> <p>The received comment was accordingly communicated to the department in charge of the project, although the project referred to in this comment was out of the scope of the JICA Study for Review of JICA Guidelines for Environmental and Social Considerations (hereinafter called 'the JICA Review Study').</p>
2-1	<ul style="list-style-type: none"> • Corresponding area <p>p. 2-7</p> <p>Regarding the "2.5 Concern about Social Environment and Human Rights", among 100 reviewed projects, no project was found which was implemented in the countries and areas in conflict or areas where the right to basic freedom (e.g. freedom of expression) and legal remedies are restricted.</p> <ul style="list-style-type: none"> • Comments <p>JICA must take it into consideration a broader pattern of criminalisation and intimidation against Indonesian environmental human rights defenders, including the local farmers who oppose the Indramayu coal-fired power plant project and were forced to be in jail for 5 to 6 months due to the false charge in West Java, Indonesia. So that JICA could be aware that the freedom of expression has been at stake in Indonesia.</p>	<p>The received comment is included in the final report of the JICA Review Study as the 'Public Comments on the JICA Study for Review of JICA Guidelines for Environmental and Social Considerations.' Comments regarding a specific project were also communicated to the department in charge of that project.</p>
2-2	<ul style="list-style-type: none"> • Corresponding area <p>p. 2-14, 2-15 (4) Environmental and Social Considerations by the Project Proponent in the E/S</p> <p>In addition, in case of Project No.13, land acquisition was carried out and the construction of the access road had been started during the period that the components covered by E/S loan was undertaken. It was confirmed that compensation for land was paid according to the national law prior to land acquisition, partially some bank accounts for compensation were frozen due to overpayment of the compensation, farming is permitted</p>	<p>The received comment is included in the final report of the JICA Review Study as the 'Public Comments on the JICA Study for Review of JICA Guidelines for Environmental and Social Considerations.' Comments regarding a specific project were also communicated to the department in charge of that project.</p> <p>The JICA Guidelines specify that if surveys for environmental and social considerations are conducted in or in parallel with the said engineering service loans, fulfillment of necessary environmental and social considerations may be confirmed at the time of the environmental</p>

	<p>to continue in areas where construction has not started yet, and livelihood restoration supports are provided as per the Land Acquisition and Resettlement Action Plan (LARAP) such as vocational training on welders and mushroom cultivation promotion, and employment as project workers.</p> <ul style="list-style-type: none"> • Comments – In Project No. 13 (Indramayu coal-fired power plant project in West Java, Indonesia), the land acquisition and the construction of the access road and the substation started without “social acceptability” from the local affected community, especially from tenant farmers, farm workers and fishermen. – The compensation payment brought big conflict and confusion among the local affected community, as the compensation for crop was paid through landowners but not directly to tenant farmers (no proper consultation with tenant farmers about such compensation) and as the compensation standards for crop have been never disclosed/disseminated. – The report said that “Farming is permitted to continue” --- It is necessary because the local tenant farmers and farm workers didn’t and won’t agree the project itself, and their life would be heavily affected and get worse if they cannot continue farming. – Livelihood restoration supports are not the solution to restore such farmer’s livelihood; even though they could get vocational training on welders, there is no certain stable job in the future; mushroom cultivation promotion has been no well-planned and failed to provide net profit for such program’s beneficiaries; and employment as project workers is only temporary and is usually limited to only a part of males, but totally not for females. – Before the completion of LARAP, PLN started paying the compensation for land ad crops. It proves no appropriate process and participation to make the LARAP. – It is not reasonable and not acceptable that JICA has continuously disbursed its E/S loan for this project, while the project itself has already caused significant damages to the local community and has violated many provisions of JICA’s Guidelines. Thus, <u>we strongly recommend that JICA revise the relevant provision of its Guidelines, so that JICA makes sure the fulfillment of environmental and social requirements under its Guidelines even during the implementation of its E/S loan.</u> 	<p>review of the proceeding phases of the project.</p> <p>As for the specific project referred to in the comment, JICA would conduct environmental review on the environmental and social considerations in accordance with the JICA Guidelines, in case the Government of Indonesia requests Japanese ODA loans for the proceeding phases of the project.</p>
2-3	<ul style="list-style-type: none"> • Corresponding area p. 2-20 Project No.13 Indramayu Coal Fired Power Plant Project (E/S) (Indonesia): 	<p>The received comment is included in the final report of the JICA Review Study as the ‘Public Comments on the JICA Study for Review of JICA Guidelines for Environmental and Social Considerations.’ Comments regarding a specific project were also communicated to the</p>

	<p>From October 2016 to August 2018, 300 people participated in the agricultural skills-based livelihood restoration programs and the non-agricultural skills-based programs, and the programs have been continuously provided. Additionally, PAHs were allowed to continue farming on the project sites except for access roads and substation sites.</p> <ul style="list-style-type: none"> • Comments – One of the villages which are mainly affected by the Indramayu coal-fired power plant is Mekarsari village in Indramayu, West Java, Indonesia. The cultural root for the most of Mekarsari villagers is farming, or cultivating land for agriculture. They have a strong bond with the land. The loss of the land due to the power plant will deprive the villagers of such cultural farming and livelihood. And such impact will lead up to the poverty of the local affected community, especially tenant farmers and farm workers. – Livelihood restoration programs are not the solution to restore small farmer’s livelihood; even though they could get vocational training on welders, there is no certain stable job in the future; mushroom cultivation program as well as catfish cultivation program has been no well-planned and failed to provide net profit for such program’s beneficiaries; and employment as project workers is only temporary and is usually limited to only a part of males, but totally not for females. – The report said that “PAHs were allowed to continue farming on the project sites” --- It is necessary because the local tenant farmers and farm workers didn’t and won’t agree the project itself, and their life would be heavily affected and get worse if they cannot continue farming. – The construction of the access road and the substation started without “social acceptability” from the local affected community, especially from tenant farmers, farm workers and fishermen. The access roads and substation sites must have been continuously cultivated by the local farmers till now. 	<p>department in charge of that project.</p> <p>The JICA Guidelines specify that if surveys for environmental and social considerations are conducted in or in parallel with the said engineering service loans, fulfillment of necessary environmental and social considerations may be confirmed at the time of the environmental review of the proceeding phases of the project.</p> <p>As for the specific project pointed out in the comment, JICA would conduct environmental review on the environmental and social considerations in accordance with the JICA Guidelines, in case the Government of Indonesia requests Japanese ODA loans for the proceeding phases of the project.</p>
2-4	<ul style="list-style-type: none"> • Corresponding area <p>p. 2-39, 2-40</p> <p>13 Indramayu Coal Fired Power Plant Project (E/S) (Indonesia)</p> <p>The NGO pointed out since September 2017 that it is not appropriate to arrest the local residents who are protesting against the project raised the national flag upside down. The NGO also pointed out as follows: Though the affected people’s group pointed out issues on the project and submitted letters showing objection to the project and JICA finance three times, there was no response from JICA. After the fourth letter was submitted to JICA, JICA Indonesia office had a meeting with the group. After that, one</p>	<p>We understand that no discrepancies have been found between the points made in the comment and the description in the draft final report of the JICA Review Study, as the report comprehensively describes the receipts of letters, including the ones submitted by Japanese NGOs in August 2017 and any subsequent letters. The timing of when the letter was received shall be corrected from ‘September 2017’ to ‘August 2017’ in the report.</p>

