

Investigation Report

Thilawa Special Economic Zone

Development Project

In

The Republic of

the Union of Myanmar

November 2014

**The Examiner for the JICA guidelines
for environmental and social considerations**

About the Examiners for the Guidelines

To ensure compliance with the “Guidelines for Environmental and Social Considerations” published in April 2010 (hereinafter referred to as the “Guidelines”) of Japan International Cooperation Agency (hereinafter referred to as “JICA”), JICA has appointed external examiners for the Guidelines (hereinafter referred to as the “Examiners”), who are to report their findings directly to the President of JICA (hereinafter referred to as the “President”) and are independent from the departments of JICA responsible for individual projects and environmental analysis (hereinafter referred to as the “Operational Departments”).

The two primary objectives of the Examiners system are as follows:

1. To investigate alleged non-compliance by JICA to establish the facts of the case and report the results to the President, aiming to ensure JICA’s compliance with the Guidelines.
2. To encourage dialogues among the parties concerned, such as the parties that submitted objections (hereinafter referred to as the “Requesters”) and the borrower countries or the parties that carry out the project (hereinafter referred to as the “Project Proponents”), by their mutual consent, to promptly solve specific environmental and social disputes arising from JICA’s non-compliance with the Guidelines in the context of JICA-supported projects.

The Examiners are required to achieve the objectives in compliance with basic principles set forth in the Guidelines - independence, neutrality, efficiency, promptness and transparency -.

Processing Requests

JICA’s objection procedures are explained in “Objection Procedures Based on the Guidelines for Environmental and Social Considerations” published in April 2010 (hereinafter referred to as the “Objection Procedures”). Upon the receipt of a request (hereinafter referred to as the “Request”), the Examiners shall take the following procedures:

1. Acceptance of a Request and Notifications to the Requesters and the Project Proponents

The Examiners shall, so long as the names and the contact information are stated in the Request, notify the Requesters, the Project Proponents, and the Operational Departments of the acceptance of the Request within five (5) business days after the receipt of the Request.

2. Preliminary Investigation

The Examiners shall check the Request, by means of writing, whether it includes the contents required in the Objection Procedures. Unless there are any special circumstances that prevent the Examiners from doing so, a preliminary investigation will, in principle, be completed approximately one (1) month after the acceptance of the Request, and a decision whether to

commence the Objection Procedures will be made.

3. Decision to Commence the Procedures

Upon the confirmation that the Request satisfies the requirements set out in the Objection Procedures and the descriptions in the Request allege facts that give reasonable cause to commence the Objection Procedures, the Examiners shall decide to commence the Objection Procedures, and send a written notice that includes the decision and the reasons for the said decision shall be given to the President, the Requester, the Project Proponents and the Operational Departments.

When the Examiners have decided to reject the Request, a written notice that includes the decision and the reasons for the said decision shall be given to the President, the Requester, the Project Proponents and the Operational Department.

4. Investigation of Facts of Alleged Non-compliance with the Guidelines

In order to establish the facts behind alleged JICA's non-compliance with the Guidelines, the Examiners may meet with and interview the Requesters. The Examiners shall interview the relevant persons in the Operational Departments and establish the facts regarding environmental the environmental and social considerations taken as well as the facts regarding the subsequent monitoring performed prior to the relevant decisions. The Examiners are entitled to access any and all materials used by the Operational Departments in confirming environmental and social considerations and the monitoring. In addition, in order to resolve the disputes, the Examiners may mediate conflicts and encourage dialogues among PAPs who have been adversely impacted by the project, including the Requesters, and the Project Proponents.

5. Report to the President

Within two (2) months after the commencement of the Procedure, the Examiners shall prepare a report on the results of the investigation of the facts behind alleged JICA's non-compliance with the Guidelines, the progress of dialogues, and the agreement reached between the parties concerned, if any, and shall submit the report to the President. If the Examiners believe that more time is required for the investigation or for encouraging dialogues, the Examiners may report to the President the reasons why an extension is indispensable. When the President judges that there is a fair amount of unavoidable reasons to extend the period, the President may extend the period up to two (2) months.

Immediately after the submission of the Examiners' report to the President, the report shall be sent to the parties concerned. The parties concerned may then submit the Examiners their opinions on the Examiners' report.

6. Opinions from the Operational Departments

Within one (1) month after the receipt of the report, the Operational Departments may, if deemed necessary, present their opinions on the Examiners' report in writing to the President,

and if a non-compliance decision has been made in the report, the measures to achieve compliance with the Guidelines should be set forth in their opinions.

Acknowledgments

This report was prepared in response to the Request regarding Thilawa Special Economic Zone Development Project.

As stipulated in the Objection Procedures, the objective of an investigation by the Examiners is (i) to find the facts whether JICA has complied with the Guidelines or not and (ii) to encourage dialogues among the parties concerned, to promptly solve specific environmental and social disputes of JICA-supported projects, thereby ultimately encouraging JICA's compliance of the Guidelines. Therefore, the Project Proponents are not subject to the investigation. The Objection Procedures require the Examiners to report the investigation findings to the President within two (2) months (or four (4) months at the longest, if extended), after the commencement of the procedures. Thus, within the limited timeframe and based on the information made available to them, the Examiners prepared an investigation report, which includes the results of fact-finding as to whether there was alleged JICA's non-compliance, the status of dialogues and an agreement among the parties concerned, if a reconciliation has been reached.

The Examiners would like to take this opportunity to thank you all who cooperated in preparing this report. In particular, we express our appreciation to the Requesters (including their supporting groups) for providing information and their trust in these Objection Procedures, to the Myanmar government for kindly offering us additional information and to JICA's Operational Departments and staff members for providing information, respectively.

November 2014

The Examiners for the Guidelines

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This English text is a translation of Japanese version for the reference purpose only and in case there is any discrepancies between English and Japanese, the Japanese versions shall prevail.

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Abbreviations and Acronyms

ADB	Asia Development Bank
DMS	Detailed Measurement Survey
EIA	Environmental Impact Assessment
FAQ	Frequently Asked Questions
IRP	Income Restoration Program
JICA	Japan International Cooperation Agency
NGO	Non-Governmental Organization
MOC	Ministry of Construction
OP	Operational Policy
PAPs	Project Affected Persons
RWP	Resettlement Work Plan
SEZ	Special Economic Zone
TSDG	Thilawa Social Development Group
WS	Workshop
YRG	Yangon Region Government

Units

Acre	1 Acre = 4,046m ²
ft	1ft = 0.3048m
ha	1ha = 10,000m ²
kyats	1kyats (MMK) = 0.112JPY (October 2014)

1. Outline of the Request Received

The Examiners received the Request as attached hereto as Appendix 1 from the Requesters who are 3 the PAPs on 2 June 2014, to which the Examiners sent the notice of acceptance on 6 June 2014 and commenced a preliminary investigation.

The outlines of the Request (Appendix 1) received are as follows:

- (1) Name of the Country: the Republic of the Union of Myanmar
- (2) Project Site: Thilawa area, Yangon Region, Myanmar
- (3) Name of the Project:
 - (i) Thilawa Special Economic Zone (Class A Area¹) Development Project
 - (ii) Thilawa Special Economic Zone (2,000ha) Development Project
- (4) The damages alleged in the Request:
 - (i) Loss of farmland and/or access to farmland
 - (ii) Loss of livelihood opportunities
 - (iii) Impoverishment
 - (iv) Loss of educational opportunities
 - (v) Substandard housing and basic infrastructure
 - (vi) Loss of access to adequate clean water

(5) Provisions of the Guidelines alleged to have been violated by JICA :

(i) 1.1 Policy

Paragraph 3

“Democratic decision-making is indispensable for environmental and social considerations. It 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.”

(ii) 1.4 Basic Principles Regarding Environmental and Social Considerations

(Principle 4. JICA asks stakeholders for their participation.)

“JICA incorporates 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. JICA replies to stakeholders’ questions. Stakeholders who participate in

¹ The first phase, 400ha, of the Thilawa Special Economic Zone Development Project is located in about 23 kilometers south east from the central Yangon in Myanmar.

meetings are responsible for what they say.”

(iii) 1.5 Responsibility of JICA

“While the Project Proponents take the initiative to deal with the environmental and social considerations of projects, JICA provides support for and examinations of the environmental and social considerations that the Project Proponents implement in accordance with Sections 2 and 3 of the guidelines, depending on the nature of cooperation projects.”

(iv) 2.5 Concern about Social Environment and Human Rights

“1. Environmental and social factors are affected by the social and institutional conditions of host countries and by the actual conditions of each project location. Therefore, JICA fully takes these conditions into account when examining environmental and social factors. In particular, special consideration must be taken for cooperation projects when disclosing information and holding consultations with local stakeholders, after obtaining understanding from the host governments in countries and areas affected by conflict or where basic freedoms, including freedom of expression and the right to receive legal remedy, are restricted.”

“2. JICA respects the principles of internationally established human rights standards such as the International Convention on Human Rights, and gives special attention to the human rights of vulnerable social groups, including women, indigenous peoples, persons with disabilities, and minorities, when implementing cooperation projects. JICA obtains country reports and information widely about human rights that are issued by related institutions, and seeks to understand local human rights situations by disclosing information about cooperation projects. Thus, JICA integrates local human rights situations into decision-making processes that relate to environmental and social considerations.”

(v) Appendix 1. Environmental and Social Considerations Required for Intended Projects
Involuntary Resettlement

“2. People who must be resettled involuntarily and people whose means of livelihood will be hindered or lost must be sufficiently compensated and supported by the Project Proponents in a timely manner. Prior compensation, at full replacement cost, must be provided as much as possible. The Project Proponents 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. Measures to achieve this may include: providing land and monetary compensation for losses (to cover land and property losses), supporting means for an alternative sustainable livelihood, and providing the expenses necessary for the relocation and re-establishment of communities at resettlement sites.”

“3. Appropriate participation by affected people and their communities must be promoted in the planning, implementation, and monitoring of resettlement action plans and measures to prevent the loss of their means of livelihood. In addition, appropriate and accessible grievance mechanisms must be established for the affected people and their communities.”

“4. For projects that will result in large-scale involuntary resettlement, resettlement action plans must be prepared and made available to the public. In preparing a resettlement action plan, consultations must be held with the affected people and their communities based on sufficient information made available to them in advance. When consultations are held, explanations must be given in a form, manner, and language that are understandable to the affected people. It is desirable that the resettlement action plan include elements laid out in the World Bank Safeguard Policy, OP 4.12, Annex A.”

2. Findings of the Preliminary investigation findings

The Examiners conducted a preliminary investigation of the Request, as follows:

- (1) 2 June 2014: Receipt of the Request
- (2) 6 June 2014: Issuance of the Notice of Acceptance and commencement of a preliminary investigation
- (3) 4 July 2014: Publication of the findings of the preliminary investigation (decision to commence the Procedures) as attached hereto as Appendix 2.

