

(This is an unofficial translation. The original was written in Myanmar.)

To:

Mr. Junji ANNEN

Dr. Sachihiko HARASHINA

Examiners for the Guidelines on Environmental and Social Considerations

Japan International Cooperation Agency (JICA)

December 3, 2014

**Opinions on the Examiners' Report
Regarding the Thilawa Special Economic Zone
Development Project in Myanmar**

We appreciate your investigation regarding the Thilawa Special Economic Zone (SEZ) Development Project, including your interview with us here in Thilawa last July. As we have carefully read your report, we would like to submit our opinions on each part of the Examiners' report as below, together with a report by Physician for Human Rights, entitled "A Foreseeable Disaster in Burma: Forced Displacement in the Thilawa Special Economic Zone" (hereinafter "PHR's report").

In short, while we have found that your report leaves many points to be understood more deeply, some recommendations you raised to solve the problems, such as for ongoing dialogue among various stakeholders, are welcome. We expect that you would take our following opinions into considerations and urge JICA to immediately and effectively implement such recommendations.

1. Methods of investigation and interviews conducted by the Examiners

Regarding the field visit by the Examiner, Dr. Sachihiko Harashina, we would like to suggest that when undertaking interviewing and investigations careful consideration should be given to ensure adequate and equal time is dedicated to interviewing each relocated family.

When the Examiner visited the relocation site on July 18, 2014, the first and second interviewees were the families whom the government or JICA must have suggested for the Examiner. The Examiner spent approximately an hour with these first two families, meaning that insufficient time was left for the other relocated families, who expected to be interviewed by the Examiner. As a result of inadequate time allotted to interviewing relocated families and excessive time with just two families, the remaining interviews had to take place as a group interview. Furthermore, this group interview was only an hour and a half long. The Examiner should have allocated enough time to conduct individual interviews with each relocated family, similar to the interviews with the first two families, so that more detailed and accurate information of the villagers' living conditions could have been collected.

Additionally, as the Examiners are supposed to be conducting an independent analysis of the situation, the Examiner should not have visited the relocation site with JICA's expert and her interpreters. In order to be impartial, the Examiner should have and should continue to ensure

independence from JICA's experts as it can cause unnecessary distrust between the Examiners and the community.

2. Findings of the investigation of the damages

(1) Loss of farmland and/or access to farmland

The Examiners reported that they saw proof that our land has been owned by the Myanmar Government, but when we asked the government to show us maps of the land that was taken from us in 1997 and again in 2013, they denied us. We do not think that JICA should accept as conclusive proof any information that has not also been shown to us so that we can verify, or dispute, its accuracy and legal force. The Examiners must also be cautious because at the time in 1997, there was a dual currency system being used in Myanmar, which means that the amount of compensation given by the government was worth significantly less in the market. From our understanding, there are procedures that must be followed under Myanmar law to confiscate land, and as of now, there is no publicly available evidence that the government followed those procedures properly. Because of these facts and that people were forced to take the small compensation in 1997, JICA should not accept that the government followed proper procedures for taking our land. We also continued to use the land since that time, which means that we have some rights to this land.

Also, we have been promised and the Examiners' report states again that we will get support from the time of our relocation until we have employment. JICA's Operational Department explained to the Examiners that the government has been implementing the Income Restoration Program (IRP) for the resettled people who wish to have support for restoring their livelihoods. However, the big problem is that the government has failed to implement the IRP effectively enough to lead to real employment and livelihood opportunities. The training topics provided so far have not all been relevant to us and there has been no seed money provided to start up small businesses for ourselves. Also, there is no support for transportation to work locations that are far away from the relocation site and where wages are not enough to support workers' families.

(2) Loss of livelihood opportunities

Even though JICA explained to the Examiners about how the Resettlement Work Plan (RWP) lays out technical support and vocational training plans, JICA should have known that most of the relocated villagers did not see the RWP before we moved. PHR's report found that 82.8% of residents did not read the work plan before they moved, and that 62.1% did not know they could see the resettlement work plan at the SEZ office (see page 14 and Graph 2 on page 20). The report also shows that approximately 30% of our community cannot read Burmese language (page 15).

According to JICA's Operational Department, 29 heads of households found employment, 6 heads of households are still looking for jobs and there are also 7 who retired and are receiving pension. The Examiners' report states that 4 of 19 the households have found new jobs. However, the jobs that the Thilawa SEZ Management Committee had promised us were inadequate. When some of our community members showed up for these jobs, the daily wages they were offered were much lower than previously promised. Although four people initially took these jobs, they

have since given them up as the income was not enough to support their families.