	<p>more letter was submitted from the group, however there was no response from JICA.</p> <ul style="list-style-type: none"> • Comments - The NGO pointed out since December 2017 about the illegal arrest of the local farmers who are protesting against the project. - The other information and facts here are correct. 	
2-5	<ul style="list-style-type: none"> • Corresponding area p. 2-50 No.13: Indramayu Coal Fired Power Plant Project (E/S), Indonesia From October 2016 to August 2018, 300 people participated in the livelihood restoration program of "agricultural skills-based," and "non-agricultural skills based". This program is being provided continuously. In addition, (<u>*Original comment stops here.</u>) • Comments Same as the Comments 2-3. 	Please refer to the answer No.2-3 above.
2-6	<ul style="list-style-type: none"> • Corresponding area p. 3-6, 3-7 Trends of International Aid (2) The Paris Agreement • Comments - As the report mentioned, in October 2018, Intergovernmental Panel on Climate Change (IPCC) published a special report on Global Warming of 1.5 C. It has become a common understanding that the world has no space for any new coal-fired power plant. Thus, <u>we strongly recommend that JICA revise the relevant provision of its Guidelines, so that JICA makes sure no more support for any new coal-fired power plant, according to the international trend.</u> 	JICA has been carefully discussing with the Government of Japan on the policy of assistance areas, and also with the governments of the recipient countries as well as the Government of Japan on the propriety of individual projects to be supported by JICA.
3-1	<ul style="list-style-type: none"> • 当該箇所 レビュー調査報告書 p.2-9 プロジェクトの重大な変更が生じた案件については、2件が該当した。No.4では、後発事業である Zone B（フェーズ2）事業は、出資区域の拡大による「重大な変更」として、実施されている。No.9については、アクセス道路コンポーネントの設計変更が「重大な変更」とされた。 	The received comment is included in the final report of the JICA Review Study as the 'Public Comments on the JICA Study for Review of JICA Guidelines for Environmental and Social Considerations.' Comments regarding a specific project were also communicated to the department in charge of that project.

	<ul style="list-style-type: none"> 意見内容 <p>1. No. 4 ティラワ経済特別区開発事業の Zone B について、「出資区域の拡大による『重大な変更』として、実施されている。」と記載があるため、JICA ガイドラインの「プロジェクトに重大な変更が生じた場合、改めてカテゴリ分類を行い3.2.1に従って環境レビューを行う。変更の概要と変更後のカテゴリ分類を公開し、主要な環境社会配慮文書入手後速やかに公開する。」という規定に基づけば、拡大した区域への「出資」決定時に「環境レビュー」が行われていなくてはならない。その「出資」決定時の「環境レビュー結果」(事前評価表)はどこで公開されているのか、ご教示願いたい。また、JICA として、出資を決定した日時もご教示願いたい。</p>	
3-2	<ul style="list-style-type: none"> 当該箇所 同上 意見内容 <p>2. No. 4 ティラワ経済特別区開発事業の Zone B について、JICA は出資及び融資という2つの異なる形態で関与をしているが、どちらであったにせよ、大規模な非自発的住民移転を伴う大規模事業について、一つの事業の「重大な変更」という認識で開発事業を進めることが妥当であったのか、検証がなされるべきである。こうした検証は、今後、同事業で次期開発区域への拡大が行われる際の出資決定がどのように行われるべきかを考えるにあたり、極めて重要であると考え。</p>	The received comment is included in the final report of the JICA Review Study as the 'Public Comments on the JICA Study for Review of JICA Guidelines for Environmental and Social Considerations.' Comments regarding a specific project were also communicated to the department in charge of that project.
4-0	<ul style="list-style-type: none"> Corresponding area Review report references to Projects No. 4 and No. 36 (Thilawa Special Economic Zone) Comments Please the attached submission together with Annexures 1, 2, and 3. (*Main topics of the submission are shown in 4-1 to 4-3. Original submission except Annexures is also attached after this table.) 	Considering the number of projects targeted for review as well as the purpose of the JICA Review Study, which is the identification of discussion points for revision of the JICA Guidelines, the draft final report of the JICA Review Study provides only a summary of each project's situation, with a focus on critical review items.
4-1	1. Report Methodology	As explained in '1.3 Scope of the Study' of the JICA Review Study, the reviewed projects include all Category A projects for which the agreement documents were signed before the end of JICA's FY2016, since the enforcement of the JICA Guidelines. As such, the Thilawa Special Economic Zone (Class-A Area) Development Project was selected as a project for review. The Infrastructure Development Project in Thilawa Area Phase I was included in the

		<p>reviewed projects, in response to a request submitted by four NGOs regarding the JICA Study for Review of JICA Guidelines for Environmental and Social Considerations (August 2017) asking for the inclusion of projects which proceeded to the Objection Procedures. Report methodology is as described in '1.4 Study Methodology' of the draft final report of the JICA Review Report.</p> <p>(As for the name of the project site, it was initially 'Class A.' Gradually, however, the name 'Zone A' had become commonly used among the concerned parties, and therefore we now call the site as a 'Zone' and not 'Class'. The report uses project names used at the time of signing agreement document, but for the readers' convenience, we will add a footnote to note that the project is currently called 'Zone A' in the final report of the JICA Review Study.)</p>
4-2	2. Failure to acknowledge correspondence provided to JICA by and on behalf of TSEZ affected persons from 2014 to date	Based on the comment, the final report of the JICA Review Study will mention the receipt of letters and reports in Table 2-17 of Chapter 2, as a part of the external comments.
4-3	<p>3. Failures to implement the JICA GLs in the TSEZ</p> <p>a) Failure to comply with environmental and social impact assessment requirements</p> <p>b) Failure to adequately consult affected villagers</p> <p>c) Failure to adhere to JICA Guidelines and international standards on resettlement</p> <p>i. Resettled villagers from Zone A and B have experienced serious deterioration of their living standards after resettlement</p> <p>ii. The Resettlement Work Plans and EIAs for Zone A and B both did not adequately explore alternatives for displacement</p> <p>iii. Affected villagers from Zone A and B did not have meaningful opportunities to participate in their resettlement processes</p> <p>iv. Breach of JICA GLs on the establishment of a Grievance Mechanism</p> <p>d) Concerns regarding the implementation of the objection procedure</p>	<p>Regarding a) to c), the received comments will be included in the final report of the JICA Review Study as the 'Public Comments on JICA Study for Review of JICA Guidelines for Environmental and Social Considerations.' Comments regarding a specific project were also communicated to the department in charge of that project.</p> <p>d) Objection Procedures Review of the JICA Objection Procedures based on the Guidelines for Environmental and Social Considerations shall be considered concurrently with the review of the JICA Guidelines, in consideration of the opinions given and the evaluations made by the users and the Examiners that have accumulated up to the time of the review.</p>

Introduction

JICA has invited public comments on its review of the implementation of the JICA Guidelines for Environmental and Social Considerations (“JICA GLs”) across its projects over the past ten years, the “JICA Study for Review of JICA Guidelines for Environmental and Social Considerations Draft Final Report” (“JICA Review” or “the Review”). The comments below are submitted by EarthRights International (EarthRights), following consultations with Thilawa Social Development Group (TSDG) and representatives of the broader Thilawa community based on the environmental and social impacts of JICA’s projects in the Thilawa Special Economic Zone (TSEZ).

