

To:
Mr. Junji ANNEN
Dr. Sachihiko HARASHINA
Examiners for the Guidelines
Japan International Cooperation Agency (JICA)

June 2, 2014

**Objection Regarding the Thilawa Special Economic Zone
Development Project in Myanmar**

Names of the Requesters:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

The three Requesters note that they are proceeding in their own individual capacities, and also as representatives of over 1,000 households that have been involuntarily displaced or face future displacement as a result of the Thilawa Special Economic Zone (SEZ) Project in Myanmar. [REDACTED] and [REDACTED] were selected as representatives of the community in the 400 ha area of the Thilawa SEZ Project in a meeting on January 25, 2014, while [REDACTED] was selected as the leader of the Thilawa Social Development Group to represent both the 400 and 2,000 ha communities in meetings in February 2013.

Contact Information of the Requesters:

1. [REDACTED]
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2. [REDACTED]
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3. [REDACTED]
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We desire that our names not be disclosed to the Project Proponent.
No

1. Projects with respect to which the Objection is submitted

Country name: Myanmar

Names of Projects:

- 1) Thilawa Special Economic Zone (Class-A-Area) Development Project
- 2) Thilawa Special Economic Zone Development Project

Sites of Projects: Thilawa area, Yangon Region, Myanmar¹

Outlines of Projects (as identified by JICA):

- 1) The objective of this project is to develop/operate an industrial park (400 ha out of 2,400 ha) in a Special Economic Zone (SEZ) located in a suburb of Yangon, Myanmar, in order to attract companies' investments into the area. In the long term, the project is expected to contribute to sustainable economic development of the country through industrial development and employment generation.
- 2) This project is to develop the SEZ in order to promote investment.

2. Substantial damage actually incurred or likely to be incurred by the Requester as a result of JICA's non-compliance with the Guidelines

The Requesters note that they present estimates and descriptions of damage or injury for themselves individually, and in aggregate for the communities they represent. As damages encountered by the large number of individual claimants are complex and diverse in nature and magnitude, this Request provides overall descriptions of the most serious and common impacts felt by the claimants as well as by the individual Requesters.

Loss of farmland and/or access to farmland:

The majority of the affected families have historically worked as farmers, either cultivating their own land or working as casual laborers or contracted workers on neighboring farms and plantations. They grew rice or specialty or seasonal crops, such as betel nut, cabbage, gourds, eggplants, and mangoes. Many also raised cattle and other animals, and supplemented their income by growing small gardens around their houses for their family's consumption. Although a small number have worked as laborers in clothing and zinc factories, on local shrimp farms or in forms of small-scale commerce, many of these families also had gardens at home. Therefore, the majority have relied on land-based livelihoods strategies.

The 81 households that have already been displaced in the first phase of the project have completely lost the farmland they previously occupied and/or owned. Of these, 13 households lived outside of the 400 ha area. The 68 households who also lived on the 400 ha of Phase I have

¹ See Appendix 1 – Map of Thilawa SEZ

been resettled in small housing lots with no farmland at all. Households have not received compensation for their lost land. Furthermore, due to inadequacies in the levels of compensation provided for loss of crops, livestock, and other assets, they have no prospect of acquiring replacement land. The 1,055 families who are scheduled for future displacement in subsequent phases of the project face the same fate.

Loss of livelihood opportunities:

The displacement of the Requesters and the communities they represent has caused and will continue to cause the loss of important livelihood opportunities – in particular, the land-based livelihoods that previously sustained them. Moreover, the displaced have been moved to resettlement areas prior to the development of new livelihood opportunities, and without a proper assessment as to the fit between the resettled population and the jobs that may become available as the SEZ develops. As a result, approximately 40 previously self-sustaining families are currently without means of supporting themselves and without any concrete prospect for a sustainable livelihood in the near future; a similar pattern can be expected for the families that are facing resettlement in the near term. Local authorities have promised that resettled individuals can find work on the construction crew for the SEZ project, but for the most part those jobs have not yet materialized, and those jobs that are available pay extremely low wages. The relocated villagers were told by a representative from the SEZ Management Committee on February 15, 2014 that jobs on the SEZ construction crew would pay 10,000 kyat (US\$10.30) per day. However, when 40 villagers arrived for the positions, they were offered only 4,000 kyat (US\$4.15) per day for physically demanding work, such as digging land. As a result, only 4 people from the 81 families from the 400 ha area are now working in these positions.

Impoverishment:

The effects of resettlement have been harsh for most – if not all – the displaced community members, who have lost land, livelihoods, and homes. The consequences have been economically devastating for residents who farmed other people's land or worked as day laborers in or near the area from which they were displaced. These residents were not eligible for crop or livestock-based compensation and have had to survive on inadequate transitional assistance. There are approximately 10 households that fall into this category. Additionally disadvantaged are families that chose to accept a stipend to build their own resettlement houses instead of accepting poor quality and inadequate pre-built homes at the resettlement site. These families have found that the stipend was insufficient to build a house and purchase new farm land, and are struggling to make ends meet. There are approximately 51 households that fall into this category.

Prior to displacement, villagers in Phase I had higher incomes than they do now. Around 20 households were farmers, growing seasonal crops, such as eggplant, longbeans, roselle, okra, etc. They earned a minimum of 1 million kyat (US\$1,030) per acre per year.² Those families with lucrative betel nut trees could earn as much as 4 million kyat (US\$4,124) per year. Approximately 14 households farmed larger plots of land for rice, earning on average 500,000 kyat (US\$515) per acre per year. Those who previously worked as day laborers in the sea port and surrounding industries could make 8,000 to 10,000 kyat (US\$ 8.25 to 10.30) per day; if there

² Unless stated otherwise, all income amounts represent gross profit.

was no work available that day, they would still be paid 3,000 kyat (US\$3) for showing up. However, since relocation, these laborers have to pay 2,000 kyat (US\$2) for transportation to and from work, reducing their earnings to a level that is unsustainable.

Since moving to the relocation site, most of the households are now in debt due to the high costs of building houses and loss of livelihoods. They are now borrowing money from relatives or family friends to make ends meet at a staggering 20% per month interest rate. Three families have used their relocation houses as collateral on loans. At least 20 families have already had to move away from the relocation area in order to find adequate livelihoods and homes.

