

Complaint Against ITOCHU and J-POWER Regarding the Central Java Coal-fired Power Plant Project in Indonesia

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Date: July 29, 2015

To:

Members of the Japanese National Contact Point (NCP):

- OECD Division, Economic Affairs Bureau, Ministry of Foreign Affairs;
- International Affairs Division, the Office of the Minister, Ministry of Health, Labour, and Welfare;
- Trade and Investment Facilitation Division, Trade and Economic Cooperation Bureau, Ministry of Economy, Trade and Industry

a. Information on complainants;

1. [Redacted]
Address: [Redacted]
2. [Redacted]
Address: [Redacted]
3. [Redacted]
Address: [Redacted]
4. [Redacted]
Address: [Redacted]
5. [Redacted]
Address: [Redacted]
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Address: [Redacted]
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Address: [Redacted]
8. [Redacted]
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9. [Redacted]
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Address: [Redacted]
11. [Redacted]
Address: [Redacted]
12. [Redacted]
Address: [Redacted]
TEL: [Redacted]
13. [Redacted]
Address: [Redacted]
14. [Redacted]
Address: [Redacted]
15. [Redacted]
Address: [Redacted]
16. [Redacted]
Address: [Redacted]
17. [Redacted]
Address: [Redacted]
18. [Redacted]
Address: [Redacted]

19. [REDACTED]
Address: [REDACTED]
20. [REDACTED]
Address: [REDACTED]
21. [REDACTED]
Address: [REDACTED]
22. [REDACTED]
Address: [REDACTED]
23. [REDACTED]
Address: [REDACTED]
TEL: [REDACTED]

We are from the Paguyuban UKPWR, of the community of Batang. We established this association in 2012 for the sake of defending our land and sea from the coal-fired power plant project which has already caused and if built will cause further, irreversible adverse impacts on our right to an adequate standard of living, including loss of our livelihood, and on our right to health.

We would like you to remind that we wish to keep our names undisclosed online, such as at any website. And even though we agree that our names could be disclosed to the Japanese companies and their partners, please note that we fear the physical threats and dangers we might face if the companies and Indonesian government discover our identities as the requesters. But we have already found that we don't have any better option to voice out our concerns to you, due to our past experience as described below, including all the threats, intimidation, violence, arbitrary arrests, attacks, and impunity we have faced with the thugs in our community, as well as the company security forces and local police and army forces. There is the possibility for us to face serious risks and repercussions after dealing this complaint.

We are residents of Indonesia who have suffered actual and direct damage and who are likely to suffer additional damage in the future as a result of the project which Japanese multinational companies are investing in: a coal-fired power plant in our community in Batang. Our damage results from the project's failure to comply with OECD Guidelines for Multinational Enterprises (hereafter, "Guidelines"), including the project's lack of respect for human rights, and its lack of appropriate process of Environment Impact Assessment (EIA).

We speak for our community: We speak for our community organization, Paguyuban UKPWR, on behalf of around 7,000 members from Ujungnegoro, Karanggeneng, Ponowareng, Wonokerso, and Roban villages. It is thus *both* as individuals *and* as representatives that we call on the Japanese NCP to carefully conduct its assessment and take necessary action for the community adversely affected by the Batang coal-fired power plant project in Central Java, Indonesia.

You may also contact us, the above requesters, through the local and Japanese NGO below, whom we have been closely working with since 2011 and since 2014. We hope that the Japanese NCP understands the role of NGOs, as we need a support of them, who may explain OECD Guidelines to us. Because all the language of the Guidelines are very complicated for us to understand, while some of us cannot read and write very well even in our language, Bahasa Indonesia.

Name of the agent: [REDACTED], Greenpeace Indonesia
Place of contact of the agent: Greenpeace Indonesia
Address: Mega Plaza Building 5th Floor
Jl. HR Rasuna Said Kav C3
Jakarta 12920
TEL: +62 21 – 521 2552 [REDACTED]
FAX: +62 21 – 521 2553
E-mail: [REDACTED]

Name of the agent: [REDACTED], Friends of the Earth Japan
Place of contact of the agent: Friends of the Earth Japan
Address: 2nd Fl. 1-21-9 Komone, Itabashi-ku,
Tokyo 173-0037 Japan
TEL: +81 3-6909-5983 / [REDACTED]
FAX: +81 3-6909-5986
E-mail: [REDACTED]

b. Information on Multinational Enterprises (MNEs) in question;

- Name of the company-1:
ITOCHU Corporation (ITOCHU)
- Location of the company-1 (country and address):
(Tokyo Headquarters)
5-1, Kita-Aoyama 2-chome, Minato-ku, Tokyo 107-8077, Japan
TEL: +81 3-3497-2121
- Reasons why the complainant considers that the company-1 is regarded as a multinational company:
ITOCHU Corporation is engaging in domestic trading, import/export, and overseas trading of various products such as textile, machinery, metals, minerals, energy, chemicals, food, information and communications technology, realty, general products, insurance, logistics services, construction, and finance, as well as business investment in Japan and overseas.¹ Itochu has approximately 130 bases in 65 countries. ITOCHU's global network can be found at <http://www.itochu.co.jp/en/about/network/> .
In this project, Itochu, together with J-Power and PT Adaro Power, established a joint venture corporation called PT Bhimasena Power Indonesia (BPI), holding 32% of its shares. BPI will construct and operate a 2,000 MW coal power plants in this project.

¹ <http://www.itochu.co.jp/en/about/profile/>

- Name of the company-2:
Electric Power Development Co.,Ltd. (known as "J-POWER")
- Location of the company-2 (country and address):
6-15-1, Ginza, Chuo-ku, Tokyo, 104-8165 Japan
TEL: +81-3-3546-2211
- Reasons why the complainant considers that the company-2 is regarded as a multinational company:
Since 1960, J-POWER has carried out 333 consulting service projects with 63 countries and regions mainly from the developing world, and is pursuing new initiatives in the overseas power generation business. In 2014, J-POWER made overseas revenue of 108.9 billion yen, and has overseas offices in China, Vietnam, and Sri Lanka.
In this project, J-POWER, together with ITOCHU and PT Adaro Power, established a joint venture corporation called PT BPI, holding 34% of its shares. BPI will construct and operate a 2,000 MW coal power plant in this project.
Further details of J-POWER are available at
<http://www.jpowers.co.jp/english/index.html> .

Outline of the project:

The objective of this project is to construct and operate a 2,000 MW coal-fired power plant in Batang, Central Java, Indonesia, which would be, if built, one of the biggest coal-fired power plants in Southeast Asia. The project consists of the Power Block for the two power plants (226.4 hectares), terminal (Jetty), dredging and dumping in the sea, and 500 kV transmission line and substation.

J-POWER and ITOCHU have already decided to invest in the project along with Indonesian partners, and have established PT Bhimasena Power Indonesia (BPI). BPI entered into a contract or a 25-year power purchase agreement (PPA) with Perusahaan Listrik Negara (PLN), an Indonesian state-owned power company, in 2011, and this is the first public-private partnership (PPP) project in Indonesia.² Japan Bank for International Cooperation (JBIC) and Japanese and other private banks are considering co-financing the project with loans, and are currently reviewing the project according to the JBIC Guidelines for Confirmation of Environmental and Social Consideration and the other relevant standards.

Till today, around 70 landowners are still refusing to give up the land (around 20 ha) needed to begin the project. Land acquisition failures so far have caused the project commencement to be postponed for 3 years. The reported estimated costs of the project have soared from 35 trillion to as much as 50 trillion rupiah (3 billion USD to potentially as much as 5 billion USD). BPI sent a force majeure notice to PLN in 2014 because of land acquisition problems, and allegedly Indonesian government has

² <http://www.itochu.co.jp/ja/news/2011/111007.html>

started considering the application of Law No. 2 of 2012 on Land Procurement for The Public Interest.³

c. Contents of complaints;

(1) Introduction

We hereby file a specific instance concerning the breach of ITOCHU and J-POWER to the OECD Guidelines for Multinational Enterprises in relations the proposed development of Batang coal-fired power plant project in Central Java, Indonesia.