The development and management of the TSEZ has violated Myanmar Law, international law, and the JICA GLs and project affected persons in the TSEZ have suffered serious environmental and social impacts as a result. JICA’s Review study, however, only makes brief cursory references to the TSEZ, and paints an inaccurate picture of the efficacy and implementation of the JICA GLs in the TSEZ. This is particularly concerning given that EarthRights and other CSOs have submitted comprehensive reports on the impacts of the TSEZ to JICA from 2014 to date which provide critical insight into the implementation of the JICA GLs.

EarthRights published a briefing note in 2014 detailing the ways in which the development and management of the TSEZ violated Myanmar Law, international law, and the JICA GLs. Broadly, EarthRights noted that JICA had failed to implement its guidelines as follows:

- a) Failure to hold stakeholders accountable under the JICA GLs as the body responsible for ensuring accountability in the implementation of its cooperation project;
- b) Inadequate analysis of human rights, environmental and social considerations;
- c) Failure to provide timely support and adequate compensation to the resettled community; and
- d) Failure to ensure that affected persons were provided with adequate information to participate in decision making.

Five years later, these same issues persist.

We submit that JICA’s reporting on the TSEZ in the Review is inadequate and that the development and impacts of the TSEZ, particularly on the livelihoods of affected persons, demonstrate that both the content and implementation of the JICA GLs need to be strengthened.

These comments are confined to specific aspects of the TSEZ, and it should be noted that any omission to directly respond to statements in the JICA Review should not be deemed to indicate our acceptance of the report's contents.

These comments are structured as follows:

1. First, we will outline concerns about the methodology of the report.
2. Second, we will detail the key correspondence that has been provided to JICA by and on behalf of TSEZ affected persons that has not been acknowledged in the report.
3. Third, we will briefly refer to the ways in which the impacts of the TSEZ projects demonstrate that JICA's projects in the TSEZ have failed to implement JICA's Environmental and Social Guidelines in the following areas:
 - a) Environmental and social impact assessment requirements;
 - b) Consultation requirements;
 - c) Resettlement requirements: including livelihood restoration and the establishment of an operational grievance mechanism; and
 - d) Objection Procedures

1. Report Methodology

The report's description of its methodology is very vague.¹ Members of the TSDG and the community leaders have raised the question of who the report was drafted by and what process was followed, and this is not clear from the report itself.² This leaves the transparency and independence of the report open to question, and is counter to JICA GL 2.10.2 which asserts that JICA's review process is "designed to ensure transparency and accountability".

EarthRights, the TSDG and affected community members have corresponded extensively with JICA over the years (as detailed below) regarding the social and environmental impacts of the TSEZ, yet they were not consulted in the drafting of the Review Report even though two TSEZ projects are included among the 100 projects reviewed (referred to as Project No.4 and Project No. 36 in the report). Consultation with these groups in the drafting of the report and proper engagement with all of the correspondence that has been provided to JICA regarding the impacts of the TSEZ would have led to a more accurate reflection of the implementation of JICA's guidelines. The TSDG and affected community members were also not made aware of this draft report's publications and they were not contacted directly for comments on the report.

The scope of the study is confined to 100 out of 1800 projects, yet the report does not describe precisely how these 100 projects were selected. This sample of projects may not be representative of all of JICA's projects. In the context of the TSEZ, for example, the report acknowledges the significant expansion of the project area of "Project 4" in the report from Zone A into Zone B, yet the report does not cover any of the impacts of Zone B even though Zone B consists of an area of over 2000 hectares and comes with significant impacts.

¹ JICA Report, p15 (1-7).

² Comments from TSDG in a meeting with EarthRights on Tuesday, 5 November 2019.

The report also uses unclear and inconsistent language to refer to the Thilawa projects themselves, which makes it challenging to respond directly to the limited references in the report. Affected persons and EarthRights have generally referred to the project areas as Zone A and Zone B, whereas the report refers to “Class-A” (Project No. 4 in the Report) and “Phase I” (Project No. 36 in the Report). It is not clear to affected persons which project the Report itself is referring to. The comments that we provide below therefore relate to both Zone A and Zone B of the TSEZ.

2. Failure to acknowledge correspondence provided to JICA by and on behalf of TSEZ affected persons from 2014 to date

JICA’s Review Report has failed to acknowledge detailed information regarding the environmental and social impacts of the TSEZ that has been provided to JICA by and on behalf of affected persons from 2014 to date. The report only acknowledges that JICA has received communication from NGOs regarding the TSEZ in two cases:

a) Letters regarding the categorization of Thilawa Class A and Thilawa Phase 1 Project:

JICA classified Thilawa SEZ Class A area (Project No. 4 in the Report) as a Category A project (meaning that JICA deems it to have “significant adverse impacts on the environment and society), while it classified the Thilawa SEZ Phase 1 Project (Project No. 36 in the Report) as a Category B project (meaning that JICA believes that the impacts of the project on the environment and society are less serious than a Category A project).

The report states that JICA received letters from NGOs on 24 May 2013 and on 28 August 2017 stating that the projects should both be considered to be Category A projects because they are closely related to each other.³ The report also states that ‘Some affected families of Class-A who resettled said they were threatened by the government by saying “Their house will be demolished if they don’t sign an agreement document for resettlement and compensation” and “if affected people want compensation for land, people have to go to a court”’ however it does not state how JICA responded to this information.

b) Letter requesting a meeting with JICA in April 2014

The report states that JICA received a letter from NGOs to request a meeting with JICA about investing in the development in April 2014, but that JICA did not reply and decided to invest in the project on 23 April 2014.⁴

JICA has therefore failed to acknowledge extensive communication and reports from EarthRights, the TSDG and other stakeholders submitted from 2014 to date.

Key information sources not acknowledged by JICA in the Review Report include:

³ JICA Review Report, page 14.

⁴ JICA Review Report, page 69.

- EarthRights “Briefing on the Thilawa Special Economic Zone: An Analysis of the Affected Communities’ Rights and Remedies Under Myanmar Law and JICA’s Guidelines” published in 2014.
- A letter to JICA regarding the outcome of the TSEZ objection procedure submitted to JICA in 2014.
- A report published by Physicians for Human Rights (PHR) in 2014 on the conditions of resettled villagers from Zone A, noting that several households told PHR that they put their homes up for collateral, entitled *A Foreseeable Disaster in Burma: Forced Displacement In the Thilawa Special Economic Zone*.
- A public statement from the Thilawa community on the failure of JICA and the project proponent to take into account community voices in the EIA and Resettlement Work Plan (RWP) processes in 2016.
- Correspondence from the Community Driven Operational Grievance Mechanism (CD-OGM) Design Committee regarding the proposal for the Thilawa CD-OGM and its development from 2015 to date.
- EarthRights’ analysis of the Thilawa Complaints Management Procedure (TCMP), submitted by EarthRights to JICA in February 2018.
- A social impact report consisting of a comparative analysis of the socio-economic status of households which have been relocated by the Thilawa SEZ and those which remained in their original communities which provides insight into the impact of resettlement as a result of the TSEZ on community livelihoods, submitted to JICA by Dr. Mike Griffiths, Paung Ku, and Mekong Watch in June 2018.