3. Findings of the Investigations of the Alleged Facts and the Status of Dialogues

3.1. Outline of the interviews conducted by the Examiners

After the decision to commence the procedures was made, the Examiners conducted interviews to find the facts alleged in the Request, as follows:

- (1) 15 July 2014: Interview with the Operational Departments
- (2) 16-20 July 2014: A field-visit investigation conducted by Dr. Harashina, one of the Examiners (hereinafter referred to as the “Field Visit”): Interview with 40 people, including the three Requesters
- (3) 15 August 2014: Interview with the Operational Departments

3.2. Findings of the investigation of the alleged damages

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

- (i) Summary of the Requesters’ allegation

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. Although a small number have worked as laborers in clothing and zinc factories, on local shrimp farms or in form of small-scale commerce, many of these families also had gardens at home. Therefore, the majority have relied on land-based livelihood strategies. The 81 households that have already been displaced in the first phase of the Thilawa Special Economic Zone (Class A Area) Development Project have completely lost the farmland they previously occupied and/or owned.

- (ii) Summary of the Operational Department’s explanation

Since the whole land located in the Class A Area to which the Request was made was expropriated by the Myanmar government in 1997, and the right to own and to use the land has been vested in the Myanmar government since then (persons affected by the 1997 land expropriation were paid compensation at that time based on the mutual agreement), the PAPs do not have the legal right to the land at all.²

Although the PAPs do not have the legal right to the land in Class A Area, giving consideration to the fact of their residence and farming practices in the land concerned, the Myanmar government prepared plans: 1) for those who had their houses in Class A Area, a plan to develop housing sites and provide them with land and houses; and 2) for those who cultivated the farmland in Class A Area, a plan to offer compensation and/or assistance to compensate for

² “Status of the farmland in the SEZ and the details of the 1997 land expropriation and compensation” (“The Land Expropriation and Compensation”)

the loss of their livelihood. During the process, the government examined the possibility of securing substitute farmland. Nevertheless, since there was no new land available to be developed or fallow fields to be offered in its surrounding area, the government found it difficult to provide the PAPs with substitute farmland without another land acquisition and resettlement, the Myanmar government proposed to pay compensation and/or assistance in an amount equal to a few times their annual income depending on the kinds of farm products, instead of offering substitute farmland,³ to compensate for the loss of livelihood, and to support livelihood restoration. Thus, their loss of access to farmland is true. However, the PAPs agreed to the resettlement and compensation plans presupposing that the PAPs would give up farming, and the government has been currently implementing the IRP for the resettled people who wish to have support for restoring their livelihoods.

(iii) Examiners' findings of facts

We confirmed the documents signed by the residents concerned regarding the compensation payment for the 1997 land expropriation.⁴ In addition, after the 1997 land expropriation, the Myanmar government decided to allow limited use of the land to the persons who started to reside in or cultivate the land in Class A Area (regarding which the Request is made), and JICA has acquired and confirmed a sample form of the Myanmar government's notice informing the persons concerned of the above decision. The sample form that the persons acknowledge they will leave the land without demanding any compensation when the development commences on the land.⁵

The RWP concerning the PAPs states that the breakdown of the households impacted by the project is as follows: by main source of income, 24 rice-farming households (29.6%), 6 commercial farm households (7.4%), 2 households engaging in animal husbandry (2.5%) and others (49 households); by main and secondary sources of income, of all 126 households, 26 rice-farming households (20.6%), 13 commercial plants farm households (10.3%) and 3 households engaging in animal husbandry (2.4%), and others (84 households).⁶ Accordingly, it is estimated that approximately 30-40% of the PAPs had made livings by rice-farming and animal husbandry.

We should note, however, that the RWP's statistics do not include any impacts of land loss on the households that had grown vegetables and fruits for their own consumption in gardens at home as explained by the PAPs, and the resettlement may have adversely impacted the households that did not depend on farming as the main source of income as well. Although a

³ Compensation for loss of income sources/livelihood (regardless of main or secondary income) is as follows: Rice Farmer: Compensation for 6 times the annual yield amount in total in the current market price, Vegetable/ Tree Farmer: Compensation for 4 times the annual yield amount and/or number of trees in total in the current market price.

⁴ The Land Expropriation and Compensation

⁵ Approval for Cropping

⁶ RWP, p.12, Table 3-14

few households have started growing vegetables and fruits in gardens at home after they moved to a new location, these activities are outside the scope of the support. In addition, no consideration has been paid to the fact that they had depended on wild foods, including mushrooms, frogs, and fishes.

As mentioned above, it is true that the 81 households who had to resettle (of which, 68 households resided in the Class A Area) have lost the farmland they had used, and in this respect, we cannot deny that they were “negatively impacted” by the resettlement. It is, however, also true that the plan for the resettlement concerning the Class A Area is to compensate the PAPs for the land loss and assist them restore their means of living other than farming, in place of the provision of alternative farmland, presupposing that the PAPs are required to give up farming.

The above-mentioned “negative impacts” refers to any unfavorable impact on the PAPs, as a matter of fact, regardless of whether they are compensated for these unfavorable impacts, or caused by acts of non-compliance with laws, regulations or the Guidelines (and the same shall apply hereunder).⁷

(2) Loss of livelihood opportunities

(i) Summary of the Requesters’ allegation

The PAPs lost their land-based livelihoods and the resettlement occurred 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, about 40 households that had been independent prior to the resettlement have lost their sources of income and have no prospect that they can have sustainable sources of income in the near future.

(ii) Summary of the explanation by the Operational Departments

It is true that “the PAPs lost their land-based livelihood,” and in many cases, they had to move “prior to the development of new livelihood opportunities.” Considering from the beginning that several years would be required for the resettled persons to restore their income sources, the Myanmar government has arranged the RWP to include the 3-year period of IRP (2014-2016) with subsequent 2-year period of monitoring.⁸ During the above-mentioned periods, compensation and/or assistance in an amount equal to a few times their annual income were provided for the resettled persons who had been engaged in farming, depending on the type of farm produce.⁹

⁷ This point shall also be applied to the “negative impact” mentioned in the following paragraphs.

⁸ RWP, p.p.32-34

⁹ RPW, p.p.25-26

Prior to the resettlement, at the third Consultation Meeting (held on 30 July 2013), the PAPs received an explanation that the compensation and assistance framework would include the IRP. The RWP Outline was presented at the 4th Consultation Meeting (on 21 September 2013), during which a framework of the plan concerning the IRP was also presented. Then, the PAPs received an explanation on compensation, grievance redress mechanism and so forth at the group and individual meetings held thereafter.

The RWP lists the examples of technical support for income earning activity including: housing management, mechanical work, construction work related to the SEZ and wood-based carpentry, food processing, tailoring and dress making, store-keeping, small-scale animal husbandry and farming around the SEZ, and also outlines implementing institutions of technical support and duration of vocational training.

According to the interviews by JICA experts with the resettled persons in the resettlement site (conducted in March 2014, and which were responded to by all 42 households that resided there at the time of the interviews), of 42 households, 29 heads of households found employment, 6 heads of households were looking for jobs and 7 heads of households were retired and were receiving pensions.¹⁰

(iii) Examiners' findings of facts

the resettlement plan concerning the Class A Area presupposes that the PAPs give up farming and in this respect, it is true that they have lost their "land-based livelihoods." It is expected that a certain period of time is required for the PAPs to adjust to the new work style other than farming, become willing to have a stable job, and restore a sustainable livelihood. At the time of this investigation, except for day workers and public servants, 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 they have employment opportunities as day workers. In this respect, therefore, we do not deny that the PAPs, including the Requesters, are negatively impacted by the resettlement.

(3) Impoverishment

(i) Summary of the Requesters' allegation

Almost all of the displaced persons who lost their land, income sources and houses are in harsh conditions. More specifically, they were not eligible for crop or livestock-based compensation and have had to survive on inadequate transitional assistance. About 10 households fall under this category.

(ii) A summary of the explanation by the departments responsible for the project

¹⁰ Livelihood Survey conducted by JICA Experts

The PAPs have been provided with compensation and/or assistance for the loss of livelihood as explained below in detail. Based on the agreement, rice farmer has been provided with [cash] compensation for 6 times the annual yield amount in total of the market price, and vegetable/tree farmer has been provided with [cash] compensation for 4 times the annual yield amount or number of trees in total, respectively, of the market price.¹¹

The Myanmar government did not provide the PAPs with non-land-based income (e.g., day workers, public servants and carpenters) with compensation and/or assistance for the loss of their livelihood, as the resettlement does not deprive them of their livelihood. The government, however, provided them with compensation for 7 working days with 4,000 kyat per day per person (28,000 kyat in total per person), moving allowances (150,000 kyat per household), commuting expenses (72,000 kyat per person) and cooperation allowance (1-time [cash] compensation of 100,000 kyat (lump-sum) per household). In addition, the Myanmar government prepared a plan to develop the resettlement site and offer substitute land and houses to those who [reside/have houses] in the Class A Area. The government met and discussed with the PAPs and integrated their opinions and requests into the plan. The compensation and assistance plan was eventually agreed by the PAPs as stated above.¹²

According to the interviews held by JICA experts with the resettled persons (conducted in March 2014, and which were responded to by all 42 households that resided there at the time of the interviews), resettlement site out of 11 heads of households that depended on wages as day workers prior to the resettlement, 10 heads of households now work as day workers (4 heads of households have continued to do the same jobs as day workers as they did before), and 1 head of household has opened a small-scale shop in the resettlement site.

(iii) Examiners' findings of facts

In the Field Visit, some claimed to have borrowed money to build their houses, while the others denied the impoverishment by the resettlement. Furthermore, some PAPs bought home appliances and/or motor bikes with the cash compensation that was provided. It is difficult to grasp the actual status of their debts due to the privacy information.¹³ As the debt is merely a result, we should carefully study the cause of the debt when we investigate whether or not the damages incurred. Even if impoverishment accelerated, all of the impoverishment cannot be regarded as negative impacts suffered by the Requesters from the resettlement itself.

While cash compensation for seven working days was provided for the loss of employment as explained by the Operational Departments, no other compensation has been paid for the loss of

¹¹ RWP p. 25

¹² RWP p. 26

¹³ Response No. 1 from the Operational Departments Point 7 , Response No. 2 from the Operational Departments Point 1-5

employment. In addition, without the sustainable livelihood, there is a risk that the PAPs may suffer further impoverishment in the future. It is understandable that the PAPs feel anxious about living on the cash compensation and/or assistance that were provided, and thus restoring a sustainable livelihood at the earliest possible time is required.

(4) Loss of educational opportunities

(i) Summary of the Requesters' allegation

For some families, the cost for transportation was too high and pupils had to drop out. For instance, commuting between the resettlement site and their previous school by motorbike taxi costs 3,000 kyat (USD 3.09) per day. In addition, for the upcoming school term, which begins in June 2014, the Thilawa SEZ Management Committee has made no preparations for the education of 52 pupils from the resettlement 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 pupils due to lack of space. Furthermore, on 28 May 2014, the school headmistress of Taman Oo school in Myaing Tharyar said that she had been forced to accept the pupils' registration despite the considerable challenge that an additional 52 pupils will pose in the classroom.

