

Complaint Against Marubeni and JERA Regarding the Cirebon Coal-fired Power Plant Project in Indonesia

Date: May 23, 2017

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

1. Information on complainant

(1) Name of the complainant and/or name of the representative of the complainants

- Friends of the Earth Japan

[REDACTED]

- Wahana Lingkungan Hidup Indonesia (WALHI: Friends of the Earth Indonesia)

[REDACTED]

(2) Contact address

- Friends of the Earth Japan

2nd Fl. 1-21-9 Komone, Itabashi-ku, Tokyo 173-0037 Japan

- Wahana Lingkungan Hidup Indonesia (WALHI: Friends of the Earth Indonesia)

Jl. Tegalparang Utara No 14, Mampang, Jakarta Selatan, Indonesia

(3) Telephone, fax number and e-mail address

- Friends of the Earth Japan

TEL: +81 3-6909-5983 FAX: +81 3-6909-5986 E-mail: [REDACTED]

- Wahana Lingkungan Hidup Indonesia (WALHI: Friends of the Earth Indonesia)

TEL: +62 21-79193363 E-mail: [REDACTED]

(4) If you are submitting a complaint on behalf of others, explain your interest in this case and reason for submitting the complaint.

Friends of the Earth Japan and WALHI, two non-governmental organizations (NGOs) namely based

in Japan and in Indonesia, note that we are submitting this complaint on behalf of the local community coalition, Rapel (Rakyat Penyelamat Lingkungan: People Environment Safer) Cirebon, which consists of community members from Villages Kanci Kulon, Kanci, Buntet, Waruduwur, Citemu, Bandengan, Mundu, and Luwung, Districts Astanajapura and Mundu, Regency Cirebon, Province West Java. Rapel Cirebon, was established in 2007 and has continued to raise their concerns about the adverse impacts of the Cirebon Coal-fired Power Plant Project - Unit 1, for which Marubeni Corporation (Marubeni) has invested in PT. Cirebon Electric Power (CEP), and also Unit 2, for which Marubeni and JERA Co., (JERA) Inc. have invested in PT. Cirebon Energi Prasarana (CEPR). Rapel Cirebon's and our concerns related to the Project are the loss and damage of livelihood, environmental destruction, health damage, terror and intimidation, and social conflict.

We as two NGOs have been supporting Rapel Cirebon to address the problems related to the Cirebon Coal-fired Power Plant Project, such as raising their concerns to the Japanese stakeholders (including Japanese government agencies and companies) as well as the legal court case in Indonesia. For this complaint to the Japanese NCP, it is required to write and provide the information in Japanese or English, while the community of Rapel Cirebon cannot understand either language. In addition, it is highly concerned that a certain risk of human rights violations against the community, such as harassment and intimidation in various forms, would be increased, if they become the direct complainant against the project activities of the companies. Thus, our organizations are proceeding with this complaint to the Japanese NCP on behalf of the community.

2. Information on the multinational enterprise involved

(1) Name of the enterprise

Company-1: Marubeni Corporation (Marubeni)

Company-2: JERA Co., Inc. (JERA)

(2) Location of the enterprise (country and address)

Company-1: Marubeni

(Tokyo Head Office)

Tokyo Nihombashi Tower, 7-1, Nihonbashi 2-chome, Chuo-ku, Tokyo, 103-6060, Japan

Company-2: JERA

(Tokyo Headquarters)

Tokyo Nihonbashi Tower 14th floor, 2-7-1 Nihonbashi, Chuo-ku, Tokyo, Japan

(3) Contact information (Contact person, telephone and/or fax number, e-mail address, as detailed as possible)

Company-1: Marubeni

(Tokyo Head Office) Tel: +81 (3) 3282-2111

Company-2: JERA

(Tokyo Headquarters) Tel: +81 (3) 3272 4631

(4) Reasons why the complainant considers the enterprise as a multinational enterprise

Company-1: Marubeni

Marubeni is engaging in the handling of products and provision of services in a broad range of sectors. The Company's activities also extend to power projects and infrastructure, plants and industrial machinery, finance, logistics and information industry, and real estate development and construction. Additionally, Marubeni conducts business investment, development and management on a global level. Marubeni has 131 branches and offices in 68 countries and regions, consisting of 12 domestic branches and offices, 57 overseas branches and offices and 30 overseas corporate subsidiaries with 62 offices. Marubeni's domestic and overseas offices can be found at <http://www.marubeni.com/company/network/index.html> .