Table 1 in Annexure 1 (attached) provides a list of the substantive correspondence that EarthRights, Mekong Watch, and Thilawa community members have publicised and/or have provided to JICA which offers insight into the implementation of the JICA GLs. A number of these documents are referred to below in our description of non-compliance with the JICA guidelines in specific areas.

3. Failures to implement the JICA GLs in the TSEZ

a) Failure to comply with environmental and social impact assessment requirements

The JICA Review does not make any specific statements about the EIA process in the TSEZ. This is concerning given that the TSEZ failed to comply with environmental and social impact assessment requirements in numerous ways, as will be detailed below.

JICA GLs require “project proponents...[to] disclose information about the environmental and social considerations of their projects” and JICA to provide assistance.⁵ The Guidelines define environmental impacts as “including [impacts on] air, water, soil, ecosystem, flora, and fauna”⁶ and social impacts as including “migration of population and involuntary resettlement, [and] local economy such as employment and livelihood.”⁷

⁵ JICA Guidelines 2.1(1).

⁶ *Id.* 1.3 (1)

⁷ *Id.* 2.3(1)

Further, the JICA GLs state that “Projects must comply with the laws, ordinances, and standards related to environmental and social considerations established by the governments that have jurisdiction over project sites (including both national and local governments).” In the context of the TSEZ, the 2012 Environmental Conservation Law and the 2014 SEZ Law are relevant. The SEZ Law imposes particularly a stringent environmental standard, requiring investors to follow “international standards and norms on environmental protection.”⁸

All of these JICA guideline requirements have been violated in Thilawa, as seen from the inadequacy of the EIAs for Zone A and B. First, due to the lack of clarity on the industries that will be operating in each zone, the EIAs failed to provide a reliable picture of the full range of environmental impacts that would result from the TSEZ. Second, both EIAs contained highly insufficient analyses of the impacts on livelihoods or social issues associated with resettlement.

On the first point, the EIAs for Zone A and B did not properly analyze the environmental impacts that will result from the Thilawa SEZ. International best practice requires that EIAs are focused, “provid[ing] sufficient, reliable and useful information for development planning and decision-making.”⁹ Unfortunately, both EIAs failed to provide a reliable picture of the full range of impacts that will result from the TSEZ. For one, they failed to describe the industries that will be operating in their respective zones. Without knowing exactly what type of industries will operate in the TSEZ, it is unlikely that accurate predictions on environmental, social and economic impacts of the project were made.¹⁰ Despite this inadequate assessment, JICA failed to hold the Project Proponent accountable.

On the second point, the EIAs were extremely lacking in their analyses of economic impacts caused by the TSEZ. Both EIAs simply conclude that the project would be beneficial to the local economy because it will bring more jobs, without backing this conclusion up with any evidence.¹¹ According to international best practice, a proper economic impacts analysis must consider the following variables: “duration of construction and operational periods; workforce requirements for each period and phasing of construction workforce; needs (numbers to be employed during the peak phase for construction works); skill requirements (local availability); earnings; raw material and other input purchases; capital investment; outputs; and the characteristics of the local economy.”¹² Except for the first and last factor, the EIA did not provide any information on these

⁸ See SEZ Law § 35.

⁹ United Nations Environmental Programme (UNEP), “Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach,” 2004, pg. 94, *available at* https://wedocs.unep.org/bitstream/handle/20.500.11822/8753/Environmental_impact_assessment.pdf?sequence=3&%3BisAllowed=

¹⁰ Zone B EIA lists the industries currently operating in the Thilawa SEZ on Table 2.7-2. On page 7-42, the EIA states that “as of March 2016, there is no clear information about what kind of industries will move into the Thilawa SEZ Zone B but it is assumed that almost the same type of industries as in Zone A will move into Zone B.”

¹¹ See Zone B EIA, pg. 7-66; Zone A EIA, pg. 7-45.

¹² The UNEP report on international best practice on EIAs states that “[w]ithout reliable information on these factors it is very difficult to implement an economic impact assessment. It is vital to attempt to obtain such data – if this does not occur, then not only economic impacts but also social and health impacts will not be predicted adequately.” UNEP, “Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach,” 2004, pg. 142.

crucial elements, nor did it provide any data on why the TSEZ is expected to have a beneficial impact on the local economy.

Given the inadequate amount of information used in the analysis for the EIAs, the Project Proponent has not conducted an adequate social impact assessment as required by JICA GLs and international best practice. JICA should have held the Project Proponent accountable on this matter yet failed to do so, yet this has not been acknowledged in the JICA Review Report.

b) Failure to adequately consult affected villagers

The JICA Review Report does not provide specific details on its adherence to its guidelines regarding consultation in the TSEZ area at all, therefore we wish to provide further detail and context in this regard.

In the JICA GLs, JICA states that “[d]emocratic decision-making is *indispensable* for environmental and social considerations,” and that “[i]t is important to ensure stakeholder participation, information transparency, accountability, and efficiency, in addition to respect for human rights, in order to conduct an appropriate decision-making process.”¹³ Further, the GLs note – as one of its seven most important principles – that “JICA asks stakeholders for their participation,” “incorporate[ing] stakeholder opinions into decision-making processes regarding environmental and social considerations by ensuring the meaningful participation of stakeholders in order to have consideration for environmental and social factors and to reach a consensus accordingly.”¹⁴

For Category A projects like the TSEZ, “JICA encourages project proponents etc. to consult with local stakeholders about their understanding of development needs, the likely adverse impacts on the environment and society, and the analysis of alternatives at an early stage of the project, and assists project proponents as needed.”¹⁵ Further, JICA itself is required to gather stakeholder opinions.¹⁶

None of these guidelines were properly followed in the context of the TSEZ, particularly in relation to EIA consultations and disclosure for both Zone A and B. In both processes, consultations were not effectively advertised, local stakeholders (including NGOs) were not adequately involved, participation at the consultations were insufficient, and the EIAs themselves were not disclosed in an accessible manner. JICA’s statement in the review report that “[r] Regarding approval, disclosure and availability of copying EIAs, it is confirmed that all category A projects except 5 projects [Thilawa not listed among these exceptions] fulfilled these requirements” is therefore not accurate.¹⁷

First, the EIA for Zone A failed to mention whether one of the most crucial project-related information, the draft of the EIA, was ever disclosed to the public. Without the opportunity to

¹³ JICA Guidelines 1.1.

¹⁴ JICA Guidelines 1.4.

¹⁵ JICA Guidelines 2.4.4.

¹⁶ JICA Guidelines 3.1.2.3.

¹⁷ JICA Review, p 51 (2-22).

access the EIA draft, it is not possible for local stakeholders to have meaningfully contributed to its drafting. Furthermore, the consultations for the Zone A EIA were not adequately advertised. Zone A EIA simply states that “township officer informed to the local residence” about the consultations.¹⁸ To comply with JICA’s requirement on meaningful stakeholder participation, many more means should have been employed to disclose the consultation schedule. Given the dearth of proper information-sharing, it was unsurprising that no affected villager participated in either of the consultations for the Zone A EIA.¹⁹ Since none of the villagers were properly consulted, it was clear that Project Proponent failed to meet the requirement of meaningfully incorporating villagers’ views in designing the EIA and EMP for Zone A, and JICA likewise failed to meet its own requirement of involving stakeholder views in decision-making.