(ii) Summary of the explanation by the Operational Departments

Since the resettlement occurred in the middle of a school term, as per the PAPs' requests, their pupils continued to go to their old school immediately after the resettlement. The Myanmar government agreed to provide the persons concerned, based on the results of the discussions with them, with additional financial assistance, i.e., 400 kyat per person per day to cover commuting expenses by ferry bus, (an amount equivalent to 4 months' commuting expenses by ferry bus), (although only 2.5 months were left before the school term ends, further 1.5 months were added just in case.)¹⁴ 1 household decided not to send 1 of their children to his old kindergarten temporarily before he moves to a kindergarten in the resettlement site. The hearing survey has found out that the family has 3 children and commuting expenses for 3 children were too much for the family and they had to give up sending their youngest child to his previous kindergarten temporarily.¹⁵ Note that bike taxi is a relatively expensive method of transportation for those who do not have their own transportation for a short distance move.¹⁶

The Myanmar government issued a recommendation letter to the school near the resettlement site with a list of pupils who wanted to be admitted to the school in the new school term starting in June 2014, and prompted the school to ensure that new pupils would be accepted without troubles. Consequently, all of the pupils were enrolled in the new school.

¹⁴ Response No. 1 from the Operational Departments Point 9

¹⁵ Response No.1 from the Operational Departments Point 9

¹⁶ The 2nd interview with the Operational Departments

In addition, due to a good reputation of the school near the resettlement site, the PAPs in the resettlement site requested that the children of their relatives, who were not affected by the project, should be also admitted to the school. Initially, the school was reluctant to accept the admissions of pupils who are not relocating, due to limited numbers of classrooms and chairs. However, since the PAPs strongly requested for their admissions, the Myanmar government requested that the school should cooperate and, as a result, all 45 pupils were admitted to the school.

The Myanmar government was planning to solve the expected shortages of facilities, such as desks and chairs due to overcapacity. Then, some parents contributed some money to buy desks and chairs, and assistance from the government was no longer needed.

Increases in the number of pupils occurred, partially because the Myanmar government changed its policy by which junior high school education became free around the same time.¹⁷

(iii) Examiners' findings of facts

Despite temporary confusion due to the resettlement that occurred in the middle of the school term and the launch of the free junior high school education by the Myanmar government, the Field Visit has confirmed that all pupils now go to their new schools/kindergartens. Thus, our findings indicate that the Requesters are not negatively impacted concerning their children's education at this point in time. Nevertheless, since those who were resettled may be feeling anxious about sending their children to their new schools/kindergartens, continuous support will be required to help reduce anxiety.

(5) Substandard housing and basic infrastructure

(i) Summary of the Requesters' allegation

The site to which the first group of 68 households resettled was prepared hastily and incompletely. Houses were erected over the course of barely 1 month, raising concerns of their structural integrity given the muddy, sandy nature of the soil on which they were constructed. In addition, drainage facilities are also inadequate. 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.

(ii) Summary of the explanation by the Operational Department

Initially, the Myanmar government planned to build houses for all the households to be resettled. However, at the Consultation Meetings, many of the PAPs requested that they should build their own houses and the Myanmar government accepted their requests. In that process, both parties agreed that in case where the PAPs would build their own houses, the Myanmar

¹⁷ Response No. 1 from the Operational Departments Point 10

government would make staged payments of 2,500,000 kyat in total to them, assuming that a construction period would be 2-3 weeks, they must complete construction approximately by the end of November 2013, and the houses to be built must meet the specifications presented by the government¹⁸.

PAPs started building their own houses on around 10 November 2013. No house was completed by the end of November. These houses were completed between mid-December 2013 and end-January 2014. The construction of 12 houses by the government started on 13 November. Four (4) of them were completed on 22 November, and 8 were completed on 27 November, except for the installment of electricity meters.¹⁹

The structures of the houses in the resettlement site are not so poor and weak, compared to other houses in the neighboring areas. While some houses have a foundation structure that is equivalent to the mat foundation in Japanese houses, the majority of the houses in the resettlement site have concrete block foundations that serve as a basis for the pillars.²⁰

Most parts of the drainage facilities are covered with concrete tops (though partially open), and the side walls of the drainage channels are cut at some parts to discharge waste water in residential areas into the drainage channels. Even the open drainage channels should work to a certain extent, unless artificially generated problems that may hinder drainage occur, such as when a large amount of rubbish and waste is thrown into them.²¹

(iii) Examiners' findings of facts

The PAPs were provided with either the houses constructed by the government or payment with which to construct by themselves houses equivalent to those constructed by the government, if they wished to do so. Therefore, there are no PAPs who are suffering from the loss of their houses due to the resettlement.

Some households moved into new houses before they were completed. In this regard, JICA has obtained documents signed by the PAPs from the Myanmar government as examples to confirm the PAPs' intention that "they voluntarily move into new houses prior to the completion of the infrastructure in the resettlement site" and confirmed it.²²

Within the limited timeframe, the Field Visit had to focus on interviews, because there was insufficient time to conduct a detailed technical survey. Under such circumstances, at least, at

¹⁸ Response No. 1 from the Operational Departments Point 11

¹⁹ Response No. 1 from the Operational Departments Point 11 , RWP (p. 25)

²⁰ Response No. 1 from the Operational Departments Point 11

²¹ Response No. 1 from the Operational Departments Point 12 , Response No. 2 from the Operational Departments Point 2-2-1

²² Response No. 2 from the Operational Departments Point 2-3

the time of the Field Visit, no significant defects in the structures of the houses and drainage facilities were found. Therefore, our findings indicate that the Requesters are not negatively impacted in this regard. However, it is recommended that JICA continue to pay attention to the development of the infrastructure in the resettlement site, including drainage facilities, roads, and street trees.

(6) Loss of access to adequate clean water

(i) Summary of the Requesters' allegation

Only 2 out of 4 water pumps at the site are currently functional. In addition, the water from these pumps is muddy and is not suitable for drinking. There are also 2 open wells that have algae growing on the surface. Thus, the relocated villagers now only have limited access to clean water.

(ii) Summary of the explanation by the Operational Departments

It is true that initially, there were problems with the quality of the well water.²³

The Myanmar government made efforts to address the issue, as exemplified by the repair work conducted in March and May 2014. However, since no significant improvement was made in the well water quality, JICA made a proposal for digging wells that sunk through an impermeable stratum into an aquifer (confined aquifer) to the Myanmar government on 6 June 2014. In compliance with the proposal, the Myanmar government started digging wells on 14 June 2014. As of 11 August, 2014, 7 wells, including 4 deep wells, are usable. 5 wells are used by the PAPs every day, of which, 4 wells provide drinking water. Thus, at the present, the issues on clean water supply have been drastically improved.²⁴

(iii) Examiners' findings of facts

Some inconveniently located wells prevent the PAPs from using them frequently, results, in turn, in deteriorated water quality, as confirmed by the Field Visit. A reason behind this may be that insufficient attention was paid to the PAPs' opinions in planning where to build the wells. Thus, there had been issues on clean water supply in the resettlement site, including the selection of the location of the wells. However, responding to the opinions of the PAPs, the Myanmar government, with the advice of JICA experts, dealt with the issues by building deep wells, etc. As a result, a certain level of improvement has been made at this point, as confirmed by the Field Visit. Therefore, our findings indicate that the Requesters are not negatively impacted at this point in time.

Nevertheless, since clean water supply is crucial issues for the livings of the PAPs, the monitoring of the water quality needs to be continued to ensure that no issues occur concerning

²³ Response No. 1 from the Operational Departments Point 13, Point 24 and Point 25

²⁴ Response No. 2 from the Operational Departments Point 2-1

well water quality, until the well water continuously meets the acceptable quality level

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

(1) JICA's responsibility to ensure "accountability" when implementing cooperation projects (Paragraph 3 of Section 1.1 (Policy) of the Guidelines)

(i) Summary of the Requesters' allegation

Both the RWP and the EIA do not meet the criteria described in the Guidelines. (The details are mentioned later in (G).) In addition, throughout the project planning and implementation processes, 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 livelihood plans. JICA fails to fulfill its accountability as described in Paragraph 3 of Section 1.1 (Policy) of the Guidelines (see 1.(5) (i) above), although JICA is responsible for ensuring that the YRG fully complies with the JICA Guidelines to mitigate any negative impacts on the communities.

(ii) Summary of the explanation by the Operational Departments

It can be considered that the RWP and the EIA cover the items and contents required by the Guidelines and the relevant OP of the World Bank's safeguards policies²⁵ (the details are mentioned later in (7)), and that the preparation process of the RWP and the EIA was appropriate since a series of Consultation Meetings were held, and the RWP was prepared by taking into consideration their requests during the course of subsequent group and individual meetings.²⁶

In addition, in order to properly reduce the negative impacts of involuntary resettlement on the PAPs and the communities, JICA has dispatched a team of experts from the planning phase of the project, has been working with the Myanmar government, and has been conducting monitoring with a focus on the implementation of a DMS, the stakeholder participation, transparency and sufficient provision of information, the adequate dialogues with the PAPs and the effective implementation of the IRP.²⁷

Specifically, JICA dispatched 7 experts to Myanmar, and since May 2013, JICA had at least 1 of these experts remain in the country to continuously provide support and conduct monitoring activities, while JICA had 3-5 experts stay in the locality to conduct activities whenever important events occurred. The said team of experts employed a total of about 20 Burmese experts, and conducted the DMS, assisted consultations with the PAPs and engaged in monitoring activities together with such Burmese experts. JICA has established a framework

²⁵ Response No. 2 from the Operational Departments Point 4-2-3

²⁶ Response No. 2 from the Operational Departments Point 4-2-4

²⁷ TOR of JICA Experts

in which to monitor local situations on a regular basis and in a timely manner, and worked on and assisted the Myanmar government whenever needed in a timely manner.

Accordingly, JICA refutes the objection of its alleged non-compliance with Paragraph 3 of Section 1.1 (Policy) of the Guidelines as groundless.

(iii) Examiners' findings of facts

As the Requesters describe their allegation that the RWP and EIA failed to meet the criteria described in the Guidelines in detail in (7), our judgments thereon are also described later in (7). Section 1.1 of the Guidelines states the policy and paragraph 3 of the section states, “[D]emocratic decision-making is indispensable for environmental and social considerations. It 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.” Based on the policy, the Guidelines stipulate that “JICA always considers environmental and social impacts when implementing cooperation projects.”

Through the experts dispatched to Myanmar that started in May 2013, JICA has been working on the Myanmar government to comply with the Guidelines and integrate environmental and social considerations into the project. Accordingly, our findings do not indicate that JICA has made non-compliance with the Guidelines.

(2) JICA's responsibility to reply to stakeholders' questions (Principle 4 of Section 1.4 (Basic Principles Regarding Environmental and Social Considerations) of the Guidelines)

(i) Summary of the Requesters' allegation

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. However, JICA did not take any appropriate action. Before giving any response to villagers, JICA made the decision to provide investment for this project. The above-mentioned practices are JICA's non-compliance with Principle 4 of Section 1.4 (Basic Principles Regarding Environmental and Social Considerations) of the Guidelines. (See 1.(5) (ii) above.)