BPI, and its shareholders ITOCHU and J-POWER, have not carried out comprehensive human rights and environmental due diligence, and it has not engaged in meaningful consultation with all affected communities to identify the full scope and severity of potential human rights, social, and environmental impacts. BPI, as well as ITOCHU and J-POWER have already violated several aspects of Indonesian laws, and caused human rights violations. The failure of BPI, ITOCHU and J-POWER to conduct due diligence will mean the companies will be incapable of preventing or mitigating significant adverse impacts on thousands of people and the environment , if the proposed project is proceeded.

Specifically, ITOCHU and J-POWER, through BPI, have breached the Guidelines by failing to:

- obey Indonesian laws;
- seek to prevent and mitigate human rights abuses directly linked to their operations and exercise their leverage to protect human rights;
- conduct comprehensive human rights due diligence, including consulting with and preventing harm to affected communities; and
- conduct comprehensive environmental due diligence for all aspects of its proposed project, including consulting with and informing affected communities about the project's actual and potential impacts.

ITOCHU and J-POWER should seek to prevent or mitigate the real and potential adverse impacts caused by BPI through their position as a large shareholder of the BPI.

(2) Contents of issues raised which describe the company's non-adherence to the OECD Guidelines

³ On June 30th, 2015, the Governor of Central Java, Ganjar Pranowo, signed a letter for "Land Acquisition Permission for the Development of Batang Coal Power Plant", which implicates the actual start of implementation of Law No. 2 of 2012.

As far as actual adverse impacts incurred, as a result of the project, our sufferings can be categorized as follows:

- Human rights violations
- Intimidation
- Violence
- Physical injuries
- Wrongful and arbitrary arrest
- Criminalization of peaceful protests
- Unfair trials
- Efforts at bribery
- Illegal and fraudulent land sales
- Hostage taking
- Community harmony endangered
- Jobs lost
- Income lost
- Rice fields and other property damaged
- Vandalism
- Trespass
- Moral distress, anguish, and anxiety, and destruction of social fabric

In addition to actual impacts already suffered, here are additional potential adverse impacts to be incurred if the project continues as planned:

- Health impacts: death and sickness
- Impacts on air, water, soil, and ecosystems
- Crop loss
- Fisheries losses
- Livelihoods losses
- Involuntary resettlement of those who can no longer work and make a living there
- Community harmony further endangered
- Loss of cultural heritage (Sacred tomb for traditional Javanese Muslim): It is also the important site for the fishermen community as this site is a place for the ritual to respect their ancestors.
- Impacts leading to trans-boundary and global environmental problems and climate change
- Damage to protected areas and conservation areas

As the above-mentioned adverse impacts already experienced and likely to be experienced in the future by a large number of affected people are complex and diverse in nature and magnitude, below we provide overall descriptions of the most serious and widespread adverse impacts experienced by a large number of affected people as well as by the individual Complainants.

1. The project has already caused severe financial harm and impoverishment to us and could cause these impacts in the future:

We could say that we already had prosperity before the project, but since it has come to our village our economy is being destroyed. We are terribly concerned about the loss of our livelihoods it has caused already – as well as losses it could cause in the future, especially given patterns of behavior already exhibited by the BPI and its business partners. Our livelihoods are tied to our fertile farmlands and productive fishing areas. Our strong local opposition to this coal power plant is based on many points, but the key ones are that as it stands, this will harm the environment and threaten or destroy our livelihoods.

i. Loss of livelihood opportunities due to the acquisition of farmland

In this project, at least 120 hectares of rice field (3 cropping times per year), around 50 hectares of jasmine farmland, and around 50 hectares of garden farmland (including coconut, cocoa, and banana), are acquired and a vast number of tenants and farm workers are deprived of their livelihood. This project is already killing our economy. We have already started to lose money from rice fields lost to project, bought by the BPI. We are already experiencing unemployment and financial hardship: individuals who were formerly able to make a living have already begun to suffer financially as a result of the coal plant's land acquisition.

Losing rice paddies as a result of the project is a real threat to our local economy and our livelihoods. Most of us local residents, except for Roban fishing village, have mainly depended on farming for our livelihood as land-own farmers, tenant farmers, and farm workers. Our farmland is very fertile and productive. 1 hectare of rice field can produce 7-8 tons of rice and husk (The national average for the yield of rice paddy is 5.136 tons, according to FAOSTAT, 2012), which leaves 3-4 tons of rice. We can harvest three times a year in our rice paddies, with our irrigation system (the irrigation started from the 1980s), which enables us to sustain our life and families. A landowner of a 1 hectare rice farm gets about 34 million rupiah per harvest, times 3 harvests, so about 102,000,000 per year – and spends roughly 20,000,000 rupiah per year.

For example, one tenant farmer who rented a paddy farm explained how he used to grow 2,000 kilos of rice every harvest, 3 harvests per year (for a total of 6,000 kilos of rice per year). Now, since the landowner sold the land for the coal plant, the former lessor has no livelihood or income left and has been forced into debt. His case is representative of others in a similar situation. Another farm worker said he lost 12,000,000 rupiah per harvest; he did 3 harvests, so lost 36,000,000 per year. In the planting session alone the landowner needs 30 workers just for planting. We think as many as 85 people can lose their jobs for each hectare lost. Now, from 3 villages (Ujungnegoro, Karanggeneng, Ponowareng,), we estimate there are about 2,000 unemployed or severely underemployed workers/tenants in the community.

Also, the jasmine gardens in our communities produced income for some farmers all year round. These livelihoods in the proposed project site will be permanently lost if the project is pushed through. In fact, some of the farms have already been destroyed. There used to be around 20 hectares of jasmine in Karanggeneng alone, and roughly 40 for all villages combined. Now just one hectare remains for all villages. Many of

the community had worked in the jasmine field: mostly women. Workers could get 100 kilos of jasmine per hectare in one day of work. One person working there, on average, could get 6 to 7 kilos per day, or in the worst case scenario, just under 5 kilos. The price of jasmine fluctuated from lowest of 13,000 rupiah, but the highest it could reach was 200,000 rupiah per kilo. At its best price, one person's harvest for the day could bring 1 million rupiah per day total, 30% of which they would keep and 70% of which would be paid to the owner of the farm. Now that source of income is lost for hundreds of people.

Some farmers have lost their livelihood opportunity due to the illegal sales of land by unauthorized individuals. For example, there are cases of landowners who rented their land to relatives or other individuals, then waking up one day and finding that the people who were renting the land had sold it to the BPI illegally. In another case, the former community head of Ponowareng also sold land that was not his.

ii. Loss of livelihood opportunities due to no access to enough irrigation water

Even some farmers who haven't yet sold their land, including the Complainant [REDACTED], couldn't get enough irrigation water as access to irrigation water has been disturbed due to the commencement of land clearing activity in April 2015. The situation has not yet been restored fully. The farmers are already expecting that their production will be reduced or even fail due to lack of water, which would be another loss of livelihood opportunity.

We are also concerned that irrigation water will no longer reach our farmland outside of the project site, because some irrigation canals pass through the proposed site. No care appears to have been taken by the project to ensure that our irrigation and our farms are protected.

iii. This project threatens our fisheries as it will harm the marine environment

There are over 2,000 fishermen in Roban village alone. The potential in Roban as a marine community and a fishing community is huge and we have continued to live sustainably, catching fish, crabs, squids, and shrimps. This coastal area where the coal-fired power plant project will be developed is one of the most productive fishing areas along the coastline of northern Java. We are concerned that emissions from the proposed coal-fired power plant may harm or even destroy our essential local coastal areas, which would mean the loss of our only livelihood.