As for the Zone B EIA, while the report contains more evidence of participation from affected villagers, it similarly suffered from a lack of information-sharing platforms.²⁰ The EIA stated that the scoping report and draft EIA report were shared at public places, but failed to mention any media outlets or online platforms. The public places where the reports were disclosed were mainly administrative offices, not places of frequent public gatherings such as libraries and community halls.²¹ Therefore, it is unlikely that affected stakeholders had adequate access to the information necessary to meaningfully participate in the consultations.

Furthermore, while the Zone B EIA referred to comments received on the draft EIA report,²² it failed to explain what changes were made to the final EIA in response to these comments. Thus, it is unclear whether the Project Proponents actually complied with the requirement that affected villagers’ views are incorporated into the EIA, EMP, and overall decision-making process.

Lastly, in the consultations for both EIAs, civil society organizations (CSOs) were not adequately involved.²³ While Zone B EIA claimed that CSOs were part of the scoping and draft EIA consultations, the attendance list did not show any CSOs participating.²⁴ Zone A EIA mentioned that an environmental consultancy company and an academic institution participated in the consultations,²⁵ but there was no evidence of participation from any of the numerous advocacy organizations actively engaged with the Thilawa SEZ. This is alarming given that the JICA Guidelines define “local stakeholders” as “affected individuals or groups (including illegal dwellers) and *local NGO*” (emphasis added).²⁶

¹⁸ See Zone A EIA, pg. 10-1.

¹⁹ While the EIA report claimed that 6 villagers participated in the second consultation, EarthRights found that three are village administrators and the other three are village heads, all of whom are paid by the government, a project proponent. See EarthRights International, *Analysis of EIA for Phase I of Thilawa SEZ*, Nov. 2014, pg. 8, available at https://earthrights.org/wp-content/uploads/thilawa_eia_analysis.pdf.

²⁰ Unlike the EIA report for Zone A, Zone B’s EIA details a greater number of consultations, provides attendance lists and a list of villagers’ comments.

²¹ The list of public disclosure places for Zone B’s EIA can be found in “Table 11.3-5 Summary of Public Disclosure for Draft EIA Stage” of the report.

²² See *id.*, Table 11.3-6 Brief Summary of Public Comments and Responses.

²³ The EIA Procedure lists civil society as one of the groups project proponents are required to consult. See EIA Procedure, § 50, 61.

²⁴ On page 11-12, the Zone B EIA claims that NGOs participated in the consultations. The attendance lists in Annex 11-3 and 11-8 do not include any civil society organization representatives.

²⁵ See Zone A EIA, Table 10.2-1 and Table 10.3-1.

²⁶ JICA Guidelines 1.3.12.

Altogether, it is clear that the JICA requirement of meaningful stakeholder participation was not fulfilled in the EIA processes for both Zone A and B, due to numerous problems concerning the disclosure of draft EIAs, advertising of the consultations schedule, and NGO involvement. JICA failed to hold the Project Proponent accountable for this violation, which is all the more alarming given that the TSEZ is a Category A Project that requires heightened involvement of local stakeholders.

c) Failure to adhere to JICA Guidelines and international standards on resettlement

In the JICA Review, limited references to livelihood restoration are made²⁷ as there appear to have been insufficient livelihood analysis to date, in spite of the fact that a comprehensive social impacts analysis has been shared with JICA (Annexure 2 attached).²⁸ We refer to this report and to the JICA Review's limited references to livelihood restoration below where relevant.

The JICA Guidelines contain extensive requirements concerning involuntary resettlement. Key requirements include: fully exploring alternatives to displacement and avoiding displacement when possible;²⁹ appropriate participation of affected people in the planning, implementation and monitoring of resettlement action plans;³⁰ and sufficient compensation and restoration of affected

²⁷ **JICA Report statements on the monitoring of compensation and livelihood restoration**

a) *Livelihood restoration for the port sub-project (Thilawa Area Phase 1):*

- i)** JICA states that the project proponent states that they have completed social monitoring of the compensation payments. However, JICA says that they have not undertaken monitoring of livelihood restoration because it was difficult for them to follow up because people from project-affected households moved to different addresses after they received their compensation. JICA states that it has asked the project proponent to continue to try to follow up on livelihood restoration. (JICA Review at p39)
- ii)** JICA also states that, according to the Resettlement Action Plan, the port development section planned to promote job opportunities for project affected households. However JICA states that affected persons did not ask for this after their compensation was paid, therefore there has been no livelihood restoration. (JICA Review at p39 and p74)

b) *Compensation and livelihood restoration for the power transmission line and substation subproject:* JICA states that social monitoring of the crop compensation payment to affected households for farmland that was affected by the transmission towers was completed, and that compensation was paid without any problems. JICA states that the livelihood restoration was not conducted here because no significant impact on livelihood was expected. (JICA Report at p14)

c) *Compensation and livelihood restoration for the gas pipeline sub-project:* JICA states that monitoring for compensation payment has been implemented, but that follow up surveys for livelihood restoration monitoring were difficult because the three households were "grazers". (JICA Report at p69)

²⁸ Mike Griffiths, Using Vulnerability mapping to measure medium term impact of relocation and resettlement by Special Economic Zones (SEZ): Thilawa SEZ, Yangon Region, Myanmar, Feb. 2018, pg. 2, *available at* http://www.mekongwatch.org/PDF/Thilawa_Vulnerability_Research_Feb2018.pdf.

²⁹ See JICA Guidelines Appendix 1(1). World Bank and Asian Development Bank guidelines on involuntary resettlement also mandate that project proponents avoid involuntary resettlement is avoided where possible. See United Nations, Basic Principles And Guidelines On Development based Evictions And Displacement, *available at* https://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf; World Bank (WB) Safeguard Policy, OP 4.12, Annex A, ¶2(a); Asian Development Bank (ADB) Safeguard Policy Statement (SPS) Appendix 2, Safeguards Requirement 2: Involuntary Resettlement ¶3.

³⁰ See JICA Guidelines Appendix 1 (3) and (4). See also United Nations, Basic Principles And Guidelines On Development based Evictions And Displacement, ¶56(I) ("The entire resettlement process should be carried out with full participation by and with affected persons, groups and communities. States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities.")

people's livelihoods.³¹ Similar requirements are also found in guidelines from the World Bank, International Finance Corporation, and the Asian Development Bank, and JICA must "confirm" that projects do not deviate significantly from such standards.³²

The resettlement process of Zone A and B have not complied with the aforementioned requirements of JICA Guidelines and international standards. Each of the requirements will be examined separately below.

i. Resettled villagers from Zone A and B have experienced serious deterioration of their living standards after resettlement

JICA Guidelines require that "people who must be resettled involuntarily and people whose means of livelihood will be hindered or lost must be sufficiently compensated and supported by project proponents etc. in a timely manner." Further, it notes that "[h]ost countries must make efforts to enable people affected by projects and to improve their standard of living, income opportunities, and production levels, or *at least to restore these to pre-project levels*"³³ (emphasis added). International best practice and Myanmar law³⁴ similarly require that affected villagers are not left in a worsened socioeconomic position after resettlement.