Additionally, around 80 farmers from Ahlwan Sut and Phaya Kone villages in Thanlyin Township have lost their livelihoods during the dry season since the Myanmar Government stopped the distribution of irrigation water from the Zarmani Reservoir in December 2012 without providing any advance notice. These farmers used to till more than 600 acres of irrigated rice fields in the 2,000 ha area during the dry season (between December and April) and used to earn 480,000 to 560,000 kyat (US\$495 to 577) per acre. They have now lost their livelihoods during two dry seasons.

Loss of educational opportunities:

When the villagers moved to the relocation site in November and December 2013, their children were allowed to finish out the school year at their old schools. However, for some families, the cost for transportation was too high and students had to drop out. For example, in the relocation site, these families had to pay 3,000 kyat (US\$3.09) per day for motorbike taxi to the school and back, whereas previously they only paid 6,000 kyat (US\$6.19) per month.

For the upcoming school year, which begins in June 2014, the Thilawa SEZ Management Committee has made no preparations for the education of 52 children from the relocation site. The village head of Myaing Thar Yar, the nearest village, previously advised the resettled families that the village school could not accept the resettled students due to lack of space. On May 28, 2014, when families went to enroll their children at the Taman Oo school in Myaing Thar Yar village, the school headmistress said that she had been forced to accept the children's registration despite the considerable challenge that an additional 52 children will pose in the classroom. The children's parents are concerned that the students will be treated unfairly because of this situation.

Substandard housing and basic infrastructure:

The site to which the first group of 68 households were resettled was prepared hastily and incompletely. Houses were erected over the course of barely one month, raising concerns of their structural integrity given the muddy, sandy nature of the soil on which they were constructed. The houses themselves are small for a single family and very close to one another, providing little privacy from one's neighbors. The plot of land for each house measures only 25 x 50 feet and is insufficient even to keep a kitchen garden for subsistence.

There are inadequate drainage facilities in the relocation site. Unfinished and open ditches run along the narrow roads, leading some yards to be flooded with waste water. Already poor drainage and flooding in the dry season raise serious concerns about the conditions of the houses and the site in general during the rainy season. Furthermore, roads are narrow and without any trees, creating a very hot and uncomfortable environment for the displaced households. Thus the displaced villagers have been forced to endure difficult and inadequate housing conditions in the relocation site.

Loss of access to adequate clean water:

Due to the haste with which the relocation site was prepared, only two out of four water pumps at the site are currently functional. The water from these pumps is muddy and not suitable for drinking. There are also two open wells that have algae growing on the surface. Although the villagers wait for the sedimentation to settle before using the well water, it still smells strong. Therefore, approximately 20 households near Myaing Thar Yar are using water from that village's wells, while another 20 are buying clean water. The remaining households have no viable option but to use the dirty water. In their prior homes, residents had adequate access to clean water and no need to buy it. However, as a result of their resettlement in an inadequately prepared site, relocated villagers now have only limited access to clean water, raising concerns about health ramifications.

Damages Incurred by Requesters

██████████'s parents had 20 acres of land before his relocation, however, the land was not in use. It had previously been confiscated in 1997 and was filled in with soil for construction, and was therefore unusable for farming. In the years prior to the relocation, ██████████ worked as a sewing machine mechanic in garment factories near Yangon, earning between 110,000 and 120,000 kyat (US\$113 to 124) per month.³ ██████████ chose to build a house in the relocation site rather than take the poor quality house prepared by the government. He spent approximately 6 million kyat (US\$6,185) to construct the new house, including the cost of filling in the housing lot with sand to try and prevent the possibility of flooding in the rainy season. He has now incurred a debt of 2.7 million kyat (US\$2,784), loaned to him by his father and aunt in order to finish his house. ██████████ spent almost 40 days to build his house, during which time he could not regularly work in the garment factories. The 28,000 kyat (calculated at 4,000 kyat per day for 7 days) (US\$29) that he received for the loss of work opportunity due to moving was not adequate. Because of the time spent away from this job during the construction of his house and moving to the relocation site, ██████████ is now only working 2 days per week plus odd jobs at the factories when he is needed. He earns 100,000 kyat (US\$103) per month now, and is planning to open a sewing shop in front of his house, so his wife can also work there.

██████████ has a total of 3.5 acres of farmland. His family previously used one acre of hillside farmland in the 400 ha area to grow crops of cabbage, eggplant, rose and betel nut leaves, where

³ See Appendix 2 – Case Study: Livelihood and Compensation of ██████████, for detailed information on his income and compensation amounts.

he continues to live there despite the resettlement process.⁴ The family also raises 6 cows and 30 chickens. In addition, the family also has 2.5 acres of farmland in the 2,000 ha area on which they currently grow rice, with 2 harvests per year. The family stands to lose both plots of land – and therefore their livelihood – because of the SEZ project. After accepting the first installment of his compensation and beginning to build a new house in the relocation site, ██████████ realized that the compensation would not be enough to finish the house or to buy replacement land to grow crops or raise livestock. He has therefore refused to sign and take the second and third installments. ██████████ has now incurred a debt of 4.5 million kyat (US\$4,639) to family members and a pawnbroker. Additionally, the government has ordered him to stop growing betel nut and crops on his land in the 400 ha where he is still living.

██████████ lives just outside of the 2,400 ha area of the SEZ project, but has 4 acres of farmland for rice cultivation in the 2,000 ha area, the profits from which he shares with his sister. In their agreement, ██████████ farmed that field during the dry season, while his sister farmed it during the rainy season. In December 2012, the government halted the distribution of irrigation water from the Zarmani Reservoir to approximately 600 acres of farmland, including ██████████'s shared field. He has already lost two years of dry season crops of rice worth 1.6 million kyat (US\$1,649) per year, but has not received any compensation for this loss of livelihood. He holds and additional 10 acres of farmland in the 2,000 ha area that he uses to farm rice, harvesting one crop per year in the rainy season.⁵

3 & 4. Relevant provisions of the Guidelines considered violated by JICA and facts constituting JICA's non-compliance, and causal nexus between JICA's non-compliance with the Guidelines and the substantial damage

Dozens of households have already been displaced, and hundreds more are planned for relocation, to make way for the Thilawa SEZ Project. The Environmental Impact Assessment (EIA) for Phase I of the Thilawa project – for which 81 households have been dislocated from 400 ha of land⁶ – delegates responsibility for resettlement and other social impacts to the Government of Myanmar. However, despite the fact that resettlement is complete, the Myanmar Government's plans for resettlement, compensation, and livelihoods recovery at Thilawa currently fall far short of the standards required by JICA's Guidelines for Environmental and Social Considerations, not to mention international standards and best practice on resettlement. As a result, dozens of families have already been deprived of land and livelihoods opportunities, become further mired in poverty, lost access to educational opportunities for their children, among other negative impacts, including those associated with lack of access to clean water. As the Thilawa project moves into next phases, in which almost 1,000 additional families face displacement, many more are threatened with similar impacts.