Besides fishermen from our villages, 500 other fishermen from surrounding areas also fish in the rich waters near our community in Batang and their livelihood would also be threatened. In recent years, several large coal power plants have been built along the coastline of northern Java. Fishermen consider the waters off the coast of Batang to be some of the best fishing areas left and fear the impacts the 2,000 MW Central Java Coal Plant will have on their fisheries.

Based on Indonesian law and regulations, no plant should be allowed to harm our marine protected area. This proposed coal-fired power plant in Batang will be located on the Central Java coast, right next to a protected marine area that will be affected by the project. The Ujungnegoro-Roban coastal area is protected as a Marine Protected Area and Local Sea Tourism Object under Government Regulation No. 26/2008 and is also protected under the Central Java provincial bylaw No. 6/2010 on spatial

planning. The Marine Protected Area is important not only for our ecosystem and our country's environment, but also because it provides employment related to tourism. It has economic value as well as environmental value and it should be protected. The Batang Regent passed a special bylaw for the project to exempt it from the restrictions of development in the vicinity of the protected marine park. This decision was hotly contested by local people and authorities. (See Annex I)

iv. Loss of livelihood opportunities will continue and even get worse in the future

Loss of livelihood opportunities in our villages is tragic for our community. Without jobs in the community, people become economically desperate and join the crew on big trawlers – Taiwanese, Chinese, Korean, or Indonesian ships. For the men who do so, the work is stressful, has tough working conditions, is low paid, exposes them to abuse, and brings them far from home and family. For three months a man working on ship might only earn 1 million rupiah. Some men also become porters, or go to Jakarta for menial jobs. Women who lose their local livelihood may go to work as maids in Jakarta or even Singapore, where they experience psychological stress due to isolation or homesickness. In fact, this tragedy has already happened to some of our community members.

According to JBIC, the project proponent is preparing alternative farmland, reportedly about 90 hectares. What is proposed is not sufficient to restore the lost livelihoods, in quality, productivity, or quantity. We are aware of no adequate plan to improve or restore our living standards in the long term.

We believe the coal-fired power plant is not planning sufficient measures to protect our fishing grounds and fishing livelihoods. For instance, we believe that the technology proposed is destructive and not in conformity with the best available / least destructive technology (such as closed systems for cooling water that require almost no water and create little thermal or other water pollution).

Information provision to the community has been inadequate. Only selected villagers received an invitation letter and allowed to participate in the hearing of Environmental Impact Assessment (EIA) (or AMDAL in Indonesia). No one deemed to be critical or questioning of the AMDAL was invited. We were not invited in a free, fair, open, and transparent fashion, and when we attempted to attend, we were barred from the hearing. In addition, there was no public hearing in Roban village at all, as the BPI has never recognized the fishermen in Roban as a key stakeholder.

With the project and some job trainings, only those who are educated could get job opportunities. But there are many farmers and fishermen in our community who didn't finish elementary, junior high, or senior high school. In this regard, it is certain that our life will get worse with the project which will deprive farmers and fishermen of main livelihood.

v. Loss of livelihood opportunities due to arbitrary arrests

In addition to the farmers already suffering, 5 people, 4 farmers and 1 fisherman, were unjustly sent to jail for the alleged suspicion against the hostage case of a Japanese businessman, and lost their income while imprisoned for over five months. Though they were found innocent and released, they have never been compensated.

And the same is true for 2 community leaders, Mr. [REDACTED] and Mr. [REDACTED] from Karanggeneng village, who were unjustly imprisoned for 7 months – They and their families suffered financially. Mr. [REDACTED]'s imprisonment cost him a substantial amount of money. Prior to the project, he made 5 to 6 million rupiah per month. While he was in jail his wife worked to substitute this lost income but she was only able to earn 1 million per month while he was gone. The family thus lost 4-5 million rupiah per month, and as a family 28-35 million in 7 months was gone. In addition, every week the family spent 200,000 rupiah to visit him, for a total of 800,000 per month on transport and meals.

2. Community members resisting the project face many documented and severe human rights violations, harassment, violence, and intimidation, and could face the same problems in the future; Community security is not ensured:

The community has faced various types of serious human rights violations. People from our community attempting to peacefully protest and voice their concerns have been beaten, shot, arbitrarily arrested, attacked, submitted to unfair trials, experienced attempted bribery, harassed at night by thugs, had their property trespassed and vandalized, and have been terrified.

i. Criminalization of peaceful protests, unfair trials, efforts at bribery and perversion of justice, and violent intimidation by armed groups prior to trial

a. Legal harassment; False and trumped up legal accusations:

- Five Community Leaders were jailed for over five months. They were released from jail because the local court did not find the government's accusations valid. There was no evidence to back up any claim against them. In fact, they were completely innocent, and the court found them so. However, they were not compensated in any way for their arbitrary arrest, unjust imprisonment, financial losses, moral distress, and the suffering of their families and their community. One key point is also that 1 of the 5 had a stroke in jail, and was hospitalized twice, with poor medical treatment. He was forced to spend his own money in the hospital for treatment even though he was in custody of the authorities at the time. The authorities failed to provide the medical treatment needed for him although his condition was urgent, serious, and dire.
- February 24, 2014, another member of the Karanggeneng village, named Kasmir, received notice from the Central Java authority that he was a suspect in a clash taking place in July 2013. There was no evidence provided for this claim.
- Two Community Leaders, [REDACTED] and [REDACTED] (from Karanggeneng village), received a 7 month jail term from the Supreme Court after being found innocent by the District Court. In 2012, [REDACTED], a land owner opposed to the project, was falsely accused of punching an individual identified by villagers as a well-known thug despite the fact that [REDACTED] was not even in the area at the time, as numerous witnesses could attest (along with other evidence such as cell phone tracking technology that would clearly have shown him to be elsewhere, which

the authorities never checked). ██████, a farm tenant and worker, opposed to the project, was also accused of the same crime, although he was also not in the area at the time.

b. Efforts at bribery and perversion of justice:

These two community members - ██████ and ██████ - faced criminal charges related to the alleged (fabricated) incident above and were unjustly held in jail for 7 months. Having been falsely accused of a crime they never committed, ██████ and ██████ won at District Court or the first level of the Indonesian court system. In this court the judge freed them and exonerated them of any wrongdoing. However, after the lower court ruling, the prosecutor in the Central Java court appealed the case to the Supreme Court. The judge of the Supreme Court sentenced them to 7 months in prison, which they served from May to December 2014.

One major problem with this phase of the case is that ██████ and ██████ received their Written Indictments detailing their crime and sentencing very late, with no provision of qualified legal counsel, no ability to review the alleged evidence against them, and received the evidence against them filled with errors of fact. Even the place where they were born was incorrectly recorded in their official letters. We believe that the papers' errors and mistakes underlie a gross miscarriage of justice.

What is most preoccupying with this phase of the case is that after ██████'s conviction and jail sentence, he was approached by the local government officers, who offered to arrange for ██████ to be freed and not go to jail if he would sell his land.

c. Intimidation by the army prior to lawsuit:

Even before ██████'s arrest in 2014, groups of police and army repeatedly came to his house in 2013 dressed in civilian clothes, with no official papers or authorizations, to force him to sell his land. This is completely illegal and constitutes gross abuse of power.

ii. Violent action, intimidation, harassment, illegal trespass, property destruction, and vandalism by military, police and private security in the community

a. Intimidation in negotiations for land acquisition:

Intense intimidation cases in negotiations with landowners by military and police in our community were reported, which Komnas HAM (the National Human Rights Commission) confirmed in its recommendations in August 2013.

b. Deployment of military, police, private security, and thugs:

- It is unclear why the project set up a security office staffed by 100 officers of private security prior to the acquisition of all project land. This action has been linked to intimidation of the local community. Highly disturbing project-related actions regarding the safety of local residents and the use of intimidation include the following, *inter alia*: police, army, and thugs working together to criminalize, intimidate, and attack community members, trespass illegally on their land, and vandalize and destroy their property. There was never any such phenomenon before the project came to our community.
- As mentioned above, in the consultations of EIA (or AMDAL in Indonesia), we were not invited in a free, fair, open, and transparent fashion, but when we tried to attend we were barred from the hearing.