Contrary to JICA Guidelines, Myanmar law, and international best practice, the Project Proponent and the Myanmar Government have failed to ensure that displaced people's standards of living are maintained. It is clear from the current situation of resettled villagers that they are worse off socially and economically after resettlement. In early 2018, a detailed social impacts report (Annexure 2 attached) was conducted and compared vulnerability levels of relocated households with non-relocated ones, and found that relocated households had "significantly higher rates of vulnerability related to economic dependency, debt and lack of livelihood/income diversity."³⁵ The study, which was shared with JICA in early 2018, found that "relocated households not only have lower levels of income, but are more likely to have expenditure in excess of annual income, and higher rates of debt and debt interest repayment rates."³⁶ It also noted that "[d]ue to a greater reliance on food purchases, and income insufficiency, relocated households reported higher rates

³¹ See JICA Guidelines Appendix 1 (2). See also World Bank Safeguard Policy, OP 4.12, Annex A, ¶2(c) ("Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher."); ADB, SPS Appendix 2, Safeguard Requirement 2, ¶ A(1); International Finance Corporation (IFC), Performance Standard 2, ¶ 2.

³² JICA Guidelines 2.6 (3).

³³ *Id.*

³⁴ The Myanmar 2014 SEZ Law requires the developer or investor to "relocate the persons so as not to lower their original standard of living" and "fulfill their fundamental needs," bearing all expenses involved in this process. See SEZ Law § 80(a)-(b); EIA Procedure §102, Annex 3, No. 12. Similarly, the EIA Procedure assigns "full legal and financial responsibility for Project Affected People (PAPs) until they have achieved socio-economic stability at a level not lower than that in effect prior to the commencement of the Project" to the Project Proponent(s). See EIA Procedure §102. If the Proponent(s) fails to restore relocated villagers to their original social conditions after resettlement, it can be penalized through a monetary fine and/or suspension of the EMP approval. See EIA Procedure, Annex 3, No. 12.

³⁵ Mike Griffiths, Using Vulnerability mapping to measure medium term impact of relocation and resettlement by Special Economic Zones (SEZ): Thilawa SEZ, Yangon Region, Myanmar, Feb. 2018, pg. 2, available at http://www.mekongwatch.org/PDF/Thilawa_Vulnerability_Research_Feb2018.pdf.

³⁶ *Id.*

of food insecurity, and nearly one-third reported taking loans to meet food shortages in the past year.”³⁷ These findings, which were completed five years after the first group of villagers relocated due to the Thilawa SEZ, clearly provide quantitative and qualitative evidence that demonstrates that villagers are far from being restored to their original conditions.

In the context of livelihood restoration for “the port sub-project (Thilawa Area Phase I),” the representatives of the TSDG state that JICA’s justification for its failure to undertake monitoring of livelihood restoration, namely that it was “difficult” to do so because some people from project affected households moved after receiving their compensation,³⁸ is poor. While it is true that some people from project affected households have moved, it would be very easy for the project proponent to establish where affected persons have moved to if they made genuine attempts to do so, as friends and family in TSEZ area all aware of where others have moved to.³⁹

The income restoration program provided to villagers has been largely unsuccessful in assisting their transition from land-based livelihoods to alternative ones. Villagers from both Zone A and B have reported that the vocational activities were not useful in finding employment.⁴⁰ Despite the developer’s promise that villagers will have access to abundant jobs at the SEZ, very few villagers have been able to get these jobs because of qualification barriers.⁴¹ Due to increased expenses and lack of ability to find income, countless resettled villagers have been forced to borrow from high-risk lenders using their new homes as collateral, many of them eventually losing their homes.⁴² Where JICA states in the Review Report that, in the context of the port sub-project, it did not promote job opportunities because “affected persons did not ask for this after their compensation was paid”, TSDG representatives state that this is not true as many community members applied for jobs but were not offered positions because the training that they received did not match the qualification requirements of the jobs that were on offer.⁴³

Despite clear indications that affected villagers from Zone A have not been restored to previous income levels, TSMC considers them to be fully restored and no longer needing income restoration

³⁷ *Id.*

³⁸ JICA Review Report, page 49.

³⁹ Comments from TSDG in a meeting with EarthRights on Tuesday, 5 November 2019.

⁴⁰ At an interview with EarthRights staff on July 26, 2019, villagers resettled from Zone B as well as community leaders, who are members of the Thilawa Social Development Group (TSDG) stated that vocational training activities has not been effective in helping resettled villagers get a job. A TSDG member stated that the message given to villagers was that it is easy to get a job at the SEZ, but this has not been the case. He discussed his son as an example, noting that he was unable to get a job at the TSEZ for three years despite having all application documents in order. He also noted that many jobs have qualification barriers which most villagers cannot meet. Resettled villagers from Zone B stated that vocational training activities, such as driving, had been offered to them, but there was low interest and not many villagers participated. They noted that even the villagers who did participate did not get a job at the SEZ.

⁴¹ *See id.*

⁴² In 2014, Physicians for Human Rights (PHR) published a report on the conditions of resettled villagers from Zone A, noting that several households told PHR that they put their homes up for collateral. Physicians for Human Rights (PHR), *A Foreseeable Disaster in Burma: Forced Displacement In the Thilawa Special Economic Zone*, November 2014, pg. 14. November 2014, pg. 16, available at <http://physiciansforhumanrights.org/library/reports/a-foreseeable-disaster-in-burma.html>. Also, in the interview on July 26, 2019 with three resettled villagers from Zone B, the interviewees noted that out of the 95 households in his resettlement village, there are only 36 households remaining. They stated that the rest had lost their homes due to being unable to pay their high-interest loans.

⁴³ JICA Review Report, at page 79 and page 205.

support,⁴⁴ and JICA has failed to take action to hold the Project Proponent accountable. While income restoration activities are still underway for resettled Zone B villagers, they are offered largely the same activities as those offered to Zone A villagers,⁴⁵ and their income restoration status so far seems to be following a similar trajectory.⁴⁶ It is clear from the current situation of relocated villagers that the Project Proponent and the Myanmar Government have breached their obligation under JICA Guidelines, international best practice, and Myanmar law to ensure that resettled villagers are restored to their original conditions, failing to take full legal and financial responsibility for them.

Additionally, villagers have suffered various deprivations after resettlement, due to improperly constructed wells, latrines, and waste management facilities.⁴⁷ While physical conditions of the resettlement site have been improved since then, employment remains a pivotal element of resettled villagers' fundamental needs, and this need continues to be unmet. Furthermore, it is alarming that compensations promised to some villagers during the pre-relocation consultations, including the vulnerability stipend, have been allegedly unpaid, despite villagers sending multiple letters to the TSMC and MJTD.⁴⁸

ii. The Resettlement Work Plans and EIAs for Zone A and B both did not adequately explore alternatives for displacement

JICA Guidelines and International best practice requires project proponents to fully explore alternatives to involuntary displacement, avoiding it where possible.⁴⁹ The analysis of alternatives should include not only alternatives to proposed project area, but also technology, design and operation.⁵⁰

⁴⁴ The third Social Economic Survey report released by the TSMC, which compiled information on the income restoration status of resettled villagers from Zone A, stated that resettled villagers' conditions were largely "stabilized" and many of them had found income sources. After this report, no further monitoring reports were published, and the website states that the initial vocational training program has been concluded as of June 2014. In the periodic newsletters published by the TSMC on vocational activities, no activities for resettled villagers from Zone A are included. TWA, "3rd Socio-Economic Survey (SES) on the Resettlement and Income Restoration Program for Development of Thilawa Special Economic Zone (Phase 1 Area), available at <http://irp.myanmarthilawa.gov.mm/sites/default/files/3rd%20SES%20%28English%20Version%29.pdf>.