In the Cirebon Coal-fired Power Plant Project - Unit 2, Marubeni, together with JERA, Indika Energy, Samtan and Korea Midland Power, established a joint venture corporation called PT Cirebon Energi Prasarana (CEPR), holding 35% of its shares. CEPR will construct and operate a 1,000 MW coal power plant in this project.

Company-2: JERA

By combining the strengths of the Tokyo Electric Power Group (TEPCO) and the Chubu Electric Power Group (Chubu), JERA aims at fulfilling the public interest of providing internationally competitive energy to Japan while ensuring a strong position on the increasingly competitive international energy market. JERA was established on April 30, 2015, after TEPCO and Chubu concluded a joint-venture agreement on forming a joint venture to implement a comprehensive alliance covering the entire supply chain from upstream fuel investment and fuel procurement through power, and agree the road map for the joint venture's formation on February 9, 2015. JERA succeeded to parent companies' existing fuel transportation and fuel trading businesses on October 1, 2015, and also succeeded to parent companies' existing fuel and overseas power businesses including upstream assets; sales and purchase agreements; and overseas power generation and energy infrastructure businesses on July 1, 2016. JERA has its subsidiaries and business domains abroad in Singapore, Thailand, Australia, and the USA, and has invested in the projects abroad, including in Australia, the USA, Canada, Mexico, East Timor, Thailand, Indonesia, Vietnam, the Philippines, Taiwan, India, Qatar, the UAE, and Oman, the details of which can be found at <https://www.jera.co.jp/english/business/projects/> .

In the Cirebon Coal-fired Power Plant Project - Unit 2, Chubu, together with Marubeni, Indika Energy, Samtan and Korea Midland Power, established a joint venture corporation called PT Cirebon Energi Prasarana (CEPR), holding 10% of its shares, and JERA succeeded this project from Chubu

in July 2016. CEPR will construct and operate a 1,000 MW coal power plant in this project.

3 Detailed description of complaint

(1) Detailed description of issues which the complainant deems the enterprise's non-adherence to the Guidelines

Outline of the project:

The Cirebon Coal-fired Power Plant Project - Unit 2 with a capacity of 1,000 megawatt is estimated to require an investment of USD 2.1 billion and is expected to be operational in 2021. Marubeni (35%), Indika Energy (25%), Samtan (20%), Korea Midland Power (10%) and JERA (10%) have invested in this Cirebon expansion project, and have established PT Cirebon Energi Prasarana (CEPR). CEPR entered into a 25-year power purchase agreement (PPA) with the Indonesian state power utility Perusahaan Listrik Negara (PLN) in October 2015. Japan Bank for International Cooperation (JBIC) and the Export-Import Bank of Korea made a loan agreement with CEPR on April 18th, 2017 although the details of co-financing for the project have remained to be announced officially.

The Cirebon Coal-fired Power Plant Project - Unit 1 with a capacity of 660 megawatt commenced the construction work in 2007 and started its commercial operation in July 2012. The project has cost USD 850 million. The Cirebon project - Unit 1 has been developed by a consortium PT. Cirebon Electric Power (CEP) consisting of: Marubeni (32.5%), Korea Midland Power (27.5%), Samtan (20%), and Indika Energy (20%). PT. CEP signed a 30-year PPA with PLN in August 2007. JBIC, The Export-Import Bank of Korea, and private banks made a loan agreement with CEP in March 2010 with co-financing USD 595 million.

Substantial damage which the local community has actually experienced due to the Unit 1 Project and will experience due to the Unit 2 Project:

Small-scale fishermen surrounding the project site, most of whom don't use a boat, traditionally walk in the shallow seawater along the coastal area and catch various types of fish, such as Blanak, Bandeng, Puro, Kedukang, and Sembilang, with fishnet. While the families could sell what they catch as their income source, they could also keep some fish for their own daily meals. Thus, the coastal area, where the Cirebon Coal-fired Power Plant Project is currently located, has been very important for small-scale fishermen and used to be the very productive fishing ground indeed.