The venue of the public hearings were heavily guarded by more than 1,000 military and police, who did not allow most of the residents who were opposing the project to even enter the venue.

- In 2013, after 5 community members were arrested for their anti-coal views, the army deployed hundreds of the “Angkatan Darat” (Army) and police to establish a massive presence in Batang for more than a week. At least one armed man was posted in front of almost every house in the Karanggeneng and Ponowareng area, terrifying the villagers. After Komnas HAM visited the village and requested that the army leave, the army withdrew its forces, but intimidation continued, carried out by thugs. Villagers report that in 2014 intimidation got worse, not better.
- Villagers report that in every village around the proposed power plant, thugs have informal headquarters, where they get drunk at night and frighten locals. The police also refused to file a complaint related to this incident. They told everyone involved to just sell their land for a good price.
- In April 2015, the engineering brigade of Indonesian military started the land clearing activity in the proposed project site. A large wall made of earth was erected to block four landowners’ lands (including [REDACTED]), which haven’t been sold for the project. The wall was designed specifically to block them from their farms and to prevent water from flowing in or out of the farms in order to damage the crops. The earthworks are guarded by armed men, including army and local security forces. The farmers worry that this could destroy the farms. The soldiers even scold [REDACTED], claiming that because [REDACTED] was opposing the project, he is an enemy of the State. [REDACTED] is feeling a risk at his security to even go inside his own farmland which hasn’t been sold for the BPI.
- The police, army, security forces, and thugs have also decided to try and forbid us and all the local people from taking photos or videos of their land and of the situation.

c. Beating and hospitalization of peaceful protestors:

- When we protested in Semarang against the way the EIA (or AMDAL in Indonesia) process was unfolding, the army and police attacked us.
- On 30 July 2013 local residents reported that they were beaten by project security, military and police because of their involvement in a protest of approximately 500 residents attempting to prevent the company from destroying farmland without the necessary permission. Local news reported 17 residents were severely injured, including 15 men and 2 women.⁴ 50 people were mildly hurt. Some injuries were serious. One of us (a woman in her 60s who is a grandmother) was so severely beaten that she could not walk for three days. Another person was injured when a bullet grazed his head.
- On 6 May 2014, during peaceful protest by the community against [REDACTED]’s arrest that involved blocking the road, police attacked many

⁴ *Mongabay Indonesia*, 2013. Villagers clash with officials while rejecting power plant project drilling. July 30, 2013. <http://www.mongabay.co.id/2013/07/31/warga-desa-bentrok-dengan-aparat-menolak-pengeboran-proyek-pltu-batang/>

of the protestors, severely beating and even hospitalizing two villagers. We have photographs of those two individuals' injuries, taken in the hospital.

d. Violence by thugs:

For the past two years, outsiders whom the villagers believe to be hired thugs (“grandong” or “preemen”) have been coming to the community to harass inhabitants, especially landowners refusing to sell their land and community leaders speaking out against the coal plant. Villagers report that thugs typically come in groups during the day and at night, bang on doors or even force their way into homes, and threaten the villagers with land confiscation and even physical punishment. – typically without wearing any uniforms.

e. There has been high level involvement with violence and intimidation:

A former head of the Batang Regency, [REDACTED], rented a house in Ujungnegoro (inside Batang). Villagers testify that he repeatedly and openly met thugs and the leaders of the thugs in the Batang area who have been intimidating community members into selling their land.

f. A violent attack on Greenpeace staff supporting the community was documented and an official complaint filed with Komnas HAM (the National Human Rights Commission):

A Greenpeace staff member was attacked by thugs and held hostage for 3 hours in a restaurant along with 2 volunteers and a driver. The driver was also attacked. During that time they were threatened. The thugs forced the Greenpeace staff member to record an audio message saying that he would never come to the community again. The thugs still send threatening text messages to that staff member. Not only was Greenpeace staff threatened at the time, but villagers were targeted as well: one man, for instance, was surrounded by 4 thugs, who grabbed his shirt and terrified him, stopping him from intervening in the hostage taking of the Greenpeace staff. Greenpeace has filed a complaint with Komnas HAM.

g. Impunity for violence against community members resisting the coal plant is a major problem in the community:

- A meeting was held between the former head of the village of Ponowareng and the community in October 2014. Community members had expressed their intention to question him as to why he sold the village land to the companies. (A head of village receives around 3-5 hectares to be used temporarily only – not as an outright gift.) When the community came to his office, thugs arrived as well. Several thugs approached and beat a community leader.
- Two thugs in November 2014 came on a motorcycle, drunk, at night, and banged on the door of a landowner who refuses to sell her land – an old woman. The owner opened her door and the thugs attacked her, beat her, and kicked her until she vomited blood, then ran away. They got into an accident that night and crashed into a truck. One died and one is still believed to be in critical condition.
- When this community leader and the above-mentioned elderly woman reported their incidents to the police, the police completely ignored the reports and told them to go away, telling them that if they try to report the assaults, the company could press charges against the community with criminal cases. These are only 2 examples of several cases of impunity.

- In 4 years, we estimate that close to 50 people from our community have been severely hurt as a result of violent attacks by pro-coal thugs, police, army, or company security guards. But no investigation or justice was sought in these cases. The most recent case happened on July 14, 2015, when [REDACTED], one of the community leaders from Ponowareng, was beaten by the thug group and was severely injured. Due to the security reason, [REDACTED] and his family have no choice than moving out from his village to the other place.

iii. The project has led to destruction of social fabric in the community by bribery and attempted bribery

The BPI has bribed several community leaders. The BPI representatives and allies try to convince the landowners to sell their land. If that does not work, they threaten people. Also, landowners who already sold and got 100,000 rupiah per m2 have been encouraged by thugs to pressure their neighbors who will not sell their land. If all landowners sell, then the landowners who already sold get a bonus: everyone will receive 400,000 rupiah per m2. As a result the landowners who have already sold have become very hostile and aggressive with the holdout landowners.

Villagers also report that they have been offered money to join the pro coal camp for years. For example, one individual claims that a policeman offered him 30 million Rupiah to “become pro coal” (he is not a landowner so this offer was not for land). Further, unemployed individuals from the area have been bribed by the thugs to support the power plant.

Now many in the community do not trust each other anymore. The social relationship among the community has been destroyed because of the BPI. This is one of the big issues the community has complained about – social tension and dislocation – as well as human rights violations and land rights violations. We used to live in harmony together and have good relations with each other, with neighbors helping each other. Now we have loss of trust, loss of connection, loss of friendship, fear, confusion, unhappiness, quarreling, and anxiety.

3. Additional potential adverse impacts likely to be incurred due to the pollution if the project continues as planned:

We believe that a coal-fired power plant would cause additional further harms because of the extensive research that documents harms and costs of coal-fired power plants.

One key harm that we are worried about is health impacts: largely due to the emissions the plants produce that fill the air with toxic pollutants including mercury, lead, arsenic, cadmium, and tiny sulphate and nitrate particles that go deep into the lungs of people that inhale them.

We would like to inform you about the research that has been done through financial harm, damage to livelihood and health suffered by another community that was forced to accept a coal-fired power plant: Cirebon (livelihood impacts of the plant studied in 2011) that JBIC has also provided its finance for. We believe that this is highly

relevant information although each power plant and each community is different and unique.