(ii) Summary of the explanation by the Operational Departments

JICA received 5 letters from TSDG on 1) 29 October 2013, 2) 27 January 2014, 3) 5 February 2014, 4) 7 April 2014 and 5) 30 April 2014, respectively. All 5 letters were brought to JICA Myanmar Office by TSDG members in person, and have no return address on them but some individuals' mobile phone numbers are written as contact information.²⁸

²⁸ Response No. 2 from the Operational Departments Point 4-4-1

Prior to the receipt of the letter dated 1) above, as per the request of TSDG, JICA met and discussed with TSDG on 15 October 2013 in the suburbs of Thilawa.²⁹

After the receipts of the 2 letters from TSDG dated 1) and 2) above, JICA telephoned TSDG on 3 February 2014. According to JICA's record³⁰, the telephone call was to notify TSDG of the following: "JICA understands that the PAPs in the Class A Area, YRG and Thilawa SEZ Management Committee (hereinafter referred to as "TSMC") agreed on the resettlement and the assistance package. Currently, the PAPs, YRG and TSMC are closely cooperating in implementing the IRP. Therefore, if you have any problems, please contact YRG and TSMC first to discuss the issue among the parties concerned and find solutions."³¹

After the receipt of the letter dated 4) above, JICA telephoned TSDG on 28 April 2014. The telephone call was to notify TSDG of the following: "The Myanmar government is willing to meet with the PAPs in person to discuss the issues, JICA understands that the Myanmar government has seriously listened to the requests by the PAPs, and JICA has not detected the Myanmar government's non-compliance with the Guidelines."³²

In addition, JICA telephoned TSDG on 28 May 2014 to propose that a tripartite meeting of TSDG, the Myanmar government and JICA should be held on 30 May 2014. In fact, on 6 June 2014, JICA met with TSDG members and several others in Tokyo,³³ and on 8 July 2014, JICA succeeded to hold the first tripartite meeting in Yangon, Myanmar.³⁴

Furthermore, JICA continues to discuss the issues pointed out by TSDG with the Myanmar government and monitor the issues by JICA's experts dispatched to the country.

Therefore, JICA refutes the objection of its alleged non-compliance with Principle 4 of Section 1.4 (Basic Principles Regarding Environmental and Social Considerations) of the Guidelines as groundless.

(iii) Examiners' findings of facts

²⁹ Response No. 1 from the Operational Departments Point 19

³⁰ Record of telephone conversation between TSDG and JICA Myanmar Office

³¹ Response No. 1 from the Operational Departments Point 19

³² Record of telephone conversation between TSDG and JICA Myanmar Office

³³ JICA's comment at the interview on 6 June: "JICA has been prompting the Myanmar government to respond to the PAPs in line with the international standards. It is imperative that dialogue between the Myanmar government and the PAPs over the resettlement issue is facilitated. JICA is not a negotiating party, and it is imperative that you discuss your problems with the Myanmar government." "JICA will create opportunities for you and the Myanmar government to meet and discuss the issues with the attendance of JICA, so please communicate what you have talked today to the Myanmar government. JICA will inform the JICA Office in Myanmar of what we have heard today." The minutes of the meeting between PAPs and JICA (6 June, 2014)

³⁴ The minutes of the first Tripartite Meeting (JICA, Mekong Watch)

It can be recognized that, after the receipt of the letters from TSDG, JICA responded to the letters by telephoning TSDG, and encouraged the parties concerned, including the Myanmar government, to hold meetings to solve the issues. As JICA responded to the issues pointed out by the stakeholders, our findings do not indicate that JICA has made non-compliance with Principle 4 of Section 1.4 (Basic Principles Regarding Environmental and Social Considerations) of the Guidelines.

However, assuming JICA had given impressions to some PAPs and/or NGOs that JICA did not respond to requests and questions from the PAPs more seriously and actively, it was desirable if JICA could have handled the requests with more prudence, for instance, by writing a reply letter (even if the letters from TSDG have no return address), in addition to phone calls.

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

(i) Summary of the Requesters' allegation

The EIA devotes a total of 2 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. In addition, 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 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. Thus, the inadequacy of the RWP and the EIA are patent on the face of the documents.

In addition, If JICA had provided adequate and appropriate support for the EIA and the RWP, it could have assured that the Project Proponents' plans for mitigating negative social impacts included these critical elements.

Thus, JICA is non-compliant with Section 1.5 (Responsibility of JICA) of the Guidelines. (See 1.(5) (iii) above).

(ii) Summary of the explanation by the Operational Departments

The Guidelines³⁵ state that “[i]t is desirable that the resettlement action plan include elements laid out in the World Bank Safeguard Policy.OP.4.12 Annex A,” and JICA has confirmed that the EIA and the RWP do not diverge from the relevant OP of the World Bank's safeguards policies.³⁶

³⁵ Item 4 of Section 7 (Involuntary Resettlement) of Appendix-1.

³⁶ Response No. 1 from the Operational Departments Point 18, Response No. 2 from the Operational Departments Point 4-2-3

At the time of the preparation of the EIA, the RWP was prepared under way, and the private company that prepared the EIA was not in a position to know the PAPs' situations and possible impacts of the project on them. Because of that, the descriptions on the social impacts of the project are limited on the EIA.³⁷ However, at the stage of the appraisal to review the environmental and social aspects of the Project, JICA has confirmed that the RWP supplemented the limited description of the social environment impacts on the EIA.³⁸

Based on the calculation basis for the [cash] compensation and/or assistance³⁹ and the Entitlement Matrix,⁴⁰ JICA has confirmed compensation levels and has also confirmed that the livelihood restoration of the resettled people is analyzed and considered in the IRP of the RWP.⁴¹

The EIA was completed after two (2) Consultation Meetings were held. With respect to the RWP, the outline of the RWP that included compensation and/or assistance and the IRP was provided at the Consultation Meeting; after the subsequent group and individual meetings, the draft RWP was published to solicit public comments, and thereafter the RWP was finalized. In addition, JICA, through the experts dispatched, monitored the processes on a regular basis and provided advice, where necessary.⁴²

With regards to livelihood restoration, as mentioned above, the RWP has a 3-year IRP to be implemented from the resettlement until 2016 (followed by 2 years of monitoring thereafter)⁴³ with an assistance package that consists of technical support such as training and job placement and the monitoring. Technical support includes those for: housing management, mechanical work, construction work in/around the SEZ area and wood-based carpentry, food processing, tailoring and dress making, store-keeping, small-scale animal husbandry and farming around the SEZ area.

Therefore, JICA refutes the assertion of alleged inadequacies in the RWP and the EIA and alleged JICA's non-compliance with Section 1.5 (Responsibility of JICA) of the Guidelines as groundless.

(iii) Examiners' findings of facts

JICA dispatched its experts to Myanmar from May 2013 to regularly monitor the RWP

³⁷ Response No. 1 from the Operational Departments Point 20

³⁸ Response No. 1 from the Operational Departments Point 20, Response No. 2 from the Operational Departments Point 4-2-5

³⁹ Calculation basis for compensation and assistance

⁴⁰ RWP, p. 24, Table 5-1

⁴¹ RWP, p. 32, p. 34,

⁴² TOR of JICA Experts

⁴³ RWP, p.p. 32-34

preparation process and offer advice to the Myanmar government. During the process, JICA confirmed that the EIA and the RWP do not deviate from the relevant OP of the World Bank's safeguards policies. In addition, while it seems given time to discussion for the PAPs was not sufficient, the outline of the IRP was included in the RWP which was completed prior to the commencement of the resettlement. Thus, our findings indicate that JICA has basically been assisting the Myanmar government in integrating environmental and social considerations into the project in line with Section 1.5 (Responsibility of JICA) of the Guidelines, and, therefore, our findings do not indicate that JICA has made non-compliance with the Guidelines.

Compensation levels will be mentioned later in (6) and (8).

(4) JICA's responsibility to take into account local human rights situations when conducting stakeholder engagement. (Section 2.5 (Concern about Social Environment and Human Rights) of the Guidelines)

(i) Summary of the Requesters' allegation

Many residents of the Class A Area, those who 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 did not move out immediately after the eviction order. At that time, army trucks arrived in the village and soldiers forced villagers onto the trucks. 2 of the Requesters experienced coercion to sign resettlement agreements. JICA should not have trusted the words by the officials of the local government that the consultation was conducted freely and properly, but JICA did believe what they had told. That is JICA's non-compliance with Section 2.5 (Concern about Social Environment and Human Rights) of the Guidelines. (See 1.(5) (iv) above.).

(ii) Summary of the explanation by the Operational Departments

Since May 2013, JICA has dispatched a team of experts to help the Myanmar government conduct the resettlement, prepare a compensation plan and hold consultations with the PAPs. The Burmese staff members of the team of experts monitored the consultations with the PAPs and reported the results to JICA from time to time. That is to say, JICA has made efforts to collect information from the Myanmar government, and, concurrently, directly checked whether or not the processes of discussing the contents of compensation with the PAPs and obtaining the PAPs' consents to the resettlement were voluntarily and properly made.⁴⁴

⁴⁴ Response No. 2 from the Operational Departments Point 3-8

Whenever new information was provided from external sources, JICA confirmed the information through its experts dispatched to Myanmar. In addition, JICA checked how the Myanmar government handled the issues at the consultations with the PAPs through the on-site visits by the Operational Departments or its Myanmar office and interviews with the PAPs. During these processes, JICA found no alleged threats.⁴⁵

Moreover, the followings were found: 1) many instances where the Myanmar government made concessions on the plans of compensation and/or assistance from the original ones, responding to the requests from the PAPs; 2) several instances where the assets of the PAPs were reassessed, responding to their request to change the results of the DMS, which may lead to increases in compensation and/or assistance to be provided, despite the prior agreement on the results of the DMS between the Myanmar government and the PAPs; and 3) instances where dialogues and negotiations continued over a long period of time due to the PAPs' objections to the proposals of the Myanmar government.⁴⁶

Thus, JICA has found no fact of alleged coercive measures and threats used by the Myanmar government, and has judged that it is appropriate to conclude that the officials of the Myanmar government well listened to the requests and demands of the PAPs while negotiating with the PAPs, and prepared the plans of compensation and/or assistance by integrating the requests of the PAPs into the government proposals.

Accordingly, JICA refutes the objection of its alleged non-compliance with Section 2.5 (Concern about Social Environment and Human Rights) of the Guidelines as groundless.

(iii) Examiners' findings of facts

The minutes (English version)⁴⁷ of the Consultation Meetings held 4 times in total concerning the RWP states that explanation was made to the PAPs that "*In the first case, you may need to settle the dispute at the court according to the existing law. You need to provide evidences such as land documents, and revenue tax in thise(sic) case.*"⁴⁸ Nevertheless, no description as alleged by the Requesters is found that if they would not accept the expropriation plan presented to them, the government would bring a lawsuit against them. (In addition, the Examiners made local lawyers in Myanmar check the minutes written in the Burmese language, and no description indicating the use of coercion or threats was found.)

