

Specific Instance between the residents of Batang, in Indonesia and Itochu Corporation and Electric Power Development Co., Ltd.

Final Statement

February 13, 2024

Japanese National Contact Point (NCP)

for the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

1 OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

- (1) The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (hereinafter referred to as the “Guidelines”), adopted by the Organisation for Economic Co-operation and Development (OECD) in 1976, are voluntary, non-binding recommendations addressed by governments to multinational enterprises operating in or from their territories. The Guidelines provide the principles and standards for responsible business conduct in a wide range of fields, including disclosure, human rights, employment and industrial relations, the environment, combating bribery and other forms of corruption, consumer interests, science, technology and innovation, competition, and taxation.
- (2) Governments adhering to the Guidelines establish National Contact Points (NCPs). In Japan, the Ministry of Foreign Affairs, the Ministry of Health, Labour and Welfare and the Ministry of Economy, Trade and Industry jointly constitute the NCP for Japan (hereinafter referred to as the “Japanese NCP”), which promotes awareness and uptake of the Guidelines and contribute to the resolution of issues that arise in relation to the implementation of the Guidelines in specific instances.
- (3) While the Guidelines are not legally binding, the Japanese NCP encourages enterprises to observe the Guidelines.
- (4) According to the Guidelines, it is not required that the NCP determine whether the activities of enterprises are consistent with the Guidelines or not. Therefore, the Japanese NCP does not determine whether the enterprises’ activities are consistent with the Guidelines. Moreover, regarding the assertions by each party on the issues raised, the Japanese NCP does not make factual findings or judgements on its legitimacy.
- (5) The Japanese NCP may make recommendations on the implementation of the Guidelines and any observations the Japanese NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement, if relevant.

2 The Specific Instance

(1) Date of the submission and the parties concerned of the specific instance

On 29 July 2015, 23 residents (hereinafter referred to as the “Complainants”) from Batang (Central Java, Indonesia), as individuals and on behalf of their communities from 5 villages, filed a complaint with the Japanese NCP as per the Guidelines, alleging that Itochu Corporation (hereinafter referred to as “Itochu”) and Electric Power Development Co., Ltd. (hereinafter referred to as “J-Power”, and collectively with Itochu, the “Enterprises Involved”) are not operating in line with the Guidelines regarding the development of Central Java Coal Fired Power Plant, which is operated by Bhimasena Power Indonesia (hereinafter referred to as “BPI”), with which the Enterprises Involved have business relationships through investment. The Complainants are supported throughout NCP process by Friends of the Earth Japan.

(2) The issues raised by the Complainants

(a) The Complainants alleged that the conduct of the Enterprises Involved was inconsistent with paragraph 2. Of I. Concept and Principles, A.10., A.11, A.14. of II. General Policies, paragraph 1., 2., 5., 6. Of IV. Human Rights and paragraph 2. A), b), 3 of VI. Environment of the Guidelines (2011 Edition).

(b) The outline of the issues raised by the Complainants is as follows.

The Complainants alleged that the Enterprises Involved were directly responsible for the current and potential adverse impacts on their livelihood, human rights, and environment pollution as described below.

- Violation of Indonesian laws (I. Concepts and Principles)
- Failure to seek to prevent or mitigate adverse impacts directly linked to their operations and exercise their leverage to protect human rights, failure to conduct comprehensive human rights due diligence including consulting with and preventing harm to affected communities, and failure to provide remedy for adverse human rights impacts (II. General Policies, IV. Human Rights)
- Failure to conduct environmental due diligence including consulting with and informing affected communities (II. General Policies, VI. Environment)

(3) Having received the specific instance, the Japanese NCP explained to the Complainants that the NCP’s role was to offer good offices to assist the parties involved resolve the issues. Having confirmed the Complainants’ willingness to engage in the dialogue with the Enterprises Involved on 31st August 2015, the Japanese NCP examined the complaint and issued the letter of receipt on 10 September 2015.