⁴ See Appendix 3 – Case Study: Livelihood and Compensation of ██████████, for detailed information on his different sources of income and compensation amounts.

⁵ See Appendix 4 – Case Study: Livelihood and Compensation of ██████████, for detailed information on his different sources of income and how these have been affected by the halting of water from the Zarmani Reservoir.

⁶ A total of 81 households lived and/or used land in the 400ha of the Phase I area. Of these, 68 families lived in that area, while 13 had land in the area that they farmed or was farmed for them.

The damages that the Requesters and their fellow community members have suffered and expect to suffer in the future are directly attributable to multiple instances of JICA's non-compliance with its Guidelines.⁷

Factual Background

On December 21, 2012, the Government of Myanmar (GOM) announced plans to develop a 2,400 ha SEZ at Thilawa, Yangon Region, Myanmar.⁸ The project will include an area for light industrial development, as well as a major port facility. The SEZ will be developed in several phases, each of which will require substantial relocation of families. Until relocation began in November 2013, 81 families were farming and/or living on 400 ha of land that will be redeveloped as Phase I of the project. An additional 1,055 families live on the remaining 2,000 ha area. Approximately half of the people living in both areas rely on agriculture for their livelihoods.

On December 25, 2012, an administrative officer from Thanlyin Township told the villagers about the government's plan for the project. On January 31, 2013, each household in Thanlyin and Kyauktan Townships received a letter stating that they would have to relocate within 14 days or face imprisonment for 30 days. The families affected by Phase I of the project were told in a meeting at the housing department on September 25, 2013 that they were required to sign resettlement and compensation agreements. Some community members objected and sought to negotiate, but by the beginning of November, all families in the Phase I area had signed agreements. Many families claimed to have been pressured, and not to have understood the documents they signed, let alone the summary of the Resettlement Work Plan (RWP) that was distributed to them. Initially, families were told that they would be required to relocate by November 8, 2013, but that deadline was extended at the last minute amidst revelations that the resettlement site was completely undeveloped, and no homes had been built for the displaced residents. After a period of hasty house construction in November 2013, local government officials began the process of relocating families living on land slated to become part of the SEZ. Also on November 4, 2013, a full draft of the RWP was finally made public, which the Requesters were not aware of until non-governmental organizations (NGOs) informed them at the end of November 2013. By December 2013, 67 Phase I families had been relocated, all except [REDACTED] family.

Also in December 2013, JICA released the environmental impact assessment (EIA) for Thilawa Phase I on its website. In April 2014, JICA announced that it had finalized plans to invest in the project, committing to purchasing approximately 10% of the shares in the development.⁹

⁷ The Requesters note that under § 2.6 ¶ 3 of JICA's Guidelines, JICA commits to avoid deviation from the World Bank Operating Procedures and to use international best practice as a benchmark. The responses to this section therefore refer to the operating procedures and environmental social safeguards of the World Bank and other major multilateral development banks as sources of substantive standards.

⁸ See *Myanmar, Japan sign MoU on cooperation in Thilawa SEZ project*, MYANMAR BUSINESS NETWORK, Dec. 24, 2012, at <http://www.myanmar-business.org/2012/12/myanmar-japan-sign-mou-on-cooperation.html>.

⁹ See, e.g., Motokazu Matsui, *Japan aid agency to buy stake in Myanmar industrial park developer*, NIKKEI ASIAN REVIEW, Apr. 23, 2014, at <http://asia.nikkei.com/Politics-Economy/Economy/Japan-aid-agency-to-buy-stake-in-Myanmar-industrial-park-developer>.

a. JICA Guidelines § 1.1 ¶ 3 – JICA’s responsibility to ensure “accountability” when implementing cooperation projects.

The Project Proponents – the Yangon Regional Government (YRG) and Myanmar Japan Thilawa Development Co. Ltd. (MJTD) – submitted and are in the process of implementing a Resettlement Work Plan (RWP) and an environmental impact assessment (EIA) respectively that fail to meet JICA’s standards. (The Requesters give a more detailed explanation of the ways in which the RWP and EIA fall short in the paragraphs below.) Throughout the project planning and implementation process, JICA has deflected community complaints about the deficiencies in these plans and assessments by insisting that it is the YRG’s responsibility to implement resettlement and livelihoods plans. (See Item 7 for details on interactions that the Requesters and the communities they represent have had with JICA.)

While it is indisputable that primary responsibility for implementation does fall with the Project Proponent, JICA’s response has completely missed the point: it is JICA’s responsibility to ensure that the YRG mitigates negative impacts on these communities in a way that complies with JICA’s Guidelines. And JICA’s failure to assume responsibility for accountability is directly linked to the suffering of the community members because, as noted in the paragraphs that follow, the damages experienced correlate precisely with the instances of non-compliance with JICA’s Guidelines.

b. JICA Guidelines § 1.4.4 – JICA’s responsibility to reply to stakeholders’ questions.

The Requesters and the Thilawa Social Development Group (TSDG), which represents the communities in the Thilawa area, have repeatedly sent letters to JICA to notify the agency of their deteriorating living conditions due to the project, and have requested meetings with JICA to discuss how to resolve these issues. Questions regarding the project’s compliance with JICA’s Guidelines were also raised in the letters. Most recently, TSDG requested to meet JICA between April 23 and 25, 2014, but JICA again failed to adequately respond to the group. On April 23, before giving any response to villagers, JICA made the decision to provide investment for this project. This violation of JICA’s Guidelines has a direct causal relation to the damages suffered by the villagers, as JICA would have had the opportunity to address the many shortcomings of the resettlement process had it responded to the villagers’ requests to meet and consult.

c. JICA Guidelines § 1.5 – JICA’s responsibility to provide support for and examine the environmental and social considerations that the Project Proponents implement.