On the other hand, while the explanation made at the above-mentioned Consultation Meetings is legally correct, the words not often used in daily life, such as "court" and "settle the dispute,"

⁴⁵ Response No. 2 from the Operational Departments Point 3-8

⁴⁶ Response No. 2 from the Operational Departments Point 3-8

⁴⁷ RWP, pp. AN4-2 - 4-37

⁴⁸ RWP, p. AN4-31

may have sounded as a “threat” to some PAPs. While it cannot be concluded that the PAPs were forced to sign the resettlement agreement, there is a possibility that the PAPs may have felt differently. At the Field Visit, some PAPs claimed that they had agreed voluntarily by their own decision and without threat, but some PAPs claimed to have been forced to sign the agreement.

37 households out of 81 project affected households signed the resettlement agreement 4 days after the 4th Consultation Meeting held on 21 September when the RWP Outline was presented to the PAPs, and the remaining households took more time to make decisions; provided, however, that the majority of the remaining households signed the agreement within 10 days of the 4th Consultation Meeting. In addition some of them reported that they felt pressured to do so during such 10–day period. Therefore, we believe some PAPs thought they were forced to sign the agreements without taking sufficient time to consider.

The descriptions in the minutes of the Consultation Meetings cannot be sufficient evidence to determine whether or not the PAPs were threatened at the Consultation Meetings. However, the minutes describe that at the meetings, the PAPs asked questions and made questions and proposals to the Myanmar government. From this, the Examiners note that there was a prevailing atmosphere for the PAPs to express their own opinions at the Consultation Meetings. In addition, JICA worked on the Myanmar government through the experts dispatched, and monitored the processes. The Examiners’ findings do not indicate any evidence that the Myanmar government, officially or systematically, coerced or threatened the PAPs to agree.

Thus, based on the information we collected to date, although JICA’s advice did not fully cover considerations to the psychological aspects of the PAPs, there is no doubt that JICA made efforts to grasp the local situation, as exemplified by the expert dispatched. Therefore, our findings do not indicate that JICA has made non-compliance with Section 2.5 (Concern about Social Environment and Human Rights) of the Guidelines.

(5) JICA’s obligation to ensure that resettled persons receive support in a timely manner. (Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines)

(i) Summary of the Requesters’ allegation

In its haste to remove residents from the 400 ha (Class A Area) of the Thilawa project, the YRG resettled households on a site that was not fully prepared. Due perhaps to the haste with which the site was prepared, that infrastructure is substandard and problematic. Furthermore, the residents in Thilawa had to leave their houses and lost their means of livelihood. They were resettled in new land, but have not been supported in a timely manner. In addition, according to the criteria of the World Bank and the ADB, the assistance to the PAPs relating to resettlement is not timely, if the resettlement occurs prior to the “provision of compensation and of other assistance required for relocation,” “preparation and provision of resettlement sites with

adequate facilities, where required” and before “a comprehensive income and livelihood rehabilitation program, supported by an adequate budget, is in place to help displaced persons improve, or at least restore, their incomes and livelihoods.” Therefore, JICA is non-compliant with Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines. (See 1.(5) (v) above.).

(ii) Summary of the explanation by the Operational Departments

With regards to the timing of the resettlement, although the Myanmar government presented the expected period of resettlement to the PAPs, there is no record that the Myanmar government forced the PAPs to relocate by the end of the said period. On the contrary, the Myanmar government explained to the PAPs that the resettlement would occur after the necessary infrastructures were completed. On the other hand, it is true that some PAPs requested that payment of the compensation and construction permits for houses should be granted at an early stage, and the resettlement should occur before houses were completed. Given that some PAPs started relocating immediately after the housing construction started, the Myanmar government received notes of confirmation from them stating that “we understand that the infrastructure in the resettlement site is not yet complete, and we voluntarily relocate to the resettlement site of our own accord.”⁴⁹

The IRP, which was summarized in the outline of the draft RWP⁵⁰ (Burmese version and English version), was handed out to the PAPs at the 4th Consultation Meeting on 21 September 2013. The content of the IRP was explained and discussed at the 4th Consultation Meeting and individual and group meetings, and the requests/proposals raised during the meetings were integrated into the draft of the RWP. The final draft of the RWP was provided for public access on 4 November at the office of Thilawa SEZ Management Committee and the General Administration Departments of Thanlyin Township and Kyauktan Township, and posted on the web-site, in addition to making notices concerning the publication of the draft RWP at offices of each township and village and markets. Furthermore, a notice was published in 2 newspapers on 8 November 2013 to indicate the places where a hard copy would be available for the public to read and the web-site address for a soft copy of the draft RWP. The final draft of the RWP was published to solicit public comments and subsequently finalized on 22 November 2013.⁵¹

Except for those who wished to relocate before the completion of the infrastructures, the resettlement of the PAPs commenced on 25 November 2013; thus, the resettlement of the PAPs was commenced after the RWP, including the IRP, was in place.⁵²

⁴⁹ Response No. 2 from the Operational Departments 2-3

⁵⁰ RWP, pp. AN4-33, Outline of Draft RWP for Development of Thilawa SEZ Phase1

⁵¹ Response No. 1 from the Operational Departments Point 37, Response No. 2 from the Operational Departments Point 4-2-1

⁵² RWP, p.p. AN4-33, Response No. 2 from the Operational Departments Point 2-3-1,

While the World Bank's Safeguard Policies⁵³ do not state anything about the timing of the completion of the livelihood program, the ADB's safeguard policies⁵⁴ state that "the borrower/client will ensure that no physical displacement or economic displacement will occur until a comprehensive income and livelihood rehabilitation program (...) is in place (...)." With regards to environmental and social considerations, while the Guidelines require that "JICA confirms that projects do not deviate significantly from the World Bank's Safeguard Policies," the Guidelines also state that JICA "refers as a benchmark to the standards of international financial organizations (...)," including the ADB.⁵⁵ However, as mentioned above, in this project, the RWP, including the IRP, was prepared prior to the resettlement of the PAPs, covering comprehensively the extent of assistance to be provided, i.e., the specific types of industries expected to offer job opportunities (about 20 types of industries), support for finding job opportunities in the said industries, job placements, technical support for livelihood management and follow-up, etc.

Therefore, JICA refutes the objection of its alleged non-compliance with Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines as groundless.

(iii) Examiners' findings of facts

The Requesters allege that the PAPs were not provided sufficient compensation and/or assistance in a timely manner by the Project Proponents. The chronology of the preparation of the RWP that stipulates compensation and/or assistance to the PAPs and their resettlement is as follows:

14 February 2013: The 1st Consultation Meeting concerning the RWP⁵⁶

11 June 2013: The 2nd Consultation Meeting concerning the RWP⁵⁷

30 June 2013: The 3rd Consultation Meeting concerning the RWP⁵⁸

⁵³ The World Bank OP4.12, para. 10:

"10. The implementation of resettlement activities is linked to the implementation of the investment component of the project to ensure that displacement or restriction of access does not occur before necessary measures for resettlement are in place. For impacts covered in para. 3(a) of this policy, these measures include provision of compensation and of other assistance required for relocation, prior to displacement, and preparation and provision of resettlement sites with adequate facilities, where required. In particular, taking of land and related assets may take place only after compensation has been paid and, where applicable, resettlement sites and moving allowances have been provided to the displaced persons. For impacts covered in para. 3(b) of this policy, the measures to assist the displaced persons are implemented in accordance with the plan of action as part of the project (see para. 30)."

⁵⁴ ADBSPS Appendix 2 SAFEGUARD REQUIREMENTS 2: INVOLUNTARY RESETTLEMENT Para. 14

"14. The borrower/client will ensure that no physical displacement or economic displacement will occur until (i) compensation at full replacement cost has been paid to each displaced person for project components or sections that are ready to be constructed; (ii) other entitlements listed in the resettlement plan have been provided to displaced persons; and (iii) a comprehensive income and livelihood rehabilitation program, supported by an adequate budget, is in place to help displaced persons improve, or at least restore, their incomes and livelihoods. While compensation is required to be paid before displacement, full implementation of the resettlement plan might take longer. If project activities restrict land use or access to legally designated parks and protected areas, such restrictions will be imposed in accordance with the timetable outlined in the resettlement plan agreed between the borrower/client and ADB."

⁵⁵ Document-1. 2.6-3 of the Guidelines

⁵⁶ RWP, p.p. AN4-2 - 4-5

⁵⁷ RWP, p.p. AN4-6 - 4-18

⁵⁸ RWP, p.p. AN4-19 - 4-28

- 21 September 2013: The 4th Consultation Meeting concerning the RWP⁵⁹
- 4 November 2013: Publication of the final draft RWP to solicit public comments
- 22 November 2013: Finalization and completion of the RWP
- 24 November 2013: Commencement of resettlement of the PAPs (except for those who had already moved with the consents).

As mentioned above, at least 4 Consultation Meetings were held before the RWP was finalized, and thereafter the resettlement of the majority of the PAPs commenced. In addition, those who had already relocated prior to the finalization and completion of the RWP indeed relocated after the final draft RWP was published to solicit public comments, which was completely the same as the completed RWP.

In addition, the Myanmar government obtained documents signed by the PAPs that they would resettle despite non-completion of the infrastructures at the resettlement site. And JICA obtained the said documents from the Myanmar government and confirmed them.

Even though it was voluntary, a question remains as to whether or not it was appropriate to commence resettlement before the infrastructures were completed. Nevertheless, at least, the fact-finding investigation found no evidence to support alleged JICA's non-compliance with Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines.

However, in light of the policy of the Guidelines, and assuming that JICA could have known the PAPs' tendency to focus on the payment of compensation, JICA could have made additional efforts to guide the Myanmar government to take more time to help the PAPs shift their focus to the importance of the IRP for their future, while such efforts are not specifically required under the Guidelines.

(6) JICA's obligation to provide compensation to resettled persons at replacement cost. (Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines)

(i) Summary of the Requesters' allegation

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." 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. More specifically: 1) the Requesters and the villagers the Requesters represent feel that inadequacies in compensation stem from lack of compensation for land, and therefore, compensation for the loss of the land should be provided at an appropriate level; 2) the provision for replacement homes is inadequate; and 3) the provision for replacement of lost

⁵⁹ RWP, p.p. AN4-29 - 4-37

income from animals is inadequate and often calculated incorrectly. JICA and the Myanmar government have argued that these numbers were agreed upon in consultations with the villagers, which is unlikely given the amount of coercion involved in the process and the failure to hold meaningful consultations. Thus, JICA is non-compliant with Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines. (See 1.(5) (v) above.)