They, however, have been severely suffered from less livelihood and income opportunity due to the adverse impact by the Cirebon Coal-fired Power Plant Project - Unit 1. One thing is the jetty located in Kanci Kulon village, Astanajapura, around which their fishing activity has been disturbed due to the limitation of access. The other thing is the waste water from the project site, including

contaminated liquid and thermal discharge, which we believe have caused the sharp drop of fish. As a result, in order to find fish, have they tried to reach further coastal area from the Pangarengan Stream (Sungai Pangarengan) at the east side to the Kalijaga Stream (Sungai Kalijaga) at the west side, which used to be from the Enar Stream (Sungai Enar) at the east side to the Bandengan Stream (Sungai Bandengan) at the west side before the operation of the Unit 1 Project. (Please also see the map in Annex 1.)

Despite the wider fishing area where they have been trying to find fish after the Unit 1 Project, their fish catchment amount has been still decreased by more than half, comparing the one before the beginning or the Unit 1 Project in 2007, according to the testimonies of some fishermen in Kanci Kulon village when we discussed with them in August 2015 about their fish catchment amount per day with fishing net. Though spending long time to find fish after the Unit 1 Project, they can't find much and are just exhausted.

This is how the Unit 1 Project has destroyed their enriched coastal environment and has deprived them of their sustainable livelihood and income opportunities. The families who have less livelihood have had no choice rather than relying for their livelihood on not-stable daily-wage works, such as construction labor. Most of the families have never received compensation or remedy from PT. CEP. Even though some families were provided fishnets and two fishermen were provided two boats, it is not an effective solution because the amount of fish remains less than before the project.

If the Cirebon Coal-fired Power Plant Project - Unit 2 is pushed through, further substantial damage on the small-scale fishermen will be caused and their life will become more difficult. It is because another jetty will be constructed exactly in their small-scale fishing area again (Please also see the map in Annex 1) and will certainly disturb their fishing activity. Likewise, they are strongly concerned based on their experience from the Unit 1 Project that the waste water from the Unit 2 Project would more deteriorate the marine ecosystem and would cause more reduction of fish they could catch. Then, where could they go fishing and sustain the life of their family? With the Unit 2 Project, those small-scale fishermen will surely suffer from further less livelihood and income opportunity.

Even though PT. CEPR, like PT. CEP, provides some programs under its Corporate Social Responsibility (CSR), we believe that those are not effective to restore their small-scale fishermen's livelihood and not the right answer. Though they have never heard about any livelihood restoration plan related to the Unit 2 Project, so far.

Administrative court case filed by the small-scale fishermen and the regional court verdict to revoke the environmental permit for the Unit 2 Project:

As for the Unit 2 project, the small-scale fishermen from Kanci Kulon Village filed an environmental administrative lawsuit in December 2016, aiming at preventing any further adverse impacts on marine ecosystem and thus on fish they could catch by the revoke of the environmental permit for the Unit 2 Project. They pointed out the illegality of the environmental permit which West Java provincial government issued and the possibility of the project's illegalities against various environmental related regulations, including the followings;

- (1) Regional Regulation No. 17 of 2011 on Cirebon Regency Spatial Planning year 2011-2031;
- (2) Government Regulation No. 27 of 2012 on the Environmental Permit;
- (3) Law No. 26 of 2007 on Spatial Plan;

Most importantly, in the recent verdict dated April 19, 2017, Bandung Administrative Court (PTUN) admitted that the Unit 2 Project to be built in two districts, namely Astanajapura and Mundu, doesn't comply with Regional Regulation No. 17 of 2011 on Cirebon Regency Spatial Planning year 2011-2031, which allocates only Astanajapura for the development of power plant. Thus, the court requires West Java provincial government to revoke the environmental permit.

Aside from the said point in the verdict, we can still point out that Government Regulation No. 27 of 2012 on the Environmental Permit stipulates that the AMDAL (Environmental Impact Assessment in Indonesian language) document cannot be assessed in case the business plan doesn't comply with the spatial plan.

Further, Law No. 26 of 2007 on Spatial Plan stipulates criminal sanctions: that is, anyone who does not comply with the designated spatial plan shall be subject to imprisonment of three (3) years and a fine of not more than Rp 500,000,000.00 (five hundred million rupiahs). In case of the officials who issued the location permits, the imprisonment could be five (5) years and a fine at the same amount.

(Note 1: PT. CEPR has started the land clearing work for the Unit 2 Project, and has been already working in Mundu as well as in Astanajapura. This fact implicates that PT. CEPR has currently committed a crime against Law No. 26 of 2007 on Spatial Plan.)