The inadequacy of the RWP and EIA are patent on the face of the documents. For example, the EIA devotes a total of two pages to livelihoods and resettlement issues, with no analysis except for a cursory conclusion that the project will increase economic opportunities in the area and a note that the Government of Myanmar will handle all social impact issues.¹⁰ In addition to the many substantive deficiencies in the RWP noted below, the RWP is inadequate in that it fails to justify the levels and forms of compensation offered to villagers for various losses, does not even

¹⁰ See Myanmar and Japan Consortium for Thilawa Special Economic Zone Development Project (Class A), Environmental Impact Assessment Report at 7-2 (Table 7.1-1), 7-45, 7-46 (Sept. 2013).

consider land-based compensation or restitution and does not analyze the necessary resources or options necessary to enable displaced villagers to build new, sustainable livelihoods.

If JICA had provided adequate and appropriate support for the EIA and the RWP, it could have assured that the Project Proponent's plans for mitigating negative social impacts included these critical elements. Because this Request centers around inadequate compensation and livelihoods restoration assistance – and the resulting impoverishment, loss of access to land, and loss of livelihood – there is a direct causal nexus between JICA's non-compliance and the injuries suffered.

d. JICA Guidelines § 2.5 – JICA's responsibility to take into account local human rights situations when conducting stakeholder engagement.

Many residents of the Phase I area of Thilawa – those that have already been relocated – report that they were induced to sign resettlement agreements in an atmosphere of heavy coercion. Families report that YRG and local government officials told them that if they did not sign the agreements their property would be destroyed and they would be denied any compensation. Furthermore, officials insinuated that if the villagers did not accept the confiscation they were being offered, they would have to take the government to court, the prospect of which most villagers find intimidating. Some families still recall their experience in the 1997 confiscation under the military regime in which their houses were destroyed when they didn't move out immediately after the eviction order. At that time, army trucks arrived in the village and soldiers forced villagers onto the trucks.

Two of the Requesters experienced coercion to sign resettlement agreements. Officials from the housing department called ██████████ several times to put pressure on him to sign the resettlement agreement. On October 29, 2013, an official told him that according to the democratic process, he had already lost because the majority of people already signed. He was threatened that if he didn't sign, his case would be reported to the YRG. In the end, he signed the agreement, the second-to-last person out of 68 to sign. ██████████ was the last person of the 68 households to sign the settlement agreement. The SEZ Management Committee tried to persuade him to sign by coming repeatedly to his house, where they waited for him until late in the evening. When he heard this and stayed away from his house, they called him many times asking him to return home and then went to his father's house. Eventually, ██████████'s father convinced him to sign the resettlement agreement.

Another woman was threatened by housing department officials and the District Police Officer to sign her agreement. When the notice for villagers to vacate their land in 14 days was posted in January 2013, her family destroyed their house so that they would be ready to move and would not be arrested for still living on the land. When that relocation did not happen, her family built two huts in which to live and provide shelter for their goats. When surveys were conducted for her property, they did not include the house that was previously there, which decreased her proposed compensation amount to next to nothing. She did not want to sign the resettlement agreement and accept such low compensation. Officials from the housing department threatened her with prosecution if she did not sign. She was then summoned to the District Police Officer's office and told that if she didn't sign her government employee husband and his supervisor

would both be sent to jail. The District Police Officer said he could not promise a replacement house and land, but did promise her that she would get compensation. Over the next couple of days, the District Police Officer called her repeatedly asking why she had not yet signed the agreement. When she decided to do as he asked, she was not allowed to read the agreement document. She received only 800,000 kyat (US\$825) of compensation for two huts on her property, but not for her original house before the SEZ development project began.

As JICA is well aware, Myanmar is a country with a long and often violent history of repression of dissent. While the country is in the midst of a political transition that is characterized by greater openness and space for peaceful expression than in the past, it is still quite difficult for many citizens to express their concerns over state development plans, let alone to disagree with or resist them. Intimidation by local government officials remains common, and the state maintains vaguely worded criminal laws that penalize unauthorized peaceful protest or conduct that could threaten public tranquility. Moreover, land-grabs and land confiscation without due process of law are common in Myanmar and are often facilitated by local government officials. Due to this history and situation, even public consultations can be fraught with intimidation that is almost invisible to the outsider if public officials or security forces are present or are able to meet with and pressure participants after the meeting is over.

JICA should have taken into account the local human rights situation. If it had done so, it would have recognized that additional due diligence was required to ensure that stakeholder engagement took place without coercion or intimidation, and should not have trusted the word of local government officials that consultation had been free and adequate. This non-compliance is directly and causally related to the injuries suffered by the Requesters and the communities they represent because JICA would have known of deficiencies in the measures for resettlement and livelihoods restoration prior to the finalization of the RWP if it had taken appropriate steps. And if JICA similarly fails to take these considerations into account in the next phases of the Thilawa project, almost one thousand additional families will suffer the consequences.

e. JICA Guidelines Appendix 1, § 7 ¶ 2 – JICA's obligation to ensure that resettled persons receive support in a timely manner.

In its haste to remove residents from the 400 ha Phase I area of the Thilawa project, the YRG resettled households on a site that was not fully prepared. In fact, the designated resettlement site was revealed to be nothing but a vacant, brush-covered, muddy field just one week before the deadline for residents to leave their houses. On that occasion, the YRG postponed the eviction deadline and hastily built houses and other infrastructure on the site. However, due perhaps to the haste with which the site was prepared, that infrastructure is substandard and problematic. Some houses experience flooding during the dry season, raising serious concerns about conditions at the site during the rainy season. Out of four water pumps built at the site to provide access to water, only two are functioning, both of which contain muddy water that is not suitable for drinking. An additional two open wells contain smelly water that has algae growing on the surface. Some residents are no longer able to send their children to school due to high transportation costs from the relocation site to their old school, and have until recently been denied enrollment at the school that is closest to the relocation site based on lack of capacity.

Even though the children are now enrolled in the nearest school, parents are concerned that their children will be treated unfairly for placing additional burden on the teachers and classrooms.