(ii) Summary of the explanation by the Operational Departments

The Myanmar government conducted the DMS several times⁶⁰ to assess the assets of the PAPs to identify a basis for calculating compensation and/or assistance, and the Myanmar government and the PAPs have agreed on the results of the DMS. Based on the results of the DMS, compensation and/or assistance plan was prepared, which was agreed by the PAPs through discussions at the 4 Consultation Meetings and the group and individual meetings held thereafter. During the process, concrete requests from the PAPs were integrated into the finalized plan; for instance, the compensation for farm produce was increased from 3 times to 6 times of the annual yield amount for rice, and from 2 times to 4 times the annual yield amount for vegetables and trees. Therefore, it can be construed that the Myanmar government showed positive attitudes towards accepting the requests and demands from the PAPs and that the compensation and/or assistance plan was prepared by revising the government's initial plan with the requests and demands from the PAPs. JICA considers that "meaningful stakeholder participation"⁶¹ was secured.

Furthermore, JICA confirmed the levels of compensation based on the calculation basis for the [cash] compensation and/or assistance.

In addition, JICA has from time to time been monitoring the agreement process and the contents of compensation and/or assistance, through the experts dispatched, by confirming the information and providing advice where necessary.

As mentioned above, JICA properly provided "support for and examinations of the environmental and social considerations that the Project Proponents implement (...)" as required by the Guidelines.

Therefore, JICA refutes the objection of its alleged non-compliance with Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines as groundless.

(iii) Examiners' findings of facts

⁶⁰ RWP p.p.8-13

⁶¹ FAQ of the Guidelines: "Meaningful participation" means that "there is a two-way communication between stakeholders and government officials, and the comments from stakeholders are reflected appropriately to preparation process of the project."

While specific amounts of compensation should not be independently judged by JICA, the DMS was conducted to assess the assets of the PAPs and based on the results thereof, compensation was calculated. In addition, given the contents of Table 5-1 (Entitlement Matrix) of the RWP and the facts that the RWP was finalized reflecting the requests from the PAPs through the Consultation Meetings and that the resettlement agreements were eventually signed by all the PAPs, our findings do not indicate that JICA has made non-compliance with Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines.

For compensation for the loss of the land, which is the first point of the allegation by the Requesters, our findings will be described later in (8) in response to the Requesters' separate allegation in (8) below. For the provision for replacement homes, see 3.2.(5) above.

(7) 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 (Items 3 and 4 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines)

(i) Summary of the Requesters' allegation

The majority of households living in the Class A Area of the Thilawa project 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. 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.

If the stakeholders to be affected by the project had been provided sufficient information and opportunities to participate in the planning of the resettlement plan and livelihood restoration strategy, many of the adverse impacts of the resettlement on the PAPs' livelihoods and their lives could have been avoided.

Thus, JICA is non-compliant with Items 3 and 4 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines). (See 1.(5) (v) above.)

(ii) Summary of the explanation by the Operational Departments

According to the findings of the DMS, the literacy proficiency of the project affected households is as follows: 13 households are proficient in reading and writing, 50 households are intermediate in reading and writing, and 16 households are illiterates (only with speaking capability). The findings indicate that illiterate households account for a small percentage of

the total. In addition, recognizing that the ability to read differs from the ability to understand what is written in documents, JICA received reports from the Myanmar government and the JICA experts dispatched to the site that a thorough explanation was given to those illiterate households by reading the documents concerned to them, rather than merely handing out the documents.⁶²

In order to understand the actual practices in the consultation process, in addition to confirming the minutes of the Consultation Meetings,⁶³ JICA dispatched the experts to comprehensively monitor the Myanmar government's resettlement process and consultation process of determining compensation levels, as mentioned above.

As mentioned in (4)(ii) above, the minutes of the Consultation Meetings include requests from the PAPs. In the minutes, JICA confirmed several instances where the Myanmar government made concessions on the plans of compensation and/or assistance from the original ones, responding to the requests of the PAPs and instances where negotiations continued over a long period of time between the PAPs and the Myanmar government.⁶⁴

Furthermore, according to the Myanmar government, copies of the signed agreements were provided to very few PAPs who signed the resettlement agreements, because the Myanmar government had originally planned to deliver such copies of the signed agreements after the payment of the compensation was completed. The Myanmar government is currently taking the procedures to provide copies of the agreements to the PAPs. On the other hand, documents specifying the amounts and the breakdowns of compensation payable to the respective project affected households (based on the signed settlement agreements) were signed by the persons concerned and copies of the signed document were provided to the persons concerned.⁶⁵

Therefore, JICA refutes the objection of its alleged non-compliance with Items 3 and 4 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines as groundless.

(iii) Examiners' findings of facts

The documents that need to be signed for the resettlement include those that are not easy to understand. Therefore, negotiations should be conducted based on an assumption that not only illiterate households but also the households intermediate in reading and writing cannot read the

⁶² Response No. 1 from the Operational Departments Point 33, Response No. 2 from the Operational Departments Point 4-1-5

⁶³ FAQ of the Guidelines: Q. : "How is it confirmed that consultations with the stakeholders have been held appropriately?" A: "JICA encourages the recording of the minutes of the consultations when consultations with the stakeholders are held. JICA confirms whether the content of such minutes is considered in the plans for the project."

⁶⁴ Response No. 2 from the Operational Departments Point 3-8

⁶⁵ Response No. 2 from the Operational Departments Point 31, Response No. 2 from the Operational Departments Point 3-7

documents. To address the issue, a thorough explanation may be necessary by reading the documents out loud to them, as well as handing out the documents to them. It was found that JICA accordingly received reports on such practices by the Myanmar government and the JICA experts. In addition, there is no dispute on the fact that all of the PAPs have signed the resettlement agreements.

Only part of the project affected households was provided with copies of the signed agreement. On the other hand, what concerns the PAPs more is the amount and the breakdown of the compensation based on the signed agreement. The documents specifying the breakdown of the compensation, copies of which were provided to the PAPs, set forth concrete numbers. Even if, as alleged by the Requesters, the majority of the PAPs were unable to understand the contents of the resettlement agreements, it can be assumed that they were able to understand the contents of the document specifying the breakdown of the compensation. Note that, unless there were special circumstances, copies of the signed agreements should have been provided to the PAPs, in principle, immediately after the agreements were signed in order not to incur suspicion of the PAPs.

With regards to the alleged failure of JICA to ensure that the important stakeholders, i.e., the PAPs, participate in the planning, implementation and monitoring of the resettlement plan, in a meaningful and proper manner, judging from the minutes of the Consultation Meetings and other documents, the Examiners think that the Myanmar government responded to the requests from the PAPs to some extent. Despite the above, if the PAPs feel that the meetings were not meaningful without an open opportunity for them to express their concerns and anxieties, this is partly due to the short length of time, which was only 2 months, spent for discussion of IRP and insufficient of communication due to such time constraints.

Infrastructures in the resettlement site and the IRP will need to be continuously improved, and during the process, opportunities should be given to the PAPs to express their opinions and requests more openly and freely.

Accordingly, our findings do not indicate that JICA has made non-compliance with items 3 and 4 of section 7 (Involuntary Resettlement) of Appendix 1 of the Guidelines.

(8) JICA's responsibility to provide compensation for lost land. (Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines)

(i) Summary of the Requesters' allegation

Since JICA has failed to assess independently whether the land was legitimately acquired or if compensation was actually paid, its approach to compensation for the loss of the land is inappropriate. The 1997 land expropriation was not undertaken through an appropriate process, and the residents have not received enough compensation for their loss of the land. In addition,

since the expropriated land was not used for the intended purpose after the 1997 land expropriation, and the farmers in the affected area were permitted to continue farming, the land should belong to the farmers who originally owned the land.

JICA has overlooked these points, thus failing to comply with Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines. (See 1.(5) (v) above.)

(ii) Summary of the explanation by the Operational Departments

JICA received evidence that the land for the Class A Area of the project is owned by the Myanmar government, and is managed by the Thilawa SEZ Management Committee. JICA also obtained evidence that there is no resident who has the rights to the land in the Class A Area under the Agricultural Land Act (2012).⁶⁶ Furthermore, the procedures for the 1997 land expropriation conducted by the Myanmar government for the residents at that time are not subject to the Guidelines, as they were undertaken for a different project that was being planned back then. Nevertheless, JICA confirmed the chronology of the 1997 land expropriation and the outline of the compensation levels, as follows:⁶⁷

- 1) For developing the Thanlyin-Kyautan Industrial Zone, in 1997, the Department of Human Settlement and Housing Department of the MOC started the land expropriation and resettlement of the residents.
- 2) Due to the Land Nationalization Act enacted in 1954, farmland in Myanmar was nationalized with the government's ownership of the land. Nevertheless, in practice, rights to use the land have been traded customarily. Compensation for land in the amount of 20,000 kyat per acre presented by the government to the then affected residents was more than twice as much as unofficial price of the surrounding area in those days (which was 8,000 kyat per acre), and the compensation agreement was signed by the affected residents. The PAPs were provided with substitute land and moving allowances.
- 3) Documents exist: 1) a document notifying the transfer of the land of 1,060 ha, including the land for the Class A Area in 1998, from the Ministry of Home Affairs or the Yangon Region to the MOC; and 2) a document proving the transfer of the land to Thilawa SEZ Management Committee in 2012.
- 4) There were some instances where, upon the receipt of the application and request from the former residents who returned to the land for the Class A Area of the project a little after the 1997 land expropriation, the Myanmar government made a decision to allow them to use the land during the rainy season in the year concerned, and notified them of moving out of the land when the rainy season was over in the year concerned.

⁶⁶ Article 31 of the Agricultural Land Act (2012) stipulates that where the land concerned will not be used for initially intended purposes within 6 months, the Central Management Body will seize the land. Article 4 of the Agricultural Land Act (2012) also stipulates that acquiring land use rights in the land concerned requires the approval from the responsible department of the township concerned.

⁶⁷ Response No. 1 from the Operational Departments Point 40

Where a government has the ownership of the land necessary for a planned project, to what extent the details should be confirmed concerning the procedures taken for the government to own the land is not specifically set forth in the Guidelines (nor in the World Bank's safeguard policies). In addition, the Guidelines do not have any provisions on land expropriation associated with a project different from the one subject to the Guidelines.

The FAQ of the Guidelines states that “[t]he residents of a project site, even though they may be living there illegally, are included among the local stakeholders provided that they live or earn a livelihood in the area.” JICA has been confirming that compensation and livelihood restoration are carried out in compliance with the Guidelines and has been assisting the Myanmar government in achieving the goal.⁶⁸

Therefore, JICA refutes the objection of its alleged non-compliance with Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines as groundless.

(iii) Examiners' findings of facts

It was found that the land for the Class A Area of the project was expropriated by the Myanmar government in 1997 for a project different from the one to which the Request was made, and as a result the Myanmar government has the ownership of the land. The Requesters do not dispute that the land for the Class A Area of the project were originally expropriated by the Myanmar government in 1997.