(Note 2: The location permit for the Unit 2 Project covers three (3) districts, namely Astanajapura, Mundu, and Pangenan, which doesn't comply with the Cirebon Regency Spatial Planning, either.)

Despite of the above-mentioned conditions related to the illegality of the Unit 2 Project, West Java provincial government supported by PT. CEPR has already lodged an appeal on April 21, 2017. Thus, the environmental permit is currently still valid till the high court or the Supreme Court concludes a verdict on this lawsuit.

It is highly concerned that PT. CEPR would still continue the land clearing work and then would start

the main construction work to build the Unit 2 power plant even before the final court decision, and thus that the small-scale fishermen surrounding the project site would be suffering from more difficult life with less livelihood and income opportunities.

(2) Descriptions on how the issues described above are in breach of the Guidelines (please specify relevant articles and chapters)

(for example: A material used in the production process of Enterprise A is hazardous and may cause an adverse impact to the residents and the environment, therefore Enterprise A breaches article 4 of VI. Environment)

1. Failure to obey domestic laws in breach of article 2 of I. Concepts and Principles (Obeying domestic laws is the first obligation of enterprises.)

As described in the above section, Bandung Administrative Court (PTUN) admitted that the Unit 2 Project to be built in two districts, namely Astanajapura and Mundu, doesn't comply with Regional Regulation No. 17 of 2011 on Cirebon Regency Spatial Planning year 2011-2031, which allocates only Astanajapura for the development of power plant. While the final court decision is remained to be concluded by the high court or the Supreme Court, PT. CEPR and its shareholders Marubeni and JERA must ensure the compliance of the Unit 2 Project with the said regulation by the final court decision, before they continue any more land clearing work and push through any construction work related to the Unit 2 Project.

In addition, Marubeni and JERA must recognize the following facts;

(1) The AMDAL document for the Unit 2 Project was developed against Government Regulation No. 27 of 2012, which stipulates that the AMDAL document cannot be assessed in case the business plan doesn't comply with the spatial plan;

(2) PT. CEPR has been already working in District Mundu as well as in Astanajapura, which implicates that PT. CEPR has already committed a crime stipulated in Law No. 26 of 2007 on Spatial Plan.

2. Failure to refrain from seeking or accepting exemptions (To be able to push through the project activity without revising the Cirebon Regency Spatial Planning) in breach of article 5 of II. General Policies (Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues.)

According to PT CEPR's press release dated April 21st, 2017 (where the company name was shown as Cirebon Power) attached as Annex 2, the company clearly and fully supports West Java provincial

government to lodge an appeal to the high court, and also indicates its acceptance of the following exemptions;

(1) Since the beginning, Cirebon regency government has committed to include Mundu district as the allocated locations for the development of power plant in the Cirebon Regency Spatial Planning. However, the Spatial Planning hasn't yet been revised till today.

PT. CEPR and its shareholders Marubeni and JERA must refrain from accepting such government offer, or must not regard such government offer as an exemption from the revision of the Spatial Planning, while having already pushed through the AMDAL process and any project activity, including the land clearing and construction work;

(2) National Body of Spatial Planning Coordination (BKPRN), West Java provincial government, and Cirebon regency government agreed that the AMDAL proposal for the Unit 2 Project could proceed (and then the AMDAL proposal followed by the environmental permit was approved by West Java provincial government) even before the revision of the Spatial Planning, which actually violates Government Regulation No. 27 of 2012, which stipulates that the AMDAL document cannot be assessed in case the business plan doesn't comply with the spatial plan.

PT. CEPR clearly stated in the press release that such agreement was the result of the company's coordination with BKPRN, West Java provincial government, Regional Body of Spatial Planning Coordination (BKPRD), and Cirebon Regional Body of Development Planning (BAPPEDA) about the Spatial Planning revision, referring to Presidential Regulation No. 4 Year 2016 about Acceleration of Power Plant Infrastructure Development.

PT. CEPR and its shareholders Marubeni and JERA must refrain from seeking such exemption or must avoid making efforts to secure such exemption from the revision of the Spatial Planning, while having proceeded with the AMDAL process.

Marubeni and JERA must ensure that PT. CEPR refrains from seeking or accepting the above-mentioned exemptions and that PT. CEPR doesn't support West Java provincial government to lodge an appeal to the high court, admitting such exemptions.