The Examiners reported that “of 19 resettled households that were previously engaged in farming as a main source of income and are currently participating in vocational training, 4 households have secured new jobs. The remaining 15 households do not have sustainable income sources.” Although the Examiners’ report acknowledges the fact that we are suffering and facing difficulties because of the resettlement, it does not adequately portray the desperate situation in which many families now find themselves.

(3) Impoverishment

JICA explained to the Examiners that the compensation and assistance plan were eventually agreed to by the community members, as stated above. As we also explained to the Examiner during his field visit, some villagers are not happy with the content of the compensation package, including the IRP.

The Examiners wrote that some community members bought home appliances and/or motorbikes with the cash compensation, and it was as a result of these purchases that we have become impoverished. It is true that some people bought motorbikes to try to seek alternative livelihood, such as motorbike taxi, however, most of them did so after using their houses as collateral for informal loans with very high interest rates from local money lenders. Due to the high interest rates and displaced residents’ continued lack of livelihood opportunities, there are now about 20 families who stand to lose their homes in the coming months. This is on top of the 31 families who have already left the relocation site because of the lack of livelihood opportunities. JICA has failed to address this situation. The conclusion drawn by the Examiners about misusing compensation is also incorrect as a result of insufficient investigation.

We strongly urge JICA and the Examiners to compare the previous and current situations, in order to fully understand the deterioration of our livelihood condition. As many villagers explained to the Examiner during the field visit, we used to have no debt before the relocation, but many of the relocated people currently have some debt from constructing the new houses and paying daily living expenses. PHR reported that the average monthly income dropped from 327,000 kyat (\$327) before displacement to 71,000 kyat (\$71) afterwards (see page 16 and Graph 5 on page 22). If this was not fully understood during the investigation, we would like the Examiners to come visit Thilawa to listen to us again.

Furthermore in this section of the report, the Examiners failed to mention the link between the impoverishment of community members and the stoppage of irrigation water from the Zarmani Reservoir during the dry season. This was a key issue we raised in our Objection. The Examiners claim that it is too early to investigate the impacts in Phase II of the Thilawa SEZ project, but it is already clear that people in this area have been forced to stop farming during three dry seasons because of lack of water and are already experiencing real and actual damage. We would like to request that the Examiners investigate these impacts and others on the residents of the Phase II project so that these can be rectified through future planning for the Thilawa SEZ project.

(4) Loss of educational opportunities

JICA explained to the Examiners that we agreed to the compensation amount of 400 kyat per

person per day to cover commuting expenses by ferry bus for our children to attend school, but we were not consulted by the Myanmar Government on this point. In fact, the commute expenses used to vary, depending on the previous locations of houses. One school in Pha Ya Kone could be commuted by ferry bus, but not for the other schools nearby. Before the current school year, 12 children were obliged to quit school because transportation costs were too high.

While the major problems related to this issue have been solved now, we believe that the Examiners should also investigate and review the past situation of loss of educational opportunities for our children from the time of our resettlement to the end of the investigation period. Children who are now attending the school near the relocation site are not being treated fairly by their teachers, which is having a negative impact on their education.

(5) Substandard housing and basic infrastructure

We would like to emphasize the defects in the houses, the lot space and drainage in the relocation site. As we told the Examiner during his field visit, the basic house the government provided is very small for a family with several children, and lacks the place for Buddhist altar and kitchen. The sanitation system is unacceptable. Houses are built on land that is lower than the roads, so when it rains, the water floods the area beneath the houses. Because latrines are built right beside our houses, this water is contaminated with fecal matter, which also seeps into wells meant for drinking water, rendering these wells unusable. (See *Appendix 1* for photos of the flooding in the Myaing Thar Yar relocation site last month.)

JICA and the Examiners mentioned documents signed by the community members to confirm their intention to “voluntarily move into new houses prior to the completion of the infrastructure in the resettlement site.” The resettlement agreements that families signed prior to their relocation, many under threats and intimidation, did not contain these sentences. In August 2014, authorities asked us to sign resettlement agreements again, which we noticed had this sentence added. We pointed out this problem to the government authorities and demanded an explanation, but none has been given to us. More than 20 families have therefore refused to sign these new versions of the agreements. The Examiners state that they have seen examples of these. We would like to request that they ask to see all of these signed agreements and verify for themselves how many residents actually agreed to voluntarily move before the completion of the resettlement site and whether they agreed to this before moving or after.