3. Feedback from the Enterprises Involved

- (1) Following the meeting between the Japanese NCP and the Enterprises Involved on 24th August 2015, upon request from the Japanese NCP, the Enterprises Involved had another meeting with the Japanese NCP on 6th October 2015, during which the Enterprises Involved explained that they were proceeding with the project respecting the local law and giving due consideration to communication with stakeholders and to corporate social responsibility (CSR). They also emphasized that since the project was directly handled by BPI, the Enterprises Involved were gathering related information from BPI as necessary.
- (2) The Enterprises Involved provided further information to the Japanese NCP as per the Japanese NCP's request and held meetings with the Japanese NCP several times.

4. Initial Assessment

The Japanese NCP, in accordance with the Guidelines (2011 edition) and the Procedural Guidance of the Japanese National Contact Point under the Guidelines, conducted the initial assessment as described below and issued it with a conclusion as described in 4.(7) below on 28 June 2016.

- (1) The identity of the parties concerned and their interest in the matter
 - (a) The Complainants are 23 residents from Batang (Central Java, Indonesia). The Enterprises Involved against which the complaint was filed are identified specifically: Itochu Corporation ("Itochu") and Electric Power Development Co. Ltd.'s ("J-Power").
 - (b) The Complainants claim that they live in the area close to the planned construction site of the Central Java Coal-Fired Power Plant. Therefore, they have legitimate interests related to the case filed with the Japanese NCP.
- (2) Whether the issue is material and substantiated

In general, the Complaints cite substantive and specific problems regarding the development of Central Java Coal Fired Power Plant. The Japanese NCP, while not determining any fact regarding the involved party's claims, notes that there are differences of views regarding the issues raised by the Complainants. Therefore, the Japanese NCP considers that the issues are material and substantiated.
- (3) Whether there seems to be a link between the activities of the enterprise involved and the issues raised in the specific instance

The Complainants filed the case against the construction project of the coal-fired power generation plant by BPI. As the Enterprises Involved respectively hold 32% and 34% stakes in BPI, the Japanese NCP considers that the Enterprises Involved are able to exercise a

influence over BPI's activities. Therefore, there seems to be a link.

(4) Relations with applicable law and procedures, including court rulings

According to the information provided by the Complainants and the Enterprises Involved, some of the issues raised are included in the Indonesian dispute settlement procedure including the legal procedure. However, as far as the Japanese NCP was aware at that time, there was no ongoing trials.

(5) How similar issues have been, or are being, treated in other domestic or international proceedings

Similar issues are treated in the domestic and foreign courts.

(6) Whether the consideration of this specific issue would contribute to the purposes and effectiveness of the Guidelines

With some exceptions, the issues in the complaint are in general related to the various articles of the Guidelines. Therefore, the consideration of these issues would contribute to the purposes and effectiveness of the Guidelines.

(7) Conclusion of the initial assessment

The Japanese NCP considered that the issues raised merit further examination under paragraph I.C.1 of the Procedural Guidance of the Guidelines (2011 Edition) and decided to offer good offices to the parties concerned.

However, the Japanese NCP decided not to deal with some of the points raised by the Complainants since the Japanese NCP is not in a position to interpret or enforce foreign country's laws. Furthermore, some points raised by the Complainants did not relate to the activities of the Enterprises Involved but the one of the Indonesian Government, therefore they were out of the scope of the Guidelines and the mandate of the Japanese NCP.

5. The Japanese NCP's Assistance in Dealing with the Issues

(1) By sending the initial assessment to the parties concerned on 28 June 2016, the Japanese NCP asked if they were willing to participate in a dialogue through the Japanese NCP's good offices as regards the issues raised in the specific instance.

(2) After several discussions with the Japanese NCP since June 2016, including several in-person meetings, the Enterprises Involved expressed their intention to temporarily refrain from answering as to whether or not to accept the good offices of the Japanese NCP on 19th March 2019, explaining that BPI is proceeding with its business while communicating with the local community, and that communication with the local community and the business may be affected by the possible announcement of acceptance or refusal of mediation, though the Enterprises Involved were not declining dialogue. Since then, the Japanese NCP has continuously sounded out the position of the Enterprises Involved on the possible acceptance of the mediation. The Enterprises Involved have explained the local situation to the NCP

each time, however, they kept their position to hold their intention until 2023.