This research demonstrates the kinds of harms and suffering that we would face if we were going to be forced to accept a coal-fired power plant; and it is confirmed by a wealth of other similar reports for other countries around the world, all of which outline the true cost of coal for affected communities. We also include some quotes from the most authoritative reports on the costs of coal-fired power plants. (See Annex II)

While the BPI might say that the Japanese companies have the clean coal technology or the best pollution control technology, the reports of Japanese NGOs reveal that the technology used for coal-fired power plants in Japan has not been equipped in the coal-fired power plants abroad JBIC has supported or would support for, including the Batang plant. (See Annex III and IV)

(3) Descriptions with reference to the paragraphs of the OECD Guidelines which have been breached

Though the project has not advanced to the construction stage yet, the process of securing social acceptance, acquiring land and conducting an EIA has significantly failed to comply with the OECD Guidelines for Multinational Enterprises. As a result, we have already faced the social and economic adverse effects, such as the loss of livelihood opportunities as well as severe human rights violations, as enumerated in the section above. We will also suffer from health impacts, further impacts on our livelihoods and environment, and further human rights violations in the future if the project is carried out as currently conceived.

The adverse impacts that the Complainants and our fellow community members have actually suffered and expect to suffer in the future if this project proceeds will be directly attributable to multiple instances of Japanese companies' non-compliance with the OECD Guidelines.

i. Violation of Indonesian Laws (in violation of General Policies Chapter I, Paragraph 2)

The Batang project, thus the BPI, has already violated several aspects of Indonesian laws and has failed or has never made efforts to avoid the illegality. This represents a breach to the following section in the Guidelines:

- **OECD Guidelines I. Concepts and Principles 2. Obeying domestic laws is the first obligation of enterprises.**

The Batang Regent passed a special bylaw for the project to exempt it from the restrictions of development in the vicinity of the Ujungnegoro-Roban coastal area, which is protected as a Marine Protected Area and Local Sea Tourism Object under Government Regulation No. 26/2008. This decision was hotly contested by local

people and authorities. We believe the Batang Regent's decision to change the regional regulation was misguided and that the decision itself might be illegal. It is our understanding that this act was based on fraud: in particular, on falsified maps with imaginary relocation of coral reefs. Indeed, local residents have brought a lawsuit against the Regent for adopting this bylaw.

Having been approached by another group in the community, a lecturer/lawyer in Satya Wacana Christian University in Salatiga Central Java filed a lawsuit against the location permit of the proposed power plant in Batang in 2013, which Bupati of Batang issued in 2012.

As part of the power plant will be built at sea, the project also infringes upon a protected area, in direct violation of Central Java provincial bylaw No 6/2010 on spatial planning.

Also, while the Indonesian government has started the implementation of Law No. 2 of 2012 on Land Procurement for The Public Interest, it is still controversial whether this law could be applied for private projects like the Batang one, or not. In fact, the opinions vary even among the government officials in Indonesia. If the Indonesian government acquires the land that hasn't been sold to the BPI under the Law, there is a question for the project in legality.

Moreover, Law No. 34/2004 on the Indonesian Armed Forces strictly prohibits the army from engaging with any business activity, especially in Article 2 (d), which states that a professional army is "well-trained, well-educated, well-equipped, and not involved in politics nor business." The involvement of the Engineering Brigade from Indonesian national army in the land clearing activity of the Batang project since April 2015 through the contract with the BPI or its business partnership (the government) clearly violates the Law. Komnas HAM (the National Human Rights Commission) also recommended on April 23, 2015 for the respect for and protection of the landowners' rights that all the military soldiers withdraw from any activity or any active/passive involvement in the construction of the Batang coal-fired power plant. (See Annex V)

Finally, Komnas HAM has issued the recommendations more than once, which include one that the governor of Central Java and the Central Government cancel the project, because of human rights violations and social problems in the community.

ii. 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

The Batang coal-fired power plant project has already caused or will likely cause various adverse impacts on civil rights, economic rights, and rights to health of local communities. ITOCHU and J-POWER have failed to seek to prevent or mitigate adverse impacts directly linked to their operations and exercise their leverage to protect human rights (in violation of Human Rights Chapter IV, Paragraph 1 and 2.). Furthermore, ITOCHU and J-POWER have failed to provide for or co-operate

through legitimate process in the remediation of adverse human rights impacts they have caused (in violation of Human Rights Chapter IV, Paragraph 6).

Additionally, ITOCHU and J-POWER has not carried out comprehensive human rights due diligence (in violation of General Policies Chapter II, Paragraph A.10 and Human Rights Chapter IV, Paragraph 5). This clear breach of the Guidelines includes the companies' failure to engage in meaningful consultation with all affected stakeholders (in violation of General Policies Chapter II, Paragraph A.14) in order to identify the full scope and severity of potential human rights impacts (in violation of General Policies Chapter II, Paragraph A.14 and Human Rights Chapter IV, Paragraph 2).

These failures mean a breach of ITOCHU and J-POWER to the following sections in the Guidelines:

- *OECD Guidelines II. General Policies A-10. Enterprises should (c)arry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed.*
- *OECD Guidelines II. General Policies A-11. Enterprises should (a)void causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.*
- *OECD Guidelines II. General Policies A-14. Enterprises should (e)ngage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.*
- *OECD Guidelines IV. Human Rights 1. Enterprises should respect human rights, which means they should avoid infringing on the human rights of others and should address human rights impacts with which they are involved.*
- *OECD Guidelines IV. Human Rights 2. Enterprises should, (w)ithin the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.*
- *OECD Guidelines IV. Human Rights 5. Enterprises should (c)arry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.*
- *OECD Guidelines IV. Human Rights 6. Enterprises should (p)rovide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.*

Adverse impacts on Civil Rights and the failure of ITOCHU and J-POWER to prevent or mitigate such impacts (in violation of Human Rights Chapter IV, Paragraph 1 and 2.)

As described in the above section, people from our community attempting to peacefully protest and voice their concerns about the project have faced the various types of serious human rights violations by the deployment of military, police and private security in the communities, being beaten, shot, arbitrarily arrested, attacked, submitted to unfair trials, experiencing attempted bribery, being harassed at night by thugs, having their property vandalized and trespassed, and having been terrified.: The community security is not ensured.

Also, the fact that some landowners have been forced to negotiate the land acquisition under the arrest or the punishment in jail or were actually forced to sell their land due to the intimidation by the military, could be an obstacle for the other landowners to freely express their opinion, because they would consider that they might suffer the same situation as victims such as [REDACTED].

So far, the BPI has failed to examine these adverse impacts of the project or the project-related activities on the community's security and the people's civil rights, and failed to address them or take any appropriate measure to ensure the safety and civil rights of the community. This is just nothing other than the BPI's complicity in adverse human rights impacts. As a result, such human rights violations against the landowners who haven't yet sold their land and the community leaders who are protesting the project are still continuing, and are even deteriorated.

It should be noted that Komnas HAM has issued the recommendations more than once, which include one that the_governor of Central Java and the Central Government cancel the project, because of human rights violations and social problems in the community.

The BPI and its shareholders ITOCHU and J-POWER must carefully identify the cause of these adverse human rights impacts we have already faced and what action should be taken or what kind of leverage should be used to avoid such impacts. We would like to reiterate that the business partners of the BPI in the project, such as the Indonesian government, have important roles to play in terms of respecting and protecting the community's human rights in the project, especially given that military and police have deeply got involved with the human rights violations against the community members, and that the responsibility for land acquisition has been transferred to the government from the BPI after the company's force majeure.

Adverse impacts on Economic Rights (in violation of Human Rights Chapter IV, Paragraph 1 and 2.)

The International Covenant on Economic, Social and Cultural Rights stipulates the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts (Article 6) and the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions (Article 11). The project has already deprived and will deprive the Batang community of these rights.

