

NGOs' Comments to the Japanese NCP's Final Statement on "Cirebon Coal-fired Power Plant Project- Unit 2" (Cirebon 2) in Indonesia

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WALHI and FoEJ, on behalf of the local community coalition, Rapel (Rakyat Penyelamat Lingkungan: People Environment Safer) Cirebon, filed a complaint (dated May 23, 2017) with the Japanese NCP against Marubeni and JERA regarding the Cirebon Coal-fired Power Plant Project- Unit 2 (Cirebon 2) in Indonesia.

The Japanese NCP has recently issued a final statement on this case, dated February 13, 2024¹, which includes the following description;

"5. (10) 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 2023. The Complainants and the Enterprises Involved submitted their comments to the Japanese NCP. The Japanese NCP considered their comments and finalised the statement."

As mentioned above, we NGOs also submitted our comments (dated January 18, 2024) on the draft final statement of the Japanese NCP. However, our comments are not sufficiently reflected in the final statement of the NCP, and we therefore publicly state our comments on the final statement as follows.

Japanese NCP's final statement	WALHI and FoEJ's comments
Page 1-2 1. (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. 1. (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.	In (4), it is stated that " the Japanese NCP does not determine whether the enterprises' activities are consistent with the Guidelines," but the NCP should at least revise its policy to state that "the Japanese NCP may, if relevant, determine whether the enterprises' activities are consistent with the Guidelines." (Reason) In (5), it is stated that " The Japanese NCP may make recommendations on the implementation of the Guidelines... if relevant." Thus, as a process to determine whether there is a need to make recommendations on the implementation of the Guidelines, it is necessary to determine whether to make recommendations after understanding and

¹ <https://www.mofa.go.jp/files/100620335.pdf>

	<p>examining the status of consistence with the Guidelines regarding the activities of the enterprises involved.</p> <p>Especially in cases like this where the party receiving the bribe has already been convicted and the involvement of the company in the bribery has been publicly pointed out, and it is clear that the company's activities may not be consistent with the Guidelines, the Japanese NCP should actively make clear recommendations on the implementation of the Guidelines, regardless of whether or not there is any complaint filed with respect to the Guidelines.</p>
<p>Page 6</p> <p>5. (7) the Complainants informed the Japanese NCP of the local situation including the situation on the alleged bribery and the conviction of the former Regent of Cirebon, through e-mails and at the occasion of an in-person meeting held in May 2023.</p>	<p>The following four points should be stated in more concrete ways;</p> <p>(1) that at the May 2023 in-person meeting, the Complainants provided information on the status of the ongoing trial regarding the bribery case and requested the Japanese NCP to inquire about the views of the Enterprises Involved regarding the bribery case;</p> <p>(2) whether or not the Japanese NCP inquired with the Enterprises Involved about their views on the bribery case after the May 2023 in-person meeting. If yes, what was the result of the inquiry;</p> <p>(3) in an email dated August 19, 2023, FoE Japan informed the Japanese NCP that on August 18, 2023, the former Regent of Cirebon was convicted, including the bribery case related to Cirebon 2, and requested the Japanese NCP to consider taking measures such as calling on the Enterprises Involved to be accountable and to take appropriate actions in light of the Guidelines "VII. Combating Bribery, Bribe Solicitation and Extortion"; and</p> <p>(4) the content and results of the actions taken by the Japanese NCP in response to the information and request in the above point (3).</p> <p>(Reason)</p> <p>In 5. (5) and (6), the contents of the information provided to the Japanese NCP by the Complainants, as well as the Japanese NCP's response to such information and the results of such response, are</p>

	described; the same should be described for the period from May 2023 and onward.
<p>Page 7</p> <p>6. (2) The Japanese NCP, noting that there is a difference of opinion between the Complainant and the Companies Involved, recommends that the Enterprises Involved continue to ensure the observance of the Guidelines, and to engage with the local community and residents, including the Complainants.</p>	<p>The term "continue to ensure the observance of the Guidelines" is inappropriate and should be replaced with "ensure the observance of the Guidelines."</p> <p>(Reason)</p> <p>The term "continue to ensure the observance of the Guidelines " can be interpreted as a recommendation to ensure that the Enterprises Involved continues to be consistent with the Guidelines, as if the Enterprises Involved are currently consistent with the Guidelines. Therefore, the words "continue to" should be deleted.</p>