- (3) Meanwhile, the Complainants informed the Japanese NCP on the local situation and the Japanese NCP has also regularly updated the Complainants on the status of consideration of the Enterprises Involved.
- (4) During the whole process, the Enterprises Involved regularly updated the Japanese NCP on their state of consideration and the circumstances in Indonesia, including parallel proceedings, and replied to the Japanese NCP with sincerity. However, given the situation described in 4(2) above, the Japanese NCP concluded that such situation falls within "when a party is unwilling to participate in the proceedings" as provided in I.C.4.c) of the Procedures of the Guidelines (2023 edition) (I.C.3.c) of the 2011 edition) and the provision of paragraph 43 of the Commentaries on the Implementation Procedures (paragraph 35 of the 2011 edition), "if the NCP finds that one or more of the parties to the specific instance is unwilling to engage or to participate in good faith, the NCP will issue a statement, on the implementation of the Guidelines in relation to the issues raised."
- (5) On 19 September 2023, the Japanese NCP issued a notification stating that in this specific instance, the Enterprises Involved are unwilling to engage in the NCP process in the near future and the Japanese NCP could not contribute to the resolution of this specific instance. In the notification, providing both parties involved with a final opportunity for discussion with a period of 2 months, the Japanese NCP stated that if there would be no apparent progress within the said timeframe, it would be appropriate to terminate the process and issue a final statement.
- (6) On 18 October 2023, the Japanese NCP held a meeting with the Enterprises Involved, which explained that they have sought engagements with local communities through BPI, who conducted about 6,745 dialogues through community meetings and 1 on 1 meetings. They also explained that BPI established a grievance mechanism, and BPI addressed the complaints from the local communities by, for example, visiting each resident if necessary. Moreover, BPI conducted CSR activities, such as supporting economic development and local infrastructure and implementing projects in the environmental, social, and cultural fields, health programs and education including scholarship program funded by BPI, with the benefits accruing to a wide spectrum of the population of more than 150,000 residents.
On 21 November 2023, the Enterprises Involved expressed to the Japanese NCP their position to decline the offer of the good offices, since BPI continued to carry out engagement with the local community through various activities contributing to the region and the community including CSR activities, and the Enterprises Involved wished to continue these engagements and dialogues with the local residents through BPI, not through good offices of the Japanese NCP. Subsequently, the Complainants were informed of the formal declination of the good offices by the Enterprises Involved.
- (7) Since one of the parties does not have the intention to participate in a dialogue within the

NCP process, the Japanese NCP recognized that there was no agreement of the parties concerned on the NCP's assistance for solving the issue in this specific instance and decided to terminate the handling of this specific instance in accordance with paragraph 43 of the Commentaries on the Implementation Procedures (2023 edition) (paragraph 35 of the 2011 edition.)

- (8) In the preparation of this final statement, the Japanese NCP made the draft of it available to the Complainants and the Enterprises Involved and requested for comments on this draft on 4 January 2024. The Complainants and the Enterprises Involved submitted their comments to the Japanese NCP. The Japanese NCP considered their comments and finalized the statement.

6. Conclusion

- (1) While the Japanese NCP takes note of and welcomes the fact that the Enterprises Involved, through BPI, has continued to engage with the local community in Batang with sincerity as described in 4(6) above, the NCPs' assistance in solving the issues cannot be provided without agreement of the parties concerned. Following the decline of the good offices by one of the parties to the specific instance, the Japanese NCP concludes the process regarding this specific instance in accordance with paragraph 43 of the Commentaries on the Implementation Procedures (2023 edition) (paragraph 35 of the 2011 edition.)
- (2) The Japanese NCP recommends that the Enterprises Involved continue to ensure the observance of the Guidelines and to engage with the Complainants and other members of the community, and residents, including through BPI's initiatives.

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