Another instance of failure to provide timely support relates to deficiencies in the Income Restoration Plan (IRP), a part of the RWP. The IRP notes that it will be finalized based on needs analysis of . . . [the displaced families] through consultation with [them] . . . [.]”¹¹ In practice, this means that Thilawa residents were removed from their homes and original livelihoods and resettled in a new place despite the fact that arrangements were not yet in place for them to find and be trained for new jobs. JICA and the YRG simply assumed that families would be able to find satisfactory new work on the construction crews for the Thilawa development, or from the new economic activity that may one day take place at the SEZ.

Based on World Bank and Asian Development Bank standards, assistance relating to resettlement is not timely if resettlement takes place *before* adequate compensation has been paid, the resettlement site is fit for habitation, and comprehensive and adequately funded livelihoods restoration programs are in place.¹² Here, by contrast, villagers were resettled hastily, and prior to the establishment of appropriate infrastructure and programming. As a result of the substandard preparation of the site, displaced residents have not received timely support in the form of adequate housing, water, or educational opportunities. And as a result of the failure to prepare and establish a credible livelihoods restoration program in advance of resettlement, residents find themselves without jobs, without access to land that would allow them to earn a living, and forced to sell their belongings (including, in some cases, the resettlement houses themselves) in order to get by. Around 20 families have already left the relocation site to find work elsewhere, while the majority of those who have stayed are in debt. Three households have had to use their relocation homes as collateral on loans.

The disbursement of the compensation in installments has also caused difficulties for the villagers. For example, the Requester ██████ received his compensation in two installments. The first installment was not enough to finish building his house on the relocation site, so he could only buy some materials for the house at that time. After receiving the second installment of compensation, he bought some more materials. This process delayed the construction of his house as well as costing him more in terms of transportation of materials to the relocation area.

In addition, no timely support or compensation has been provided for the farmers in the 2,000 ha area who lost their livelihoods in the dry season due to the Myanmar Government’s decision to stop providing irrigation water from the Zarmani Reservoir in December 2012. They have already missed two harvests.

This faulty process is likely to cause similar suffering to the residents of the 2,000 ha area when and if they are relocated in the near future.

¹¹ See Yangon Regional Government, Resettlement Work Plan (RWP) for Development of Phase 1 Area - Thilawa Special Economic Zone (SEZ) at 33.

¹² See WB OP 4.12 ¶ 10; ADB Safeguard Policy Statement [[hereinafter “ADB SPS”] Appendix 2, Safeguards Requirement 2: Involuntary Resettlement ¶ 14.

f. JICA Guidelines Appendix 1, § 7 ¶ 2 – JICA’s obligation to provide compensation to resettled persons at replacement cost.

The RWP lists all forms of expected compensation and assistance to displaced persons in a table known as an “Entitlement Matrix.”¹³ Despite some language to the contrary in the Entitlement Matrix, the forms of assistance offered to the displaced families of Thilawa fall short of applicable standards because they do not even compensate displaced persons at “full replacement cost,” which is the standard used by all lending institutions, including JICA.¹⁴ The RWP does not justify many of the levels of compensation or replacement assets that it provides for, and, in fact none measures up to the value of the losses sustained by the displaced residents of Thilawa.

First, the YRG has claimed that the land in the SEZ area was legally confiscated from the villagers in 1997 and therefore they are not providing any compensation for land. However, an analysis of Myanmar domestic laws finds that in fact in both the 1997 and 2013 attempt to confiscate lands, the procedures and requirements for compensation under Myanmar law, including the 1894 Land Acquisition Act, were ignored. (See section (h) for more details on the land confiscation in Thilawa.)

The amount of land provided along with each house – a plot nominally measuring 25 x 50 feet, but with an unacknowledged reduction of five feet along each boundary to provide for paths and roads between plots – is insufficient even to keep a kitchen garden for subsistence.

The Requesters and the villagers they represent feel that the inadequacies in compensation stem from this lack of compensation for land. Had adequate compensation been given for the land on which they lived and used for their livelihoods, they could have moved and continued their way of life on new land of comparable size. Instead, they have been forced into a lifestyle and living conditions that are new and difficult for them. The compensation they have received does not cover the hardships associated with this kind of transition.

Second, the provision for replacement homes is inadequate. The RWP does not specify whether the homes built at the replacement site are equivalent in value or quality to the residents’ pre-displacement homes, and as noted above, there is reason to believe they are not due to flood-prone nature of the land, and the hasty construction that took place after the resettlement deadline was postponed. Some households opted to accept an allowance instead of a replacement home, which they could use to build their own houses. However, the amount allotted was not even close to being sufficient to actually build a habitable home.

Third, the provision for replacement of lost income from animals is inadequate and often calculated incorrectly. The Entitlement Matrix provides for assistance for income from livestock, the matrix outlines “cash assistance for three (3) times of income from cow for milk.” Requester ██████ received only 360,000 kyat (US\$371) for his 6 cows, calculated at 60,000 kyat

¹³ See RWP, *supra* note 11, Table 5-1.

¹⁴ See WB OP 4.12 ¶ 6(a)(3); IFC Performance Standard 5, ¶ 9; JICA Guidelines Appendix 1, § 7, ¶ 2.

(US\$62) per animal.¹⁵ In reality, he can earn 10,000 kyat (US\$10) per day for milk from 2 of his cows during 8 months of the year, totaling 2.4 million kyat (US\$2,474) per year. Therefore, the compensation provided for livestock is significantly below current market price. Additionally, the matrix only includes compensation for cows, but not for other animals, such as pigs or chickens. There is little transparency about the amounts of compensation for the items listed in the RWP or those actually distributed to the villagers. Villagers do not received details of how their compensation amount was calculated. Villagers are similarly mystified for the basis of the RWP's determination of the number of years necessary to replace different sources of income – six years for rice paddy, four years for vegetable and tree crops, and three years for milk. While JICA and the government have argued that these numbers were agreed upon in consultations with the villagers, this is unlikely given the amount of coercion involved in the process and the failure to hold meaningful consultations and involved. (See section (g) for more details on consultations.) The undervaluation of compensation is particularly harsh in the Myanmar context, where inflation is likely to rapidly undercut the value of any compensation package.