(6) Loss of access to adequate clean water

The Examiners’ findings regarding the loss of access to clean water state that although some of the wells are still not usable, the situation has improved and that there are no negative impacts at this point in time. It seems that the Examiners have repeated JICA and the Myanmar Government’s statements that digging deeper wells has solved the water problem. These findings do not match the reality on the ground. We would like to refer you to PHR’s report, which found the water sources and latrines provided by the Thilawa SEZ Management Committee at the relocation site are below international standards for refugees (see page 16 and Table 2 on page 19). Also, members of TSDG collected water samples following Myanmar Ministry of Health (MoH) guidelines from the seven pumps and wells at the relocation site, and had them tested at a MoH water quality testing laboratory in Yangon. The laboratory found that all of the samples were “bacteriologically unsatisfactory,” meaning that the amount of bacteria from human feces that was found in the water

samples exceeded a level deemed acceptable by the MoH, and thus were unfit for human consumption.

3. Findings of the investigation of the alleged JICA's non-compliance with the Guidelines

(1) JICA Guidelines § 1.1 ¶ 3 – JICA's responsibility to ensure "accountability" when implementing cooperation projects.

JICA and the Examiners found that they have not violated this section of the Guidelines because several experts have been dispatched to monitor the situation in the SEZ area. These so-called experts have had very little contact with us. If they did, then they would see the real situation on the ground.

Furthermore, in every meeting with the community members, JICA representatives claimed that they don't hold any responsibility for the resettlement plan and its implementation, and that these are the concern of the Myanmar Government. This disproves the Examiners' finding. JICA must hold the government accountable for ensuring that the resettlement plans comply with international standards and JICA's own Guidelines.

(2) JICA Guidelines § 1.4.4 – JICA's responsibility to reply to stakeholders' questions.

The Examiners did not adequately investigate this section of our request. Our letters to JICA's Yangon office contained detailed questions and requests for meetings with JICA and the Myanmar Government. However, JICA's responses via telephone did not answer these questions. Furthermore, JICA's responses from May 28, 2014 onwards, including the eventual tripartite meeting that was held on July 8, only happened after JICA learned about our plan to submit a formal objection to the Examiners in Tokyo.

JICA's Operational Department's allegation that they could not respond in writing because our letters did not contain an address is shallow. JICA's staff could easily have delivered a letter to us in person in Thilawa.

(3) JICA Guidelines § 1.5 – JICA's responsibility to provide support for and examine the environmental and social considerations that the Project Proponents implement.

Despite what JICA's Operational Department has claimed, there were no proper consultations on the Environmental Impact Assessment (EIA). The EIA names 6 supposed representatives of the affected communities in lists of attendees at the two so-called consultation meetings. However, half of these individuals are village administrators while the other half are village heads. All of them are employed by the government and do not represent us.

The RWP similarly did not have meaningful consultations. As we have already mentioned, PHR's report shows that most of us had not read the RWP before we moved, let alone being consulted about it as it was being developed.

(4) JICA Guidelines § 2.5 – JICA’s responsibility to take into account local human rights situations when conducting stakeholder engagement.

The Examiners report that they did not find that the Myanmar Government “officially or systematically coerced or threatened the PAPs to agree” to the resettlement agreements. However, some of the relocated residents did experience these things even if there is no evidence. PHR’s report also found that this happened. They reported that 93% of randomly sampled households felt they felt threatened or afraid of what would happen if they refused to move (see page 14 that Graph 3 on page 21). The Examiners should not have disregarded our experiences.

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

JICA and the Examiners mentioned the documents signed by the community members that confirmed their intention to “voluntarily move into new houses prior to the completion of the infrastructure in the resettlement site.” As we have already mentioned, this sentence was added to statements that resettled residents were asked to sign again in August 2014. These documents should not be seen by JICA and the Examiners as justification for the late delivery of support, such as the livelihood restoration program, which has still not been adequately implemented.

Furthermore, JICA’s Operational Department states that the RWP including the IRP was finalized on November 22, 2013 and that our relocation only started on November 25. The existence of the written documents of the RWP and IRP does not mean that any livelihood restoration activities were being implemented on the ground. People have been living in the resettlement site for a year already and there still has not been adequate livelihood restoration trainings.

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

The Examiners rely on the Detailed Measurement Survey (DMS) carried out by the Myanmar Government to conclude that the compensation levels were calculated correctly. We can only respond from our firsthand knowledge that the compensation levels are inadequate to replace what we have lost. The amount allotted to families who chose to build replacement houses themselves was less than the half the amount necessary, and many of us were forced to use the crop and livestock compensation to supplement the housing allowance. This left us with little to support our families in light of the lack of livelihoods to replace our former agricultural livelihoods. Moreover, as we have repeatedly told JICA, we did not sign relocation agreements freely or based on adequate information, and we are troubled by the Examiners’ conclusion that our signatures on the agreements are enough to absolve JICA of responsibility for independently confirming compliance with the Guidelines.