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

Past circumstances on the issues:

Rapel Cirebon, or the community members, made several protest actions against the Cirebon Coal-fired Power Plant Project - Unit 1 and demanded that the local Cirebon government halt the plant construction during the construction phase. Even though they conveyed their opposition to PT. CEP more than 30 times through demonstrations and media statements, there was no response from

the company. As a result, their efforts to voice the opposition against the Unit 1 project didn't bear fruit then, and the Unit 1 plant started its commercial operation in 2012.

After a few years since the operation of the Unit 1 plant started, the community members have found that their life hardship is still not addressed appropriately and have also become more concerned about our health condition, especially their children's, due to continuous fly ash and coal dust fall in their community. As the community already had experience no response from PT. CEP to their statement, they have tried to tell their concerns to Marubeni, one of the investors in PT. CEP and PT. CEPR, through us or NGOs, Wahana Lingkungan Hidup Indonesia (WALHI) and Friends of the Earth Japan. WALHI and Friends of the Earth Japan had a meeting with Marubeni on May 18, 2016 in Tokyo and explained the community's concerns and problems which they have already experienced from the Unit 1 Project and will experience from the Unit 2 Project in the near future. But Marubeni showed the different view or recognition from ours on the facts we have raised about the Unit 1 and the Unit 2 projects.

Present circumstances on the issues:

On December 6, 2016, Rapel Cirebon, represented by 6 small-scale fishermen in this case and assisted by the Advocacy Team for Climate Justice, including WALHI, filed a case to the administrative court (PTUN) in Bandung, demanding the revoke of the environmental permit for PT. CEPR to develop the Unit 2 power plant, which was issued by West Java provincial government. Though the PTUN in Bandung admitted in its verdict dated April 19, 2017 that the Unit 2 Project didn't comply with the local regulation on spatial planning and required West Java provincial government to revoke the environmental permit, the provincial government supported by PT. CEPR has lodged an appeal to the High Court in Jakarta on April 21, 2017.

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

Due to the appeal by West Java provincial government supported by PT. CEPR, the environmental permit is currently still valid till the High Court or the Supreme Court concludes a verdict on this lawsuit. Thus, It is highly concerned that PT. CEPR would still continue the land clearing work and then would start the main construction work to build the Unit 2 power plant even before the final court decision, and thus that the small-scale fishermen surrounding the project site would be suffering from more difficult life with less livelihood and income opportunities.

(4) Expected outcomes complainant wishes to achieve through the NCP procedure (requests to the enterprise involved)

(for example: Through the NCP procedure, we (the complainants) want to have meetings with Enterprise A and request them to adopt cost-effective measures to prevent or minimize damages

caused by the material used for production.)

To ensure that substantial damages and problems related to the Unit 2 Project are prevented among our community in the long-term as well as in the short-term, through the NCP procedure, we would like to request that Marubeni and JERA adhere to article 11 or 12 of II. General Policies of the OECD Guidelines and make sure that the followings;

(1) PT. CEPR doesn't continue and push through any project activity related to the Unit 2 Project, including its land clearing work and its construction work at the project site, till the final court decision makes sure the compliance of the Unit 2 Project with the above-mentioned laws and regulations;

(2) PT. CEPR refrains from seeking or accepting the above-mentioned exemptions and that PT. CEPR doesn't support West Java provincial government to lodge an appeal to the high court or the Supreme Court, admitting such exemptions;

(3) PT. CEPR even encourages West Java provincial government to withdraw its appeal to the high court or the Supreme Court, and makes efforts to comply with the Indonesian laws and regulations.

4. Attachments of relevant documents supporting the complaints, where applicable. (If the original documents are written in languages other than Japanese and English, translation in Japanese or English should be attached.)

(1) Text of relevant laws and regulations of the country where the issues occurred

Please refer to Annex 3 (Case petition summary No. 124/G/2016/PTUN.BDG prepared by WALHI) and Annex 4 (Explanation on the court case prepared by one of the lawyers in charge of the administrative court case. The Japanese translation is prepared by Friends of the Earth Japan) as well as the descriptions in the above sections.

(2) If the specific instance is also dealt with by other domestic or international proceedings, documents on the identity of the country or organization conducting the parallel procedure, the issues raised, the status of the procedure and its future prospects.

Please refer to Annex 4 as well as the descriptions in the above sections.