Finally, the Entitlement Matrix lists no concrete plans to provide additional transitional assistance for families. This is a particularly acute problem for households that had relatively little farmland to begin with and relied mostly on odd jobs, opportunities for which are completely absent at the relocation site. These households have been forced to subsist entirely on their relocation stipend, which – for many – is already exhausted. Since moving to the relocation site, most of the households are now in debt due to the high costs of building houses and loss of livelihoods. They are now taking loans to make ends meet; three families have used their relocation houses as collateral on loans. At least 20 families have left the relocation area to pursue livelihoods elsewhere.

The failure to provide compensation at replacement value is directly and causally connected to the current state of impoverishment and deprivation in which the displaced villagers find themselves, and will likely be the cause of similar suffering for households from the 2,000 ha area in the near future unless rectified. For those households that opted to accept a housing allowance rather than a replacement house, the underpayment has forced them to dip into allowances meant to replace other necessities, such as food and crop-based income, or to take loans that will be difficult to repay. For those households that accepted sub-standard payments for lost crops and animals, the compensation is unlikely to carry them through to the stage of self-sufficiency. And for families that had little or no crop-based income to begin with are already under water due to the lack of compensation adequate to replace their previous homes or livelihoods.

¹⁵ In a Japanese language document distributed by JICA at a meeting of the Advisory Committee for Environmental and Social Considerations, the amount for milk cows is calculated at 90,000 kyat (US\$93) per head. The amount for non-mils producing cattle or buffalo is 60,000 kyat (US\$62) per head.

- g. *JICA Guidelines §2.1, Appendix 1, § 7 ¶ 3 and 4 – JICA's responsibility to promote participation by affected people and their communities in the planning, implementation, and monitoring of resettlement action plans. Also, JICA's responsibility to take displaced persons into account and ensure that consulted stakeholders are well informed in advance.*

Over the course of several months in 2013, households living in the Phase I area of the Thilawa project were presented with “agreements” providing for their resettlement; while some families disputed the terms, all eventually agreed in the end. However, most families are unable to read and were therefore unable to fully understand the resettlement agreements that were presented to them. Very few were given copies of the agreements.

While the YRG did hold consultation meetings with regard to the RWP, they were not meaningful consultations that provided the villagers with an open opportunity to express their concerns. Government officials' responses to villagers concerns were little more than lip service, with most inputs not being taken into consideration or implemented. For example, villagers requested the ability to choose the location to which they would be relocated, but this has not been included in the RWP. Consultations were called on short notice, with little information about the agenda of the meeting. In principle, consultations should be transparent and inclusive. But in Thilawa, some villagers were not allowed to enter the meetings, which discouraged others from joining. Furthermore, the Project Proponent held side meetings in which they sought to win the support of some elites in the community. This caused divisions and disagreements among the people. Community members have written several letters to the YRG, the Thilawa SEZ Management Committee, and JICA expressing their concerns about the resettlement and livelihoods plans, but changes have been minimal or non-existent.

JICA violated its own policies by failing to ensure that important stakeholders – the displaced persons themselves – were able to meaningfully and appropriately participate in the development, implementation, and monitoring of resettlement plans. The JICA Guidelines insist that displaced persons' preferences should be taken into account,¹⁶ that consultations should take place with the participation of affected persons, and that such persons must be given sufficient information about the project and the proposed plans, in advance of the consultation.¹⁷

International best practice, as embodied in the policies of the major international financial institutions, further confirms that free, prior, and informed consultation with affected persons is necessary for projects that will entail involuntary displacement. The World Bank, for example, insists that displacement choices should be made pursuant to the preferences of the displaced persons, to the extent possible.¹⁸ The ADB goes further, noting that resettlement is transparent and equitable only if accomplished through “negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.”¹⁹ Project proponents are therefore expected to carry out “meaningful consultations” with all affected persons – including the displaced persons and their new host communities, and to

¹⁶ See JICA Guidelines § 1.1.

¹⁷ *Id.* Appendix 1, § 7 ¶ 3.

¹⁸ See WB OP 4.12 ¶ 3.

¹⁹ See ADB SPS, Involuntary Resettlement Safeguards, Principle 6.

ensure their participation in the planning, implementation, and monitoring and evaluation of resettlement programs.²⁰

The failure to conduct meaningful consultations – and, most importantly, to provide villagers with information they would need to understand and respond to the YRG, the Thilawa SEZ Management Committee’s resettlement plans – is directly and causally related to the injuries described above. If the YRG, the Thilawa SEZ Management Committee or JICA had provided adequate information and opportunity to affected stakeholders to *shape* the project, the resettlement plans, and the livelihoods strategies, rather than presenting them with a fait accompli and the mere opportunity to make changes at the margins, they could have avoided many of the negative impacts on residents’ livelihoods and lives.

In fact, villagers who were the most outspoken, raising serious concerns and questions about the resettlement process, were often purposefully excluded from the process. ██████████ attended several consultation meetings, the last of which took place on September 24, 2013. In this meeting with the housing department, he expressed concern about the very limited participation of villagers in the resettlement planning process and asked for the planning to be more inclusive. He also questioned the government’s plan to restore the livelihoods of project affected people who were previously reliant on land, in light of the lack of compensation to be provided for confiscated land. The official from the housing department replied negatively to him, accusing him and others of squatting on the land. After that meeting, ██████████ wasn’t invited to consultation meetings any more. When consultations relating to the 2,000 ha area began in his village on April 26, 2014, he was not invited.

Most of the project affected people were not aware of the draft RWP that was disclosed at local government offices and on the internet at the beginning of November 2013. The draft document was also announced in the notice board section of a newspaper on November 8, 2013. The villagers only became aware of the draft RWP when a Japanese NGO learned about it and told a local NGO, which shared it with them. According to the government, there was a comment period for the draft RWP until November 22, but without knowing about the document, there was no way for the villagers to make comments and participate in the development of the RWP. Even before the RWP was finalized, the relocation of the villagers was underway.

While some villagers from the 400 ha area, including Requesters ██████████ and ██████████ couldn’t participate in the important decision-making process to develop the RWP, others engaged in negotiations in closed-door meetings. They were able to achieve some improvements to the compensation package. For example, the size of the housing lot in the relocation site was increased from 20 x 40 feet to 25 x 50 feet. Additionally, the years of crop compensation were increased from 3 years to 6 years for rice and from 2 years to 4 years for vegetables and trees. However, some villagers were still not content with the result of such closed-door negotiations where they could not participate, but were forced to sign relocation agreements under pressure from government authorities.