The Guidelines do not specify JICA's obligation to how far back it should trace the history of land expropriation, if any. In this project, at least, JICA received an explanation from the Myanmar government that the whole area of the land for the Class A Area of the project is owned by the Myanmar government as a result of the 1997 land expropriation; the Myanmar government paid compensation more than twice as much as the market price for the loss of the land to then affected residents at the time of the 1997 land expropriation; and JICA received a copy of the documents concerning the payment of the compensation with signatures of the affected residents. And there is no evidence found to the contrary.

According to the above explanation by the Myanmar government, those who resided in or cultivated the land for the Class A Area of the project in and after 1997 do not necessarily have the legal rights to the land. Giving considerations to the fact of their residence and farming practices, in launching the project to which the Request was made, the Myanmar government provided houses in the resettlement site and compensation depending on crop yields. In addition, after the 1997 land expropriation, the Myanmar government received a written

⁶⁸ RWP, p. 25

statement signed by the persons who resided in or cultivated the land for the Class A Area of the project that they would relocate without demanding any compensation when the development started. JICA obtained and confirmed a sample form of such document.

In addition, it was also found that JICA dispatched the experts to guide the Myanmar government to take procedures for compensation for the project of the land for the Class A Area in accordance with the Guidelines.

Given the above, JICA traced the land expropriation as far back as reasonably possible and confirmed the compliance of the Guidelines concerning the land expropriation, and there is no evidence found to the contrary. Therefore, our findings do not indicate that JICA has made non-compliance with item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines, which do not have a specific provision concerning the point.

(9) “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.” (Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines)

(i) Summary of the Requesters’ allegation

The YRG has not only denied land compensation to the Thilawa residents, it also failed to offer replacement land or opportunities to continue farming. In addition, international best practice emphasizes that families who are dependent on a land-based economy should be relocated to replacement land where possible, rather than shifting them to a wage-based income. The lack of adequate land must be demonstrated and documented, if it was the case. However, there is no indication that such a demonstration 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. The RWP does not include Livelihood Restoration Plans that detail the options for displaced persons and the forms of assistance available to help them take advantage of those options.

Thus, JICA is non-compliant with Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines. (See 1.(5) (v) above.)

(ii) Summary of the explanation by the Operational Departments

As stated in (1) (2) above, JICA was informed by Myanmar government that it was difficult for the government to offer land to substitute the farmland.

In addition, at the 4th Consultation Meeting (held on 21 September 2013), the Myanmar government suggested that the PAPs should inform the government of the candidate sites of the resettlement, if any, so that the government can confirm the land rights to see if the

development of the candidate sites may be possible. Nevertheless, no comment or information was provided by the PAPs.

The outline of the RWP, which was explained and discussed at the 4th Consultation Meeting and the individual and group meetings thereafter, describes the IRP, including steps to restore livelihood and grievance redress mechanism. At the meetings with the PAPs, the plan for livelihood restoration support was explained, although the PAPs' interests tended to focus on the contents of the compensation and/or assistance. Then, revisions were made to the government's initial plan, reflecting the requests and demands raised through the consultations with the PAPs and other meetings, and the RWP draft was published to solicit public comments before it was finalized. Thus, the PAPs were provided with opportunities to express their requests and opinions to be integrated into the RWP.⁶⁹

The IRP, as mentioned above, included specific plans, i.e., vocational training and job placement in the fields of: housing management, mechanical work, construction work in/around the SEZ area and wood-based carpentry, food processing, tailoring and dress making, store-keeping, small-scale animal husbandry and farming around the SEZ area, and the monitoring.⁷⁰

As mentioned above, JICA dispatched the experts to assist the Myanmar government in preparing the RWP. And thus JICA provided "support for and examinations of the environmental and social considerations that the Project Proponents implement" in accordance with the Guidelines and made efforts towards "supporting means for an alternative sustainable livelihood."⁷¹

Given the above, JICA refutes the objection of its alleged non-compliance with Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines as groundless.

(iii) Examiners' findings of facts

According to the RWP, the resettlement plan for the project is to help the PAPs restore the means of livelihood other than farming in place of the provision of alternative farmland in the resettlement site, on the assumption that they give up farming. In this regard, the Myanmar government explained to the PAPs that there is no alternative land to be provided free of charge around the resettlement site, and there is no evidence found to the contrary.

Furthermore, the outline of the RWP (Burmese version and English version) includes the steps to restore livelihood and grievance redress mechanism. Our findings do not indicate that JICA

⁶⁹ Outline of Draft RWP for Development of Thilawa SEZ Phase1, RWP p.p. AN4-6 - 4-37

⁷⁰ RWP, p.p. 32-34

⁷¹ RWP, p.p. AN4-6 - 4-37, TOR of JICA Experts

has made non-compliance with Item 2 of Section 7. (Involuntary Resettlement) of Appendix 1 of the Guidelines.

On the other hand, of 19 ex-farming households who participate in vocational training, only 4 of them have secured stable jobs to date. In addition, there is information that some PAPs have lost their willingness to work and living on the lump sum payment that they received as compensation. A certain period of time is required before the PAPs get used to the new job market, have their willingness to secure stable jobs, and restore their livelihoods. While it is imperative to continue providing support for vocational training and helping them find jobs towards restoring the livelihood, increasing successful cases of the PAPs who maintain their willingness to work in new environment at the earliest possible time will mitigate their anxieties and lead to a stable environment for the whole community.

3.4. Agreement of the parties concerned pertaining to the encouragement of dialogues and the records of dialogues among the parties concerned

The Examiners received reports from the Operational Departments that there were dialogues between the parties concerned after receiving the Request. In the following dialogues that were facilitated by JICA, the PAPs made further proposals and the Myanmar government made responses to them. The main topics included training opportunities for a sustainable livelihood and concrete measures for a better residential environment.

(1) Record of the tripartite meeting held on 8 July 2014

Place: The office of Thilawa SEZ Management Committee (Thilawa)

Date and Time: 14:30-16:30, Tuesday, 8 July, 2014

Attendees:

- 37 TSDG members (of whom, 6 members are from the Class A Area, and of the said 6 members, 3 members now reside in the resettlement site)
- Mekong Watch, a Japanese NGO
- Paung Ku, a local NGO
- a lawyer representing the PAPs
- 5 officials of the Myanmar government
- 7 JICA staff members and an interpreter

The requests from the PAPs were made with respect to the following points:

- Jobs and means of restoration of their livelihoods
- Compensation for the loss of the land
- Compensation for the losses of the agricultural crops and livestock
- Housing and environment in the resettlement site

In response to the above requests, the Myanmar government commented, an outline of which is as follows:

- Various training opportunities are being provided to help the PAPs restore their livelihoods.
- The land expropriation was completed by the previous administration and based on that premise, the current administration is considering the compensation and/or assistance levels.
- The contents of the compensation already agreed upon by the PAPs are based on the requests from the PAPs.
- Please inform the government whenever an issue concerning housing and environment, including access to drinking water, arises. The government will examine possible measures to address the issue immediately.
- Difficulties exist immediately after the resettlement. Nevertheless, many people have overcome the difficulties and are living better lives than before.

(2) Record of the tripartite meeting held on 25 August 2014

Place: The office of Thilawa SEZ Management Committee (Thilawa)

Date and Time: 13:15-15:30, Monday, 25 August, 2014

Attendees:

- 46 TSDG members (including an interpreter and a lawyer)
- Paung Ku, a local NGO
- 6 officials of the Myanmar government
- 6 staff members of JICA (of whom, 2 members are based in Tokyo) and an interpreter

The requests from the PAPs were made, as follows:

- Pay 150,000 kyat/per month as unemployment compensation during period of unemployment.
- Extend the water supply system to each house.
- Install a septic tank to toilets.
- Raise the ground level to the same height as roads to mitigate drainage problems.
- Broaden the roads to allow for fire truck access. Replace the roads with concrete roads.
- Issue new IDs.
- Compensate for the loss of birds, pigs and goats.
- 80 x 60 ft of land will be needed for rice farmers or 40 x 60 ft of land for tenant farmers, when providing compensation in the 2000 ha project.

In response the above requests, the Myanmar government commented, an outline of which is as follows:

- Later, we will discuss these additional requests from the PAPs with the responsible ministries.
- We provided each household with materials to improve the toilets, but they used the materials for different purposes, which prevented improvement work from being carried out as originally planned.
- The Myanmar government and the PAPs have agreed that small animals that can be carried to

the resettlement site, such as birds, pigs and goats, are not subject to compensation.

3.5. Problem solving methods

At the tripartite meetings held in July and August 2014, the PAPs showed their concerns over their future. It takes a certain period of time for the PAPs to understand a new job market other than farming, become willing to have a stable job and restore their livelihood. The Myanmar government, with support from JICA, has been making efforts to help them restore their livelihood by, for instance, putting the IRP into practice. The Examiners do sincerely hope that these efforts will bear fruit at the earliest possible time.

JICA dispatched the experts and collected information on the consultations between the Myanmar government and the PAPs and participated in the tripartite meetings through the experts. Nevertheless, in order to reduce the PAPs' anxiety and solve remaining issues, particularly livelihood restoration, it is suggested that JICA pay attention to the followings:

- (1) JICA will clarify its position that it will assist in resolving disputes between the Myanmar government and the PAPs and encourage communications between various stakeholders, including the PAPs, and the Myanmar government. While the tripartite meetings seem to be serving as opportunities where the PAPs voice their opinions and requests, meetings should provide the opportunities to discuss realistic ways to meet their needs and solve issues. For such purpose, it is recommended to set a meeting, such as the one between the Myanmar government and the PAPs. In addition, JICA will act as the arranger/operator of such meeting and prepare fair and reliable facilitators who can take the interests of both the PAPs and the Myanmar government into account and develop a workable and mutually acceptable agreement.
- (2) In addition, local and international NGOs' participation is also required to support the PAPs who are in a weaker position than the government. A hybrid model meeting, where the experts who have knowledge including IRP participate in the meeting together with the various stakeholders, is recommended. It is recommended that JICA will actively provide support to arrange and operate such meetings by, for instance, proposing a dispatch of personnel who understand the situations in Myanmar and/or have expert knowledge of the advanced precedents in other countries.
- (3) The meetings should, in principle, be made public and we would like to suggest that JICA should help the Myanmar government so that the information is adequately disclosed and transparency of information to the stakeholders is maintained. It is desirable that a meeting notice specifying the date, time and location would be sent to the PAPs concerned at least 1 week prior to the scheduled meeting date, with agenda and as much information as possible. In addition, the procedures for preparing the minutes of a meeting and approving it at the following meeting should be set in place.

- (4) To restore livelihood, changing the PAPs' ways of thinking is also imperative. For those who are expecting additional compensation payments and have lost their willingness to look for a sustainable livelihood, measures should be taken to enhance their willingness to restore their livelihood by, for instance, showing them other cases of resettlement and successful experience in as much detail as possible.

3.6. Continuous support

The Request refers not only to the Class A Area of the project but also to the next phase of the project (2,000 ha). However, since the latter is still in the process of preparing a resettlement plan, it is too early for the Examiners to investigate and determine whether non-compliance has occurred. Accordingly, in this report, whether or not JICA was compliant with the Guidelines was determined only concerning the Class A Area of the project.