Due to the land acquisition for the project, many farmers as land-own farmers, tenant farmers, and farm workers are already suffering the loss of work or income sources which they wanted to continue. In addition, if the Indonesian government acquires the land that hasn't been sold to the BPI under Law No. 2 of 2012 on Land Procurement for The Public Interest, such forcible acquisition of land will make more farmers suffer financially due to the loss of livelihood opportunities in the farmlands, and will be also just no respect for or the neglect of the landowners' basic land rights.

If the project is pushed through, the construction of the jetty and the emissions from the proposed coal-fired power plant will also destroy our essential local coastal areas protected by under the above-mentioned regulations, which also means the loss of the livelihood for our fishing families.

Adverse impacts on Rights to enjoy the highest attainable standard of health (in violation of Human Rights Chapter IV, Paragraph 1 and 2.)

The International Covenant on Economic, Social and Cultural Rights stipulates the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Article 12). The project will expose the people of Batang in the higher risk of health damage if it is pushed through as currently planned, and will fail to ensure the Batang community to enjoy the highest attainable standard of health without using the best-available technology.

In the table of Annex IV, we can find the Isogo plants in Kanagawa, which J-POWER is very proud of for its "clean" technology, have adopted much better pollution control technology than the Batang Power Plant. For example;

- Mitigation measure against SO_x:
The emission concentration will be 5-10 times higher in Batang than in Isogo.
- Mitigation measure against NO_x:
In Batang, they will only install LNB, but SCR. The emission concentration will be 6-10 times higher in Batang than in Isogo.
- Mitigation measure against PM:
The emission concentration will be 5-10 times higher in Batang than in Isogo.

It is unacceptable and not legitimate that J-POWER and ITOCHU will not use the best-available technology for human beings in Batang who is the same as in Isogo, and will not expose the people of Batang in the higher risk of health damage.

Failure to conduct comprehensive human rights due diligence(in violation of General Policies Chapter II, Paragraph A.10, 11 and 14 and Human Rights Chapter IV, Paragraph 2 and 5)

As these adverse human rights impacts are unavoidable as long as the BPI pushes through the project in Batang as currently planned, the BPI should address such impacts. However, the BPI has failed to carry out human rights due diligence and mitigate such adverse human rights impacts.

Firstly, the BPI's identification of adverse impacts or the scope of impacts to be examined by the BPI was very limited (in violation of General Policies Chapter II, Paragraph A.10 and Human Rights Chapter IV, Paragraph 5). The BPI has failed to

do the census of the affected farmers and fishermen who will lose their livelihood or experience less income opportunity because of the project; this is a vital failure for designing the proper and effective compensation and livelihood restoration measures in the transitional period and in the long-term. Without the basic census data in details, the BPI couldn't adequately assess or address potential human rights impacts on farmers and fishermen.

Secondly, the BPI couldn't appropriately engage with relevant stakeholders, or landowners, farm tenants and workers, and local fishermen, in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for the project and for the compensation and livelihood restoration measures. (in violation of General Policies Chapter II, Paragraph A.14).

For example, there was no public consultation before the land negotiation started between the BPI and each landowner. Thus, the landowners couldn't provide the meaningful opportunities their views to be taken into account in planning of such compensation measures *before* the land acquisition process had started.

In addition, even though the inadequate and late consultations for the EIA (or AMDAL in Indonesia) were held⁵, most of the farm tenants and workers and the local fishermen were not invited as the participants and were barred by the presence of over 1,000 military and police who guarded there. Consultations have largely only taken place with the landowners involved in the direct land acquisition process and with the HNSI – the government-established union made for fishermen. The local fishermen of Roban village have not been consulted and believe that the HNSI does not represent the local fishermen's views. According to data from Kiara (The People's Coalition for Fisheries Justice), about 10,961 Batang fishermen will be affected by the proposed coal power plant.⁶ There is no evidence to suggest that efforts have been made to verify that the HNSI represents the local fishermen's views. Overall, the community feels that they had no ability to have input to the EIA (or AMDAL in Indonesia) or any livelihood or compensation plan unless they were a landowner or part of the HNSI.

The local fishermen and farm tenants and workers should have been considered to represent disadvantaged or vulnerable persons located in the project-affected area. A Stakeholder Engagement Plan should include differentiated measures to allow the effective participation of those identified as disadvantaged or vulnerable. When the stakeholder engagement process depends substantially on community representatives (such as the HNSI), the BPI should make every reasonable effort to verify that such persons do in fact represent the views of Affected Communities and that they can be relied upon to faithfully communicate the results of consultations to their constituents.

A situation, where the landowners and the community leaders have faced with the various human rights violations and were actually put into jail or were injured by the violence action of the military, the police and the thugs, could be also one of the huge obstacles for the community to appropriately participate in such consultations or

⁵ As far as we know, there was no separate public consultation specifically for the Livelihood Restoration Plan (LRP) in this project.

⁶ This number represents the total fishermen who currently fish in Batang Waters.

freely express their concerns in any time, because they would consider that they might suffer the same situation as victims in their same community. The BPI should address this situation by using its leverage.

In the above-mentioned ways, our participation opportunity in planning the measures for compensation and/or livelihood restoration has been significantly flawed. We were not able to express our concerns properly at any consultations, and our concerns have not been incorporated into the planning of even the compensation and/or livelihood restoration measures as well as the project itself. Thus, sufficient and effective remediation for us to restore our potential loss of income and livelihoods has not been provided.

Failure to provide for or co-operate through legitimate process in the remediation of adverse human rights impacts they have caused (in violation of Human Rights Chapter IV, Paragraph 6).

BPI has not yet prepared or made in public any independent compensation and/or Livelihood Restoration Plan (LRP) or any concrete or detailed measures for proper compensation and/or livelihood restoration even in the EIA (or AMDAL in Indonesia). This is a direct attribution of many farmers already suffering the financial impoverishment due to the loss of income opportunities. And more farmers and the fishermen will suffer it in the future, if the project is pushed through in this way.

An LRP should establish the entitlements of affected persons and/or communities, should ensure that these are provided in a transparent, consistent, and equitable manner, and should design how to provide opportunities to improve, or at least restore, their means of income-earning capacity, production levels, and standards of living, by compensation for loss at full replacement cost, transitional support, and so on.

Furthermore, the legitimate process in the remediation was not provided for landowners. The BPI had just started the process of land acquisition by negotiating with each landowner separately, before the unified compensation plan was prepared under the public consultation process. As a result, there has been no transparency and no standard in the compensation for each land, and the compensation amount has been unfairly varied in each case.

In addition, the BPI has provided no sufficient remediation or compensation/transition support in a timely manner for the farmers who have already lost their livelihoods opportunities because the landowners of the farmland where they used to till had sold the land for the project since 2011. As a result, many farmers are already suffering the loss of income sources and more farmers will suffer it in the future, if the project is pushed through.

The alternative farmland which the project proponent is preparing is not sufficient in terms of quality and quantity, considering its size, location and productivity. We don't expect any possibility to remediate or improve/at least restore our living standard or income opportunities with that alternative farmland.

With the project and some job trainings, some people who are educated could get job opportunities in the operational stage of the power plant as well as the construction stage. But there are many farmers and fishermen in our community who didn't finish

elementary, junior high, or senior high school. In this regard, it is certain that our life will get worse with the project which will deprive farmers and fishermen of main livelihood and with difficulty in establishing any other alternative main livelihood.