⁴⁵ The RWP for Area 2-2 of Zone B states that "similar vocational training options can be offered to the PAHs of Area 2-2 East after discussions with PAHs." Essentially, the same activities have been offered to resettled villagers from Zone B, which consists of mainly driving and sewing training. See RWP, Area 2-2, pg. 42. Like resettled villagers from Zone A, Zone B villagers complained during the interviews in July 2019 that they were unable to get jobs at the SEZ and had no viable source of income.

⁴⁶ The aforementioned PHR report found that residents have been relocated on a plot less than half an acre. See *id.*

⁴⁷ For more information, see *supra* "II. Background" of this report; See also PHR, *A Foreseeable Disaster in Burma: Forced Displacement In the Thilawa Special Economic Zone*.

⁴⁸ At the July 2019 interview with resettled villagers from Zone B, one interviewee mentioned that he was promised a compensation package of 120,000 lakh total but have not received yet, despite having moved in 2017. He stated that he sent several letters to the TSMC and MJTD but have not received a reply.

⁴⁹ See *supra* note 22.

⁵⁰ The notion that analysis of alternatives to involuntary resettlement must involve more than just a consideration of alternative project areas is grounded in international best practice. For example, ADB's sourcebook states that "Project design can reduce involuntary resettlement impacts in varied ways. Technical design elements such as alignments for roads, railways, power lines, canals, and embankments can be carefully altered to minimize their effects on heavily populated areas or agricultural lands. Rights of way can sometimes be narrowed. Infrastructure or

In both Zone A and B, Project Proponents did not properly explore alternatives to displacement. The EIA for Zone A and B both stated that alternative areas were considered for the project,⁵¹ but failed to mention any alternatives for project design, technology, or operation. Further, the alternative project area analyses presented in the EIAs were inadequate. For example, the EIA for Zone A stated that alternative areas were considered but failed to mention where these areas were.⁵² Also, it failed to compare the selected project design with the “without project” situation, contrary to international best practice.⁵³

While Zone B’s EIA contained a more thorough analysis, including a comparison with the “no project” scenario,⁵⁴ it nonetheless failed to consider other ways of decreasing or avoiding involuntary displacement besides choosing alternative project areas. Also, the “no project” scenario analysis was riddled with unsubstantiated assumptions – the EIA concluded that it would be better to have the project in the proposed area rather than not because without the project, there will be disorderly development in the area, jobs would not increase, and economic development would be overall limited.⁵⁵ There were no figures to substantiate these projections, and the EIA failed to contemplate alternative development projects that could stimulate economic growth without involuntary displacement.

Alarming, most Resettlement Work Plans (RWPs) for Zone A and B drafted by the YRG failed to mention the consideration of any alternatives. While the RWP for Area 2-2 mentioned alternatives, it simply referred to the analysis already done in the EIA for Zone B without adding anything new.⁵⁶

Considering alternative project areas is only one piece of the puzzle for exploring alternatives to displacement. Due to the inadequate analysis contained in the RWPs and EIAs, the Project Proponent have failed to comply with international best practice and JICA Guidelines, and JICA has failed to hold it accountable.

iii. Affected villagers from Zone A and B did not have meaningful opportunities to participate in their resettlement processes

Contrary to international best practice and JICA Guidelines,⁵⁷ resettled villagers from both zones were not given meaningful opportunities to participate in their relocation processes. For one, they received a letter in 2013 demanding them to relocate in 14 days or spend 30 days in jail, before

borrow pits can be located on land of low value. Water and sewerage pipes can be run along existing road corridors. The dam height for reservoir projects might be lowered to reduce the inundation area while still providing reasonable storage. Buffer walls might be utilized to minimize noise or other environmental effects which might otherwise have led to relocation.” ADB, *Involuntary Resettlement Safeguards A Planning and Implementation Good Practice Sourcebook – Draft Working Document*, ¶66, <https://www.adb.org/sites/default/files/institutional-document/32827/files/ir-good-practices-sourcebook-draft.pdf>.

⁵¹ See Zone A EIA, Section 3.2; See Zone B EIA, Section 3.3.

⁵² See Zone A EIA, Section 3.2.

⁵³ See *id.*

⁵⁴ See Zone B EIA, Section 3.3.

⁵⁵ See *id.*

⁵⁶ Yangon Regional Government (YRG), Resettlement Work Plan for Area 2-2, pg. 36.

⁵⁷ See *supra* note 23.

any consultation took place. The Project Proponent did not deem villagers' opinions as important in the resettlement process at all, attempting to unilaterally force them to vacate their homes.

While four consultations for Phase I of the Thilawa SEZ were arranged after villagers and CSOs objected, these consultations were plagued by lack of transparency and coercion. As explained earlier in this report, villagers reported that they were pressured by authorities to sign compensation agreements, given agreements that they did not understand, and were not allowed to retain copies of it after signing. Also, they stated that they were not given clear information about compensation amounts, and that compensation amounts sometimes differed among villagers.⁵⁸

While some improvements were made for the consultation process of Zone B, with more detailed meeting notes and comments from villagers documented in the RWPs, it also failed to comply with international best practice. First, there have been allegations that community leaders have been barred from attending consultations since 2016.⁵⁹ Hence, it is possible that the consultations were not truly open forums for all villagers to participate and voice their opinions. Furthermore, while villagers noted that they were able to voice their concerns during consultations, they shared that they are now frustrated because they had been given misleading information at these meetings.⁶⁰ They have reported that many of the promises made during the consultations had not been fulfilled more than a year after relocation.⁶¹ The lack of follow-up on commitments made at the resettlement consultations signifies that villagers did not have a meaningful opportunity to participate in their resettlement process. Without accurate information, their participation could not have been meaningful, as the feedback they gave at these meetings were based on the information presented by the developers.

Additionally, for both zones, many villagers did not have a proper opportunity comment on their RWP. Zone A's RWP simply stated that the workplan is planned to be disclosed to the public, without stating how long it will be disclosed, where it will be disclosed, and whether villagers will be able to comment.⁶² Given this lack of details, villagers were likely unable to comment meaningfully on their RWP at all. Furthermore, while the RWPs for Zone B (Area 2-1, 2-2, 2-1 expanded) were disclosed for villagers to comment, there was a wide discrepancy in disclosure times, ranging from 40 days to 2 weeks.⁶³ Two weeks is not enough time to comment on a RWP, and hence several affected villagers did not have a meaningful opportunity to participate in the RWP drafting process.