The findings of the investigation and lessons learnt have identified possible solutions to the remaining issues of the Class A Area and a set of points to consider for subsequent phase of the project. More specifically, taking the Requesters' proposed measures to improve the planning and consultation process, the Examiners would like to offer the following proposals.

- (1) It is suggested that JICA guide the Myanmar government to take enough time to prepare the RWP and the IRP. One of the lessons learnt from the Class A Area is that the PAPs tend to focus on the amount of compensation and ask for early payment. However, taking a certain period of time to help the PAPs take a realistic view of their new circumstances and also to convince them of the importance of livelihood restoration through consultations may eventually lead to enhanced willingness to work among the PAPs, thus preventing problems from occurring. It is also suggested that, by showing cases of resettlement and livelihood restoration in other countries, including Japan, JICA explain that taking sufficient time to consult with the PAPs is efficient as a means to an end, although it may seem like a tedious task at first.
- (2) Dialogues between the parties concerned should be prioritized first in reconciling different stakeholder opinions. It is desirable that JICA respond to questions from the stakeholders in the form requested, in order to obtain the trust of the stakeholders.
- (3) It is desirable that JICA assist the Project Proponents in ensuring that a notice of the consultations should be sent to the PAPs concerned at least 1 week prior to the scheduled meeting date, since being polite and allowing enough time for the expected participants to prepare are required to build and maintain good relations between the Project Proponents and the communities.

Based on the specific points found by the investigation, the Examiners would like to suggest the following:

- (1) It is desirable that JICA assist the Myanmar government in implementing measures to address the issue on flooding that happens on the areas lower than nearby roads, including dialogues between the Myanmar government and the PAPs to establish a framework in which the PAPs can participate in flood prevention work.
- (2) The wells need to be further improved for user convenience, including the locations. In doing so, it is desirable for JICA to assist the Myanmar government in listening to the PAPs' views and opinions to repair them and/or construct new ones.
- (3) The measures to mitigate a change in living environment for the PAPs, in addition to vocational training should be provided, as they will need time to get adjusted to their new environment and restore their livelihoods. It is desirable that, for instance, JICA assist the Myanmar government in responding appropriately to the PAPs' requests and taking action, including the provision of a kitchen garden for those who have requested one, and plans to plant street trees.
- (4) At the Field Visit, an issue on toilet drainage was raised by the PAPs. Although vault toilet facilities were made available for the PAPs after the resettlement (which were not available for them before), they appeared to be feeling burdened by tank emptying and pumping cost. The Examiners have been told that although the Myanmar government presented a measure to address the issue, the PAPs are planning to make a counter proposal and the government is currently waiting for it to be submitted. It is desirable that JICA assist the Myanmar government in implementing a measure to address the issue at the earliest possible time.
- (5) Where the PAPs strongly hope to continue farming, It is desirable that JICA assist the Myanmar government in giving advice to them at the earliest possible time, for instance, presenting them with some successful cases, e.g., 1) a family used compensation and/or assistance to purchase new farmland and 2) a household rented some farmland from the others to continue farming.

Accumulate successful cases of the PAPs getting a sustainable income source will lead to the livelihood restoration of the community as a whole. Accordingly, offering continuous support to the PAPs will be needed, while enhancing their willingness to work.

4. List of main documents summarizing the rationale for the decision(s) of the Examiners

No	Title of the Document ⁷²
1	国際協力機構環境社会配慮ガイドライン(2010年4月) (Guidelines for Environmental and Social Considerations, JICA, April 2010)
2	環境社会配慮ガイドラインに関するよくある問答集 (FAQ) (2011年7月20日) (FAQ of the Guidelines)
3	World Bank OP4.12,Annex A,OP4.02,Annex B
4	ADB SPS Appendix2
5	異議申立手続要綱 (Objection Procedures based on the Guidelines for Environmental and Social Considerations, JICA, April 2010)
6	Objection Regarding the Thilawa Special Economic Zone Development Project in Myanmar, 2 June 2014、 (本件異議申立書 (和訳))
7	The letter from PAPs to Dr.Tanaka, President of JICA, 29 October 2013, 27 January, 5 February, 7 April, 30 April, 2014
8	事業担当部レスポンス 1 (2014年7月3日) (Response No. 1 from the Operational Departments , 3 July 2014)
9	事業担当部レスポンス 2 (2014年8月15日) (Response No. 2 from the Operational Departments, JICA, 15 August 2014)
10	The Land Acquisition Act, 1894
11	The record on the land acquisition in 1997, Land Acquisition Collector's Office, General Administration Department, South Yangon District, 11 June 1998
12	Approval for cropping (in English and Burmese), 13 August 2004
13	Farmland Law, 30 March 2012
14	Feasibility Study for Thilawa Special Economic Zone (SEZ) Class A Development, Nippon Koei Co., Ltd., February 2013
15	JICA 専門家 TOR (2013年5月) (TOR of JICA Experts, JICA, May 2013)
16	Environmental Impact Assessment Report, Myanmar and Japan Consortium for Thilawa Special Economic Zone Development Project (ClassA), September 2013
17	Outline of Draft Resettlement Work Plan for Development of Thilawa SEZ Phase 1 (in English and Burmese) , 21 September 2013
18	住民移転交渉の状況 (2013年10月1日) (A report from JICA Experts on the progress of the negotiation between PAPs and the Myanmar government, JICA, 1 October 2013)

⁷² Japanese titles indicate the document referred by the Examiners is in Japanese.

19	PAPs と JICA の面談記録 (The minutes of the meeting between PAPs and JICA, JICA, 15 October 2013)
20	Resettlement Work Plan (RWP) for Development of Phase 1 Area, Thilawa Special Economic Zone (SEZ), Yangon Region Government, November 2013
21	The minutes of the first IRPWS, 11 December 2013
22	The minutes of the second IRPWS, 22 December 2013
23	The minutes of the third IRPWS, 16 January 2014
24	環境所見 (決裁書表紙、所見、マトリクス) (Environment Review, JICA, 16 February 2014)
25	移転先地における生活・生計状況調査結果 (JICA 専門家, 2014 年 3 月) (Livelihood Survey conducted by JICA Experts, March 2014)
26	PAPs と JICA の面談記録 (The minutes of the meeting between PAPs and JICA, JICA, 6 June 2014)
26	第 1 回三者協議記録 (事業部作成) (The minutes of the first Tripartite Meeting, JICA, 8 July 2014)
27	The minutes of the first Tripartite Meeting, Mekong Watch, 8 July 2014 (第 1 回三者協議記録 (メコンウォッチ作成))
28	第 1 回三者協議記録音源(Recorded audio source of the first Tripartite Meeting, JICA, 8 July 2014)
29	第 2 回三者協議記録 (事業部作成) The minutes of the second Tripartite Meeting, JICA, 25 August 2014
30	原科審査役現地調査面談記録 1-8 (The minutes of the field visit conducted by Dr.Harashina, number 1-8, July 2014)
31	SEZ 内の農地のステータス及び 1997 年の用地取得と補償の経緯について (Status of the farmland in the SEZ and the details of the 1997 land expropriation and compensation)
32	JICA ミャンマー事務所と TSDG との通話記録 (The record of telephone conversation between TSDG and JICA Myanmar Office)
33	Sample of the agreed documents (in English and Burmese)
34	Sample of the document specifying the amount and the details of compensation
35	補償・支援費算定根拠 (Calculation basis for compensation and assistance)
35	Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomas Ojea Quintana, UN, 23 September 2013
36	Democratic Governance in Myanmar Current trends and implications, UNDP

Annexes

1. Request
2. Results of the preliminary investigation
3. Outline of the interviews conducted to establish the facts concerning the alleged non-compliance

Request⁷³

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]
[REDACTED]
[REDACTED]
Yangon Region, Myanmar
TEL: [REDACTED]
2. [REDACTED]
[REDACTED]
[REDACTED]
Yangon Region, Myanmar
TEL: [REDACTED]
3. [REDACTED]
[REDACTED]
TEL: [REDACTED]

We desire that our names not be disclosed to the Project Proponent.
No

⁷³ Information on individuals is deleted.

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 livelihoods 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 to 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

██████████ 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-milks 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 chose 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 ██████████ and ██████████, 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, livelihoods 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.

OK
[Redacted]

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[Redacted]

[Signature]
[Redacted]

Result of Preliminary investigation

4 July 2014

The Examiner for the Guidelines
Japan International Cooperation Agency (JICA)

Results of Examination

1. Formality requirements of the Request

All necessary items are described in English.

2. Requirements to commence the Procedures

(1) Requirements regarding the Requester

The Request has been submitted by two residents of the country in which the project is implemented.

(2) Project with respect to which the objections are submitted

After identifying the project from the request, it has been confirmed JICA provides funding for the project.

(3) Period

The Request was submitted between the time at which JICA indicated its categorization of the project and the time at which the project is completed.

(4) Actual damage incurred or likely to be incurred by the Requester as a result of JICA's non-compliance with the Guidelines

The Requester has claimed that actual damage incurred in the Report. But further investigation is needed.

(5) Relevant provisions of the Guidelines considered to have been violated by JICA and the facts constituting JICA's non-compliance alleged by the Requester

The Requester has claimed and described relevant provisions not complied with the Guideline. But further investigation is needed.

(6) Causal nexus between the JICA's non-compliance with the Guidelines and the substantial damage

The Requester has claimed and described causal nexus between the JICA's non-compliance

with the Guidelines and the substantial damage. But further investigation is needed.

(7) Facts concerning the Requester's consultation with the Project Proponent

The Requester has tried to have dialogues with the Project Proponent.

(8) Facts concerning the Requester's consultation with JICA

The Requester has tried to communicate with JICA's Operational Department.

(9) Prevention of abuse

There is no concern that the Request is determined as abuse of JICA objection procedures.

[END]

Outline of the interviews conducted to establish the facts concerning the alleged
non-compliance

In accordance with the Objection Procedures, the Examiners conducted a fact-finding investigation, as follows:

1. Receipt, review and examination by the Examiners of the Response No. 1 from the Operational Departments (dated 3 July) and related materials, in regards to the complaints alleged in the Request.
2. The first interviews with the Operational Departments (15 July), based on the Response No. 1 from the Operational Departments
Interviewees: The Office for Private Sector Partnership and Credit Risk Analysis and Environmental Review Department of JICA
3. The Field Visit by Dr. Harashina, the Examiner, (17-19 July)
Interviewees: The 3 Requesters, 25 PAPs (other than the Requesters), the chairman of the Thilawa SEZ Management Committee, etc. Minister for Agriculture and Irrigation of the Yangon Region Government, etc., Local NGO, Mekong Watch (Japanese NGO), the JICA expert team and JICA Myanmar Office
4. Interview with Mekong Watch by the Examiners (25 July)
5. Additional inquiries to the Operational Departments from the Examiners (8 August)
6. The second interviews with the Operation Departments(15 August), and the receipt, review and examination of the Response No. 2 from the Operational Department (dated 15 August)