As a result of no efficient and sufficient remediation or lack of the proper and effective compensation and/or livelihood restoration programs, many farmers are already suffering the financial harms and impoverishment due to the loss of income opportunities, and more farmers and the fishermen will suffer it in the future, if the project is pushed through.

iii. Failure to conduct environmental due diligence, including consulting with and informing affected communities

ITOCHU and J-POWER have not conducted comprehensive environmental due diligence that assesses all project components and their impacts (in violation of General Policies Chapter II, Paragraph A.10 and Environmental Chapter VI, Paragraph 3). In addition, ITOCHU and J-POWER have not engaged with all relevant stakeholders during the environmental assessment process (in violation of General Policies Chapter II, Paragraph A 14) thereby rendering the BPI's existing environmental studies incomplete and inadequate. Furthermore, ITOCHU and J-POWER have not provided the public with adequate, measurable and verifiable information about potential environmental impacts of its proposed project (in violation of Environmental Chapter VI, Paragraph 2a and 2b). These failures mean a breach to the following Guidelines:

- *OECD Guidelines II. General Policies A-10. Enterprises should (c)arry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed.*
- *OECD Guidelines II. General Policies A-14. Enterprises should (e)ngage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.*
- *OECD Guidelines VI. Environment 2-a). Enterprises should provide the public and workers with adequate, measureable and verifiable (where applicable) and timely information on the potential environment, health and safety impacts of the activities of the enterprise*
- *OECD Guidelines VI. Environment 2-b). Enterprises should engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.*
- *OECD Guidelines VI. Environment 3. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority,*

(enterprises should) prepare an appropriate environmental impact assessment.

Failure to conduct comprehensive environmental due diligence (in violation of General Policies Chapter II, Paragraph A.10 and 14 and Environmental Chapter VI, Paragraph 3)

The process of Environmental Impact Assessment (EIA) (or AMDAL in Indonesia) for this project had not yet started before the process of land acquisition or the start of negotiation for land purchases by the BPI with individual landowner. Therefore, it is obvious that there was no appropriate assessment from the earliest planning stage possible, or that no alternative proposal or minimization measures to prevent or reduce adverse impacts were examined or incorporated into the project plan in the earliest planning stage possible.

In fact, according to Indonesian authorities in the Ministry of the Environment and Forest and numerous other analysts, the AMDAL fails to appropriately analyze alternatives or justify the selected option as the one with the lowest environmental and social risk. There has been no cost analysis of alternatives that justifies the selected option, including power generation technology (e.g., renewable energy vs. coal), pollution controls, plant size, water usage, etc. Originally, the government of Indonesia planned for the Batang Central Java power plant to be a 600-800 MW plant. In the end, the final project offered for bidding grew to 2,000 MW. The AMDAL offers no justification for expanding the plant from the original 600-800 MW to the current 2,000 MW plant.

The participation process in the public hearings on the AMDAL is also a big question. In December 2013 the local residents and the Indonesian Legal Aid Foundation filed a complaint on the Central Java Power project's non-compliance with the AMDAL requirements. It should be also noted that Ministry of Environment and Forest is currently reviewing the AMDAL in various aspects.

Failure to engage with relevant stakeholders and provide them with adequate information on environmental impacts (in violation of General Policies Chapter II, Paragraph A.14, and Environmental Chapter VI, Paragraph 2-a and 2-b)

We want to note that public consultation on the EIA (or AMDAL in Indonesia) was held *after* land acquisition process started, not before, which is profoundly wrong. The BPI did not make sure that the discussions with the affected community were held from early stages in the project preparation. Therefore, it is obvious that no meaningful opportunity was provided in timely manner by the BPI for the local affected community to express their views from a planning stage of the project where alternative proposals may be examined or no incorporation of the views of the affected community into the contents of the project plan.

In addition, the BPI failed to hold the adequate consultations. With regards to the public consultations on the AMDAL, only selected villagers who received an official invitation letter, largely landowners, were allowed to participate in the consultations, chiefly left out the farm tenants and workers. No one deemed to be critical or questioning of the AMDAL was invited. We were not invited. Inadequate and misleading information was given about consultations and key information has been withheld from us, including the number of meetings, dates and times, and locations of

alleged consultations. In fact, not only were we not invited in a free, fair, open, and transparent fashion, we were barred from the consultations. The venue of the public consultations was heavily guarded by more than 1,000 military and police, who did not allow most of the residents who were opposing the project to even enter the venue.

Moreover, there was no public consultation in Roban village at all, as the BPI has never recognized the fishermen in Roban as a key stakeholder. When we protested in Semarang against the way the AMDAL process was unfolding, the army and police attacked us.

This is how our views have been addressed. We were not able to explain our views and concerns properly at any time. The BPI did not ensure that local people affected by this project were able to express their opinions in discussions with the BPI or the government agency planning the project, and did not ensure that the project design accommodated community views as much as possible.

The adequate information on the potential environment and health impacts has not been provided for the affected community, either. The BPI failed to provide enough information even before and after the flawed consultations. The BPI and the government have never explained to us the negative environmental and health impacts to be caused by the project. The community affected by the project had no opportunity to learn about the project itself and its environmental and health impacts in the earlier stage of the project.

According to experts, the AMDAL disclosed to the local population did not provide adequate data on pollution to determine the environmental and social impacts associated with the project. For example, the AMDAL does not provide data on the expected emissions of particulate matter (PM10 & PM2.5, both chronic and acute health impacts should be considered) or mercury.⁷ There is also inadequate information regarding the specific pollution control technology to be utilized by the new plant. Such information is critical in order to determine the potential level of pollution and the associated public health and environmental impacts.

In the process of the AMDAL, the BPI should predict and assess the project's likely positive and negative impacts, to the extent possible in quantitative terms. The BPI should identify mitigation measures and any residual negative impacts that cannot be mitigated. Quantitative terms for the predicted level of pollution, required mitigation measures, and the associated health, and environmental impacts need to be determined and shared with the public. If the project is pushed through without disclosing and discussing such information, we believe that we and our children's and grandchildren's generation would suffer health damages.

⁷ There are data provided on SO₂, NO_x, cadmium and lead.

(4) Background of the issues raised (such as past and present circumstances of the issues and reason why the complainant decided to submit a complaint to the Japanese NCP)

Past circumstances on the issues

The BPI and its business partners have held several consultations on the EIA (or AMDAL in Indonesia) since 2012, but we believe them to have been deeply flawed. Most of us couldn't participate in such consultations due to the various reasons as described in the above section.

Nevertheless, the Complainants and our fellow community members have endeavored to have dialogues with the BPI and its business partners. We have made repeated, good faith efforts to speak with them and explain objections. We reached out in numerous ways including: letters, petitions, meetings, demonstrations, and more. We have continuously expressed our strong opposition to the project since 2011 in every way we know how. This includes filing complaints and lawsuits and participating in over 25 protest actions with thousands of people locally as well as in Jakarta, despite considerable physical risks, because of our concern with the huge impact of the project. Those repeated efforts have been repeatedly ignored or rebuffed, or even met with violence and intimidation. Below is a description of all the ways in which we have reached out to the BPI and Indonesian government authorities working with the BPI and being able to stop or monitor the BPI and all other relevant parties.

- (i) Our community members endeavored to have communications with the BPI. When our community representatives visited Japan in September 2014, they tried to set a meeting with the ITOCHU and J-POWER who have invested in the BPI, which was refused,
- (ii) Our community members endeavored many times to have communications with Indonesian government authorities able to stop or monitor the BPI. Just recently in March 2015, the president of Perusahaan Listrik Negara (PLN), an Indonesian state-owned power company, visited ██████'s house to persuade him to sell the land with the huge amount of compensation, but ██████ has continuously refused selling his land till today,
- (iii) Our community members had communication with the courts through lawsuits regarding the process of the AMDAL, the misguided change of regional regulation, or the marine protected area, and the controversial location permit of the proposed power plant in Batang.
- (iv) Our community members had communication with Komnas HAM, and Ministry of Environment and Forest⁸. Through such government agencies,

⁸ On January 28, 2015, a community representative met with the Minister of Environment and Forests to explain the situation in the village. The Minister subsequently sent a team from her Ministry to investigate and conduct a fact-finding mission in the village, from February 11-13. The team's recommendation was that the government should cancel this coal-fired power plant project. Members of the presidential advisory team have now also been apprised of the findings of the Environment Ministry team, and expressed their concern for the community's sufferings. The Ministry team also expressed their desire to support a new challenge against the project AMDAL, which they found to be flawed and possibly illegal on a number of grounds.

we expected better communication with the project proponent and the other government authorities.