Currently, the consultation process for the resettlement of villagers from Area 2-2 West of Zone B is underway. Despite the fact that nearly half the villagers from that area are Tamil speakers, all consultations and resettlement documents have been done in Burmese. Effectively, about half of

⁵⁸ For example, during the aforementioned July 2019 interview with resettled villagers from Zone B, one interviewee stated that those that had good relations with authorities got better compensation and that his compensation was calculated incorrectly, but he had no choice but to accept the incorrect, lesser amount.

⁵⁹ EarthRights International, Interview with three TSDG members, July 26, 2019.

⁶⁰ EarthRights International, Interview with resettled villagers from Zone B, July 26, 2019.

⁶¹ *Id.*

⁶² See Yangon Regional Government, "Resettlement Work Plan (RWP) for Development of Phase 1 Area Thilawa Special Economic Zone (SEZ)," Nov. 2013, pg. 38.

⁶³ The RWP disclosure period for Area 2-1 was 40 days, while the same for Area 3-1 was 2 weeks.

the affected population has been barred from public participation in the resettlement process. Even the most basic resettlement-related information, such as the RWP, have not been presented in a manner that is understandable to a significant proportion of villagers.⁶⁴ Therefore, the consultation process for Area 2-2 West, too, do not seem to comply with international standards and JICA Guidelines on meaningful engagement and consultations.⁶⁵

Lastly, in a recent interview with TSDG members, community leaders reported that villagers were being threatened against cooperating with NGO by MJTD and the government authorities.⁶⁶ This is a highly troubling development that flies directly in the face of encouraging affected villagers to share their opinions and advocate for their preferences.

To adhere to the guidelines on meaningful stakeholder participation in involuntary resettlement processes, JICA must hold the Project Proponent accountable and ensure that villagers are able to contribute meaningfully to decision-making concerning their own resettlement.

Altogether, many of relocated villagers' fundamental needs remain unmet, and JICA must urge the Project Proponent and Myanmar Government to fulfill its responsibilities under its Guidelines on involuntary resettlement.

iv. Breach of JICA GLs on the establishment of a Grievance Mechanism

Section 7.3 of “Appendix 1: Environmental and Social Considerations Required for Intended Projects” of the JICA GLs states that “appropriate and accessible grievance mechanisms must be established for affected people and their communities” in cases of involuntary resettlement.

JICA states in its Review Report that grievance mechanisms have been established in 43 of 44 Category A and Category B Projects, including Thilawa. No further information on the nature of the Thilawa grievance mechanism is provided. The report fails to acknowledge that even though community members were first relocated in Thilawa in 2013, no grievance mechanism was established in TSEZ until 2017. JICA and its project proponents were therefore operating in breach of GL Appendix Section 7.3 for a period of four years. Community members first sought to develop a grievance mechanism since in late 2014 and early 2015. In 2015, stakeholders discussed an interim mechanism, but all backed out when the community members tried to use it. So not only did the project proponent fail to have a grievance mechanism in place, but they actively rejected efforts to create one.

As JICA and the project proponents know, the failure of JICA and the project proponents to adhere to international standards and to the JICA GLs and establish an accessible and appropriate grievance mechanism for such an extended period led community members in Thilawa to establish a Design Committee who together with the TSDG began to develop a Community Driven Operational Grievance Mechanism (CD-OGM) in consultation with the broader population. The Design Committee shared a briefer and proposal for the CD-OGM with JICA and the project

⁶⁴ The RWP for Area 2-2 West has been released only in English and Burmese.

⁶⁵ International guidelines on resettlement require that information is presented to PAPs in a language that is understandable. *See e.g.* ADB, SPS Appendix 2, Safeguard Requirement 2, ¶15.

⁶⁶ Earth Rights International, Interview with TSDG Members, July 26, 2019.

proponent in 2016 and the CD-OGM has since been discussed extensively with stakeholders from JICA, the Thilawa SEZ Management Committee (TSMC), and Myanmar Japan Thilawa Development Limited (MJDT). However, subsequent to this process, in November 2017, the TCMC and MJDT elected to launch an entirely separate grievance mechanism, the Thilawa Complaints Management Procedure (TCMP), without consulting with the Design Committee or affected community members.

The development of the TCMP therefore appears to have actively declined to meet a core requirement of the United Nations Guiding Principles on Business and Human Rights (UNGPs), namely that a grievance mechanism should be “based on engagement and dialogue”. Beyond this, the Design Committee, the TSDG and EarthRights have a number of concerns about the TCMP as its development and its procedure fall short of international standards in numerous ways, as detailed in EarthRights’ analysis of the TCMP (Annexure 3 attached). EarthRights sent this analysis to JICA’s offices in Myanmar and in Japan in February 2018 yet the issues that it raises are not reflected in the Review Report.

This a significant failing of the JICA Review Report. JICA GLs should be strengthened to include detailed substantive criteria to assess whether the development and substance of grievance mechanisms aligns with the UNGPs and other international standards.

In a meeting with EarthRights in November 2019, one community member stated that a complaint that he had lodged through the TCMP has gone unresolved for a full year.

In 2019, because the stakeholders refused to make improvements to the TCMP based on feedback received, EarthRights sought an external expert to review both the TCMP and the CD-OGM. EarthRights and/or other stakeholders may elect to submit supplementary comments based on this review.

d) Concerns regarding the implementation of the objection procedure

JICA acknowledges in its report that a formal objection to the “Thilawa Class A Project” was raised in 2014 and that it proceeded to the investigation by JICA Examiners. JICA states that non-compliance with its guidelines was not confirmed, but that the examiners advised JICA and the project proponents to work to find a solution to the issues raised in the objection.⁶⁷ As demonstrated by the discussion above, many of the issues raised in the objection (such as loss of livelihood opportunities and a failure to incorporate community voices into decision making, among others) remain largely unresolved. One of the outcomes that followed the objection procedure was that the MJTD verbally offered three acres of common land to affected persons for the purposes of growing vegetables for home use, however a land dispute with the original owner of the land in question prevented affected persons from commencing activities on this land. This issue was raised by affected persons at an annual meeting with JICA earlier this year and JICA stated that it would revert back to affected persons, however it has not yet done so.⁶⁸

⁶⁷ JICA Report, page 205.

⁶⁸ EarthRights meeting with TSDG members on Tuesday, 5 November 2019.

JICA does not suggest any need to review its freestanding objection procedures in the Review Report. We submit that JICA should take this review opportunity to assess the objection procedures at the same time as the JICA GLs, since the objection procedures provide an important mechanism for communities to assert their rights. At the time of making this submission, we have not had the opportunity to consult with affected persons in the TSEZ regarding the nature of amendments to be made to the objection procedures based on their experience of the objection process. Should affected persons wish to make submissions, supplementary comments will be submitted on this issue at a later stage.

Concluding statements

While we recognise that it would not be practical for the JICA Review Report to canvas all 100 of its review projects in this level of detail, we submit that the inaccurate and incomplete manner in which the effects of the TSEZ projects have been reviewed is problematic. The fact that the report does not paint an accurate picture of the impacts of the TSEZ projects has the effect that it fails to accurately assess the efficacy of the JICA Guidelines. This defeats the purpose of this review as a whole. Selective reporting on the implementation of the Guidelines means that key gaps in the guidelines will be obfuscated, and opportunities to strengthen the Guidelines to better align with their overall purpose will be missed.