According to the Chapter 12 of RWP, the Income Restoration Program Implementation Sub-Committee (IRPISC) is the main body for internal monitoring of progress of the IRP and the

²⁰ *Id.*

status of resettlement. It also states that representatives of the villagers are to be members of the committee. However, the villagers, including Requesters [REDACTED] and [REDACTED], did not know of the existence of such committee, nor did they learn the identities of their representatives on the committee. In this way, there was no appropriate participation of villagers in monitoring the RWP and no functional or effective system to resolve the villagers' current problems properly and in a timely manner.

The failure of the government to provide adequate information about the relocation in advance, and the denial of any meaningful opportunity for project affected people to participate in the development of RWP, violate JICA's Guidelines. These failures are directly linked to the Requesters' damages because the Requesters could have ensured that they were properly compensated and given adequate transitional assistance had they been able to participate in an appropriate manner.

h. JICA Guidelines Appendix 1, § 7, ¶ 2 – JICA's responsibility to provide compensation for lost land.

The YRG has determined that none of the households at Thilawa are eligible for compensation for the land that was taken from them – land that formed the very basis for their lives and livelihoods. As described in the RWP, this decision is based on the assertion that compensation for the first group of resettled farmers “had been completed in 1997” and that their land rights were therefore terminated.²¹ This approach is inadequate, as JICA has failed to assess independently whether the land was legitimately acquired or if compensation was actually paid. As detailed below, there is reason to believe that the Thilawa residents' land rights were not terminated properly, and that they maintain some right to use and enjoy the benefits of the land. Moreover, the RWP fails to address the full range of assets that are compensable under international standards, or to assess their value appropriately.

Farmers in the affected area have written to JICA on seven occasions, explaining that their land was taken without due process or adequate compensation. For example, Myanmar's 1894 Land Acquisition Act requires that any proposed expropriation be published beforehand in the National Gazette as well given in a public notice in a convenient location for those affected by the confiscation in order to allow for objections, a procedure that apparently did not take place at the time. These allegations – certainly plausible in light of the character of the Myanmar military regime in 1997 – puts in doubt the legitimacy of the original expropriation of land, and should have lead JICA to question the YRG's initial determination on land compensation.

International law requires that when a government expropriates land, it must provide timely, adequate, and effective compensation.²² Because the status of the Thilawa residents' land rights

²¹ See RWP, *supra* note 11, §§ 2.1 and 2.2.

²² See OECD, Expropriation laws and review processes, *Policy Framework for Investment User Toolkit*, available at <http://www.oecd.org/investment/toolkit/policyareas/investmentpolicy/expropriationlawsandreviewprocesses.htm>. Also see UN General Assembly Resolution 1803, Permanent Sovereignty over Natural Resources, U.N. Doc. A/5217 (1962) (“4. Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognized as overriding purely individual or private interests, both domestic and foreign. In such cases the owner shall be paid appropriate compensation, in accordance with the rules

is in dispute, JICA should have investigated the legitimacy of the expropriation in order to ensure that those land rights have been terminated consistently with Myanmar law and international standards. In 1997, Myanmar was ruled by a military regime with a reputation for arbitrary land-grabbing, and the Japanese government had cut off lending to the Myanmar Government. If the land was expropriated in 1997 through coercion, or if the Myanmar Government failed to provide legal due process, JICA should have concluded that the Thilawa farmers did not legitimately lose title to their land. And even if there was no coercion or denial of due process, JICA should have evaluated whether compensation was adequate at the time of expropriation. If it was found to be inadequate, then JICA should have ensured that the Thilawa residents are paid a supplement to make up for being short-changed at the time of expropriation.

Moreover, even if the 1997 expropriation was lawful and legitimate, land compensation should still have been required. Because the land was not used for the intended purpose after the 1997 expropriation and they were permitted to continue farming, the land should have reverted to the farmers from whom it was taken. In some cases, the Myanmar Government expressly returned the land to certain households. Thus they may have title to the land, either because the land concessions for which the land was originally taken were cancelled, because the land was given back to them, or because they acquired title through adverse possession.

The RWP includes no analysis of this situation; there is no indication that JICA has investigated the ramifications of the residents' ongoing occupation and use of the land. There is no process for determining whether farmers may have reacquired any land rights that had been previously terminated, and there is no provision to compensate those whose land title may be legitimate.

By declining to independently consider the current status of the Thilawa residents, JICA has failed to comply with best practice, which expressly includes displaced persons whose claims to land may have been through means other than formal land title. These means can include adverse possession, customary or traditional law and usage, and continued, uncontested possession of public lands, as long as they are recognized by national law or through a participatory resettlement planning process.²³ Moreover, best practice dictates that financial institutions should hold land compensation funds in escrow until ownership disputes are resolved.²⁴

JICA's failure to consider the Thilawa residents' land rights is a direct cause of the impoverishment and loss of livelihoods that the Phase I residents are already experiencing, and that the residents in subsequent phases of the project will presumably face when their land is also taken. With proper land compensation, displaced households could invest in sustainable livelihoods – either by purchasing replacement land elsewhere or seeking training opportunities to transition to new livelihoods, possibly in connection with – but not limited to – the new economic activity that is expected to be drawn to the SEZ.

in force in the State taking such measures in the exercise of its sovereignty and in accordance with international law.”)

²³ See WB OP 4.12 ¶ 15 & n.20.

²⁴ See IFC Performance Standard 5, ¶ 9 n.14.

- i. *JICA Guidelines Appendix 1, § 7, ¶ 2 – JICA's responsibility to improve or at least restore displaced persons standard of living, income opportunities and production levels, including through supporting means for alternative sustainable livelihoods.*

The YRG has not only denied land compensation to the Thilawa residents; it also failed to offer replacement land or opportunities to continue farming. Many of the families have been farming the land for decades and are justifiably concerned about their post-displacement livelihoods.