The Examiners relegate the issue of land-based compensation to a later section in the report, which, while understandable, fails to recognize the ways that the forms of deprivation that we have experienced are interlinked. If we had been adequately compensated for our lost land or given replacement land, then our families might be able to withstand the sub-standard levels of compensation for crops, livestock and houses.

(7) 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.

As we have already stated and as is documented in the PHR report, the majority of relocated residents did not see the RWP or IRP before they were relocated. Those who did see these documents did not have the opportunity to meaningfully contribute to their development. We also reiterate that many of the relocated families felt coerced into signing the resettlement and compensation agreements.

(8) JICA Guidelines Appendix 1, § 7, ¶ 2 – JICA’s responsibility to provide compensation for lost land.

We have already explained in the previous section some of the reasons that the Examiners’ findings about the land ownership in Thilawa are inaccurate. JICA and the Examiners have believed what the Myanmar Government has told them about the situation of the land ownership without doing their own legal investigation. We would like to repeat the requests from our formal objection for JICA undertake an independent inquiry into the status of the land and to work with the Yangon Regional Government to assess whether there is replacement land nearby the SEZ that can be given as compensation. The Examiners write that the government decided to offer income restoration instead of replacement land because “there was no new land available to be developed or fallow fields to be offered in the surrounding area.” We were never made aware of the process by which the government came to this conclusion and believe that we as affected people should be involved in the process of investigating and identifying land that could be allocated to us to replace what we have lost. If replacement land is truly not available, then JICA must work with the government to provide adequate compensation.

(9) 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.

We find that the Examiners’ conclusions on this point do not look at the substance of JICA’s obligation under the Guidelines to ensure that affected persons should enjoy a standard of living that is at least equal to their standard of living prior to displacement. Instead, the Examiners focused on the fact that the RWP includes “steps to restore livelihood and grievance redress mechanism.” The Examiners appear to concede that only a small percentage of former farming households have found new jobs and does not even consider the impacts of the resettlement on households that had other sources of income prior to resettlement. However, they credit unspecified reports that we have become lazy and are trying to live off the meager lump sum payments instead of seeking work. The Examiners conclude that the real problem here is not the lack of income but our “anxieties” leading to the lack of a stable environment for the community. They counsel us to wait until we “get used to the new job market, have [our] willingness to secure stable jobs, and restore [our] livelihoods.”

We submit that many families at the resettlement site have already run out of funds, have become

indebted to predatory lenders in arrangements that put our homes at imminent risk, and have no realistic prospects finding new jobs in time to prevent serious hardship to us and our families. The PHR report makes clear that nutritional standards have decreased perilously, as have many other indicators of standard of living. In the face of this reality, we fail to see how the Examiners can conclude that JICA has met its responsibility on this issue.

4. Problem solving methods and continuous support

We welcome the Examiners' recommendations for tripartite meetings, with JICA as an arranger or facilitator of the meetings. In the past, JICA has said that it is not their role to do this, so we hope the local staff will abide by this suggestion. We also welcome the participation of local and international NGOs in these meetings.

JICA and the Examiners have a perception that one of the lessons learned from the Class A Area is that the affected communities tend to focus on the amount of monetary compensation and ask for early payment. But it is not true. The displaced villagers came to need financial support or compensation because of the hurried and forced relocation, without income restoration programs active on the ground.

JICA and the Examiners also mentioned some successful cases, e.g. (1) one family used compensation to purchase new farmland; and (2) a household rented some farmland from others to continue farming. We have never heard about the first case where the villager could purchase new farmland. In the second case, we don't take this to be successful, because the farmland that was rented is not of good quality compared to the previous farmland, and the person in question actually fell into debt this year due to the poor yields and high quota of rice he was required to provide to the land owner. Furthermore, the capital for inputs came from income the farmer made from renting out agricultural machines and cows. From our observations:

- It is difficult to rent or buy farmland with the small amount of compensation that has been received for the few acres of land held by small-scale farmers in the Phase I (Class A) area;
- It is difficult to find the capital money for inputs, such as fertilizer, wages for laborers, etc., without any other livelihood; and,
- It is difficult to find the farmland that the owner is willing to lend. And even if we could find land, it would likely not be of good quality.

We would like to reiterate our gratitude for the Examiners' time and effort in investigating our request. However, we feel that this report does not adequately address the damages we have experienced or the failures of JICA to follow its own Guidelines.

Sincerely,

Khine Win

Kyaw Win

Mya Hlaing

Contact Information of the Requesters:

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Appendix 1
Photos of Flooding in the Myaing Thar Yar Relocation Site on November 7, 2014



Photo 1 – Flooding in the housing lot.



Photo 2 – Flooding in the housing lot.



Photo 3 – Flooding around a water well.



Photo 4 – Flooding around a water pump.