Present circumstances on the issues

After the BPI had sent a force majeure notice to PLN in 2014 because of land acquisition problems, the Indonesian government started considering the application of Law No. 2 of 2012 on Land Procurement for The Public Interest, which would allow the government to forcibly acquire the land. The BPI and the government have put more pressure again on the local people to divide the community, so that they can completely settle the land acquisition for the project. This pressure, such as the intimidation and persuasion to the landowners, is still continuing till today even after the Governor of Central Java allegedly signed a letter to start the implementation of Law No. 2 of 2012 on June 30, 2015.

We have also faced increased intimidation after an invitation was made to the President: In February 2015, President Widodo was invited by the project proponent to the village for a groundbreaking ceremony. Subsequently, the intimidation in the community got worse because the BPI and its business partners wanted to make sure land acquisition was completed before President Widodo arrived. At midnight, thugs were banging on the doors of project opponents, threatening to kill people and sending threatening letters.

Recently, insincere way or misleading and untrue statements by the government to the press about land acquisition is continuing. Government officials and even a government minister have been quoted in the press saying that land acquisitions for the Batang power station have finally been completed, although this is not true. For example, on 5 March 2015, Reuters reported that the State Minister of Agrarian and Spatial Planning, Ferry Mursyidan Baldan, said that “all land problems related to the Batang power plant have been cleared” – even though landowners in Batang are still refusing to sell around 20 hectares. A recent statement by President Widodo that the process of land acquisition for Batang power plant is already completed, must have been based on a false report from his subordinates, because it is not accurate. In fact, up until today there is land still retained by local citizens. But this is how the BPI together with the government authorities as its business partners are trying to pretend that there is already no problem and also to put more pressure on the individual landowners.

Further, the Engineering Brigade from Indonesian national army has started the land clearing activity of of the Batang project since April 2015. And they haven't yet followed the recommendations of Komnas HAM (the National Human Rights Commission) dated on April 23, 2015 that all the military soldiers withdraw from any activity or any active/passive involvement in the construction of the Batang coal-fired power plant.

Why the complainant decided to submit a complaint to the Japanese NCP

We are facing growing and unbearable pressure to make us silent or not freely oppose the project, or force the landowners to give up their unsold land as described above, and the situations have been deteriorated without the necessary and appropriate response/action from the BPI and the Indonesian government. We believe that the Japanese companies, ITOCHU and J-POWER, must be accountable or responsible for

the past, present, and potential adverse impacts on our community and could use their leverage to prevent such impacts or effect change in the practices of the BPI and its business partners. However, the both companies have failed to do so till today. Thus, we decided to submit this complaint to the Japanese NCP.

(5) A list of requests to the Japanese NCP for assistance to help us resolve the problems

The Complainants request the Japanese NCP to resolve our concerns and problems by taking the following measures;

1. Immediate action to make the ITOCHU and J-POWER protect landowners from human rights violation: As previously stated, there are still 70 landowners refusing to give up their land. These landowners and the community in general are feeling heightened pressure as the Government is pushing forward to finalize the land acquisition soonest. It is thus imperative that the companies use their leverage to ensure this process does not involve any further manipulation, coercion, intimidation or violence towards the local community;
2. Immediate action to urge the companies and the relevant government agencies to ensure appropriate rehabilitation or remediation for any damage to restore the farmlands and for any negative impact on farmers' livelihood (including free access to farmland and irrigation water) caused by the current land clearing activity since April 2015;
3. A field visit by relevant Japanese embassies and/or consulates to assess the Japanese companies' compliance with the Guidelines. We strongly request that the Japanese NCP through the embassies and/or consulates conduct a full, fair, and impartial assessment of every aspect of the project so far and hear directly from the local people to be affected by the project including landowners, farm tenants and workers and fishermen, and not solely from the companies and the Indonesian national and local government officials, in order to confirm our above-mentioned concerns, especially the instances of project-related intimidation. Many Indonesian authorities expressed support for us. It is simply not true that all Indonesian authorities want this project. The facts and evidence contradict such an assertion, and the NCP must assess it, too;
4. The Japanese NCP's findings in the above-mentioned assessment should be presented to the community.
5. Regarding security personnel, when the BPI retains direct or contracted workers to provide security to safeguard its personnel and property, the Japanese NCP take action to make the companies assess risks posed by its security arrangements to the community within and outside the project site. In making such arrangements, the BPI should be guided by the principles of proportionality and good international practice in relation to hiring, rules of

conduct, training, equipping, and monitoring of such workers, and by applicable law. The BPI should consider and, where appropriate, investigate all allegations of unlawful or abusive acts of security personnel, take action (or urge appropriate parties to take action) to prevent recurrence, and report unlawful and abusive acts to public authorities. The BPI is required that any government related security arrangements involving the project are publicly disclosed.

6. The Japanese NCP take action to make the companies identify Project Affected Persons (PAPs) who have already lost and would lose income sources or means of livelihood as a result of land acquisition for projects, and research on how they should be assisted in their efforts to restore their livelihoods and standards of living;
7. The Japanese NCP take action to make the companies establish a mechanism for consideration/consultation and compensation for all PAPs, with inclusion of differentiated measures to allow the effective participation of those identified as disadvantaged or vulnerable, such as the farm tenants and workers and the local fishermen;
8. The Japanese NCP take action to make the companies prove appropriate consultation with local fishermen and local farm tenants and workers and appropriate compensation for their losses to improve or at least restore their living standards – if this cannot be proven, ensure appropriate consultation takes place to determine their concerns, views, and impacts followed by appropriate compensation for any losses of income/means of livelihood;
9. The Japanese NCP take action to make the companies disclose quantitative terms for the predicted level of pollution / data on all harmful emissions, including *inter alia*, particulate matter (PM2.5 & PM10) and mercury;
10. The Japanese NCP take action to make the companies disclose the specific pollution control technology that will be utilized by the project for PM, SO₂, NO_x, and mercury, in a form and manner that are understandable to the affected people. Such information is critical in order to determine the potential level of pollution and the associated public health and environmental impacts;;
11. The Japanese NCP take action to make the companies disclose quantitative data on the project activities' associated social, health, and environmental impacts, including impacts on fisheries and crops; and required mitigation measures (including an assessment of the impact of the plant in Batang on the nearby protected marine area);
12. The Japanese NCP take action to make the companies disclose the analysis of alternatives that justifies the selected option, as the one with the lowest environmental and social risk, including power generation technology (e.g., renewable energy vs. coal), pollution controls, plant size, water usage, etc. as the option with the lowest environmental and social risk;

13. Help the Japanese companies understand our concerns, and instructions to the companies to take some action to investigate the cause of the problems and solve them in a transparent and accountable way;
14. Public call upon all companies, financiers, and the governments to dialogue with the local community in an attempt to resolve disputes and enhance understanding of the issues at stake;
15. The Japanese NCP take action to make the companies disclose the information regarding the process by which the Batang Regent passed a special bylaw for the project to exempt it from the restrictions of development in the vicinity of the protected marine park; making available the evidence on which the Batang Regent's decision was based.

We firmly believe that our Complaint is legitimate, truthful, and in no way abusive. We do not unduly seek compensation; we do not submit this solely to delay implementation of the project, but rather, because of real and legitimate concerns and grievances, which are urgent. We have not submitted this for political purposes unrelated to the project. To our knowledge, all information in this Complaint is correct and we welcome a full assessment by Japanese NCP into each and every one of these facts, by not only asking the companies' views, but also ours.

We, as Complainants, hereby covenant that all the matters described herein are true and correct.

Names and signatures of each Requester are followed here.

23 community members signified.