Crucially, continued income from farming is not envisaged as a possibility under the IRP, despite the stated preferences of many Thilawa residents and the assertion that the IRP will be finalized based on a participatory needs analysis of the displaced persons. Instead, livelihood opportunities in the SEZ area are expected to include small-scale industry and livestock raising, construction work, retail, and factory work – all wage-based livelihoods that the Thilawa farmers are unaccustomed to and lack the skills to perform.²⁵

International best practice emphasizes that families dependent on a land-based economy should be relocated to replacement land where possible, rather than shifting them to a wage-based income.²⁶ Financial institutions are expected to verify that adequate replacement land is unavailable before agreeing to resettlement plans that turn farmers into wage laborers against their will;²⁷ indeed, “[t]he lack of adequate land must be demonstrated and documented to the satisfaction of the Bank.”²⁸ There is no indication that such a showing was ever made to JICA.

In fact, it is indisputable that most displaced families have lost their livelihoods, and that neither the YRG nor JICA made any attempt to prevent such a loss. Moreover, the project's provisions for developing an alternative, sustainable livelihood are grossly inadequate. Resettlement action plans are expected to include Livelihoods Restoration Plans that detail the options for displaced persons and the forms of assistance available to help them take advantage of those options. However, the RWP includes only an Income Replacement Plan (IRP),²⁹ which gives little information on how livelihoods will be maintained or restored. The IRP vaguely refers to new wage-based jobs that may come into existence with the development of the SEZ, but it does not demonstrate that any of the jobs contemplated actually exist, or that displaced persons will receive assistance to acquire the skills to succeed in those jobs. Moreover, there is no discussion of the options that will be available to displaced persons for pursuing alternate livelihoods.

In short, Thilawa farmers have been forced to leave their land, abandon their previous, sustainable livelihoods, and move to a crowded resettlement site to wait out an indefinite transition period with no source of income other than an undervalued compensation package. They have been asked to place their hopes in the promise of jobs that do not match their own expectations and preferences, despite the fact that they may be neither qualified nor suited for these jobs, and it is unclear whether any programs exist to help them acquire the necessary skills

²⁵ *Id.* § 7.2 and Figure 7-2.

²⁶ See WB OP 4.12 ¶ 11 (“Preference should be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based.”); ADB SPS Appendix 2, ¶ 9 (“Preference will be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based.”).

²⁷ See WB OP 4.12 ¶ 11.

²⁸ *Id.*

²⁹ See RWP, *supra* note 11, Ch. 7.

and start-up capital. In practice, since being displaced families are now eligible to take training courses that are expected to prepare them for new jobs in the SEZ, but it is unclear how long it will take for those opportunities to materialize.

Representatives from the Thilawa SEZ Management Committee have represented to the villagers that they can find employment in construction sites in the SEZ, but in fact the compensation available from those jobs is unsustainable after factoring in the cost of transportation to the site. At present, only four of the displaced families have members working at the project site. Non-compliance with the requirement to prevent loss of livelihoods – either through the provision of replacement land or the establishment of re-training and placement programs *prior* to displacement – is the direct cause of these impacts.

In addition to the failure to preserve or provide for sustainable livelihoods for the Phase I households, the YRG has already moved to make livelihoods impossible for the residents of the 2,000 ha. The Myanmar Government has halted the delivery of water for irrigation from Zarmani Reservoir to approximately 600 acres in Thanlyin Township, which is slated for subsequent phases of the project. On April 26 and 27, the government held the first consultation meeting with farmers in the 2,000 ha area in which they explained that the village administrator, housing department and police are starting to conduct surveys with each family about their livelihoods and to measure their land. (The RWP described above applies only to the Phase I stage of the Thilawa project.) They do not know under what terms their resettlement will take place, but by halting delivery of water, the Myanmar Government has already begun to undermine their economic position and the sustainability of their livelihoods. Thus the Thilawa project in the 2,000 ha area is already non-compliant with JICA's Guidelines, and causing substantial injury to affected community members.

5. Remedial measures desired by the Requesters:

The Requesters request JICA to resolve their concerns by taking the following measures:

- Immediately *and directly* intervene to repair the two non-functioning wells at the Thilawa Phase I resettlement site and ensure that the two functioning wells are providing clean water.
- Immediately and in conjunction with the YRG conduct a survey of housing conditions at the Thilawa Phase I resettlement site and take prompt steps to remedy any inadequacies identified as a result of the haste and inadequate diligence with which the site was prepared, including susceptibility to flooding, defects in the foundations of homes and inadequate drainage of waste water.
- Immediately intervene with the Myanmar Government to ensure that all resettled households will be able to send their children to a reasonably convenient school, and provide funding for expansion of school capacity if necessary.
- Immediately communicate to the YRG the position that it will invest in subsequent phases of the Thilawa project only if and when a review of the provisions for resettlement that were implemented in Phase I has been completed.

- Conduct an independent inquiry into the land rights of all persons who have been resettled or are facing resettlement, including (a) the circumstances under which the Myanmar Government may have acquired the land; (b) whether appropriate compensation was paid for any land that was acquired; (c) whether, under Myanmar law, the residents retained or recovered any compensable land rights that were in force when they were resettled for the purposes of the Thilawa project.
- Ensure that any identified compensable land rights are appropriately compensated, and work with the YRG to identify land that could be acquired in lieu of monetary compensation for land.
- Work with the current and resettled residents of the Thilawa project site and the YRG to identify the appropriate level of compensation for loss of crops, livestock, and other assets, and increase the level of compensation paid accordingly.
- Work with the current and resettled residents of the Thilawa project site and the YRG to develop a new Livelihoods Restoration and Support Plan that recognizes and accommodates villagers' desire to maintain their land-based livelihoods and identifies the steps necessary to make alternative, non-land-based livelihoods reasonably available to the those who have been deprived of their livelihoods.
- Implement the steps identified in the Livelihoods Restoration and Support Plan described above, and provide adequate transitional financial assistance to support dislocated households in the interim.
- Ensure meaningful participation of current and resettled residents in all aspects of the planning, decision-making and monitoring stages of the project, and that they can participate without fear of retaliation.
- Establish and participate in a communication mechanism between investors, the YRG and communities.
- If the YRG is unwilling to implement any of the resolutions described above, suspend Phase I of the Thilawa project and signal a determination not to engage financially in any future phases.

6. Facts concerning the Requesters' consultation with the Project Proponent. See *Appendix 5 – Summary of Consultations with Project Proponent.*

7. Facts concerning the Requesters' consultation with JICA's Operational Department. See *Appendix 6 – Summary of Consultations with JICA.*

The Requesters hereby covenant that all the matters described herein are true and correct.

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